

UNITED PRESS DISPATCHES

Medford Daily Tribune.

The Weather
The weather man says:
Indications point to cloudy weather for tonight and Tuesday. Warmer, Easterly winds.

THIRD YEAR.

MEDFORD, OREGON, MONDAY, MARCH 1, 1909.

No. 294.

POSTAL RECEIPTS IN YEAR INCREASED 32 PER CENT

COMMISSION TO WORK FOR BETTER ROADS

Not Alone Will Railroad Matter be Considered But All the Highways Throughout State

From the letter sent out by Governor George E. Chamberlain appointing the members of the commission on highways it is evident that the commission will constitute a board to carry on actual work for the good roads movement in Oregon.

The commission's chief work is to secure all data relating to highways throughout the state and recommend such action as will result in better transportation facilities.

The report of the conservation commission appointed by the governor under the same circumstances without authority of law, has attracted national attention and won commendation from the highest officials of every department of the government.

The governor desires me to suggest to you that you arrange for a meeting and of your own motion fill any vacancies that may occur in the commission, organize for work and take such steps generally as you may deem advisable in the premises.

TODAY LOW RATES GO INTO EFFECT

Chance for Every Person to Aid in Developing State by Urging Eastern Friends to Come.

Today is an extremely important one in the growth and advancement of the state of Oregon. It is the opening day of the latest priced one-way tickets to the state sold for years, and calculated on the basis of rate per mile.

CITY'S GROWTH IS REFLECTED IN FAST INCREASING BUSINESS

February and January Show Great Gains Over Last Year—Not a Box to Be Had in Medford's Postoffice Building.

During the year ended February 28, 1909, the postal receipts of the Medford postoffice increased over the preceding year over 32 per cent.

January, 1909, shows an increase of \$265.28, or 21 per cent, over January, 1908.

February, 1909, shows an increase of \$287.24, or 29 per cent, over February, 1908.

During the year ended February 28, 1909, the total postal receipts amounted to \$15,150.16. The receipts during the preceding year totaled \$11,442.28, an increase of \$3707.78.

In January, 1909, the receipts were \$1564.49 and in January, 1908, they amounted to \$1299.21, an increase of \$265.28.

In February, 1909, the receipts amounted to \$1258.99, an increase of \$287.24, when compared with February, 1908, when the receipts were \$971.75.

In no way is the growth of the city reflected in a more striking manner than by these figures.

As a further indication of the growth of the city, it is almost impossible to secure a lock box at the postoffice, although a year ago one could easily have been secured.

EVANS TO TOUR THE NORTHWEST LECTURING

Announcement comes that Rear Admiral Robley D. Evans is to lecture in Portland and other Pacific northwest cities late in March. "The Fleet From Hampton Roads to San Francisco" will be his subject.

WIDOW AND CHILDREN PERISH IN THE FLAMES

BAKERSFIELD, Cal., Feb. 27.—Mrs. M. W. Beckman, a widow with four young children, burned to death early today in a fire destroying her home, seven miles from here.

MAN REGISTERS GIVING HIS AGE AT 1000

TACOMA, Wash., March 1.—According to the registration books here, Tacoma has a citizen, S. C. Hitchcock, a workman, who is a thousand years old.

Old Soldier Dies.

LUCKY BALDWIN HAS RUN HIS LAST RACE

LOW ANGELES, Cal., March 1.—E. J. (Lucky) Baldwin died here at 7 o'clock this morning. The last five days he has been kept alive by oxygen. He was stricken with pneumonia six weeks ago. Nobody knows what his estate is worth, but it is estimated to be millions.

15 STAMP MILL FOR ANACONDA AND MARSHALL

Dr. Reddy Buys Third Interest—Has Been Worked for 30 Years—Situated 8 Miles From Wolf Creek

Dr. J. P. Reddy of this city has purchased a third interest in the Anaconda and Marshall mine, situated eight miles from Wolf creek. He purchased his interest from Reuben Jones of Glendale. The owners of the mine are J. C. Lewis, Tom Sheridan of Rainier and Mr. Souanna. The mine is a famous quartz and has been worked for the last 30 years, over 1000 feet of development work being done on it in that interim.

At the present time there is a five-stamp mill upon the property and the owners expect to increase this at once by adding ten stamps to the mill. This will give them a chance to rush the work of development and handle the output in a much more satisfactory manner.

SIGNERS OF GUARANTEE FOR BASEBALL VISITORS

The following are signers for the fund guaranteeing expenses of the Portland baseball team: William M. Colvig, Young & Hall, Ed Van Dyke, Joel Billard Parfous, O. M. Selby, J. J. Boster, W. E. Phillips, Wilbert Ashpole, Newman & Clark, Frederick Hoshold, W. C. Green, T. W. Miles, James W. Durbach, B. W. Gregory, L. R. Warner, Jr., H. S. Butler, S. T. Howard, Jr., R. P. Platt, Warner, Wartman & Co., Hubbard Bros., George P. Merriam, Rex Gregory company, Deed & Koster, Model Clothing company, P. W. Hallis, Daniels & Miles, J. C. Bigham, Leon B. Buckley, M. Elwood, A. A. Davis, H. E. Chapman, W. E. Johnson, C. H. Seyler, E. L. Tom Valle, H. T. Findley, Medford Grocery company, Medford Auto company, J. D. Otwell, Charles D. Haysbrigg, L. D. Harris, "Toggerly Bill," C. T. Noe, George T. O'Brien, H. A. Wilkinson, J. R. Wood, W. W. Ebert, W. E. Johnson, A. M. Boudreau, O. M. Murphy, A. S. Rosenbaum, M. W. Weeks, E. A. King, Jesse Hensley, J. W. Wright, D. B. Wood, J. E. Rogers, M. Bagshaw, Chas. King, Fred Weeks, M. & E. J. Adams, Dr. J. L. Helms, E. Wilkinson, Grover (Carm), J. D. Howard, H. A. Thieroff, Elwood & Harrold, Eiter & Dunlap, Harry E. Foster, P. E. Merrill, John M. Root, H. D. Howard, J. H. Hamilton, A. B. Reames, George M. Needles, John M. Howard, J. H. Brown, R. F. Seely, P. J. Donning, J. E. Barfield, G. W. Priddy, J. E. Sallis, Olmsted & Hillard, Rogue River Electric company, H. Whittington, J. R. Woodford, E. B. Pickett, J. A. Perry, Frederick C. Buege, J. A. C. Jones, M. K. Kild, J. W. Buss, H. P. Hargrave, John J. Wilkinson, A. E. Whitman, Arthur H. Davis, R. F. Bonson, W. C. Murphy, P. H. Miller, Edgar Hafer, Judge W. S. Crowell, J. A. Melrose, Charles Tull, J. C. Barman, C. W. McDonald, M. S. Belden, J. T. Piggart, Bert Anderson, Arthur Brown, R. H. Whitehead, Martin J. Reddy, Ben Garnett, H. L. Alford.

HOTEL ARRIVALS

The Nash—J. Miller, San Francisco; Charles Bloom, Portland; L. Worthington, Spokane; E. E. Tremblay, Pasadena; James C. Wilson, Fort Quinlan; B. Conner, Table Rock; Bert G. Bahrdt, Son. Salen; R. E. Panto, Philadelphia; W. D. Bernady, Portland; James Goss, Chicago; John J. Walker, Pittsburgh; R. B. Swift, St. Cloud; E. B. Wilson, San Francisco; M. A. Olson, Portland; D. E. Casner, Maple View; W. C. Walling, G. O. Miller, Minneapolis; A. H. Jones, San Francisco; E. P. Cummings, Fort Lewis; P. G. Baymond, Portland; H. P. Hill, Chicago; E. S. Dobbie, Hood River; T. C. Prochaska, Mackay; Fred J. Rickel, St. C. Barry, and wife, Eschburg; P. R. Drexler, New York; E. C. Leland, Chattanooga; T. W. Wolrin, H. T. Daniels, Seattle.

F. E. Murphy has returned to Eugene after a visit with friends in this city.

SUIT STARTED TO RECOVER LANDS

Action Brought Against Harriman By Government Started Today in United States Court in Portland

The suit of the government to recover the possession of some 2,000,000 acres of Oregon land, valued at nearly \$10,000,000, was started today in the United States court in Portland. Tracy C. Becker and R. D. Townsend represent the government, while W. W. Cotton and others will represent the Harriman railroads, who have succeeded to the title to this land grant, which was primarily given the Oregon & California railroad.

The case came up today on a demurrer filed by the railroad company to the bill of complaint and the contention of the government will stand or fall upon the arguments upon this document. Should the demurrer be sustained the government will have lost its case; should the demurrer be overruled the case will continue to trial. It is expected that the arguments will consume several days.

Great Interest to Oregon. This is the beginning of the trial of the Oregon & California land grant cases involving the ownership of vast tracts of lands in this state. July 25, 1850, congress gave as a constructive grant the old sections of land for 20 miles on each side of a proposed railroad line. The express terms of the grants given to the Oregon & California railroad, which proposed to construct a line through Oregon, were that the lands in the grant should be sold to actual settlers for not to exceed \$25.00 an acre. It is alleged that the railroad company violated these terms, by charging as high as \$7 an acre for these lands and later taking the land off the market.

Local Defendants. Supplementarily to this case are many other suits in which over 100 purchasers of railroad land are made defendants. Among these suits brought into the court are the Big Bend Milling company, of which W. L. Vawter and A. A. Davis are majority owners; the Battle Falls Sugar Pine Lumber company, controlled by Dewing brothers of Michigan; and R. H. Harris of Medford and numerous other Jackson county timber land owners.

LOCAL CANTON IS ORGANIZED

With the largest charter membership of any like institution west of the Rocky mountains, Canton Daylight, No. 16, Entertainers Militant, I. O. O. F., of the department of Oregon, was organized on Saturday evening in this city under the direction of W. Crowhurst, school and address camp to the general commander, representing the grand lodge.

The officers of the institution are: W. S. Crowhurst, captain; C. C. Taylor, lieutenant; D. S. Day, sergeant; M. M. Tucker, standard-bearer; J. P. Thompson, J. E. Day, secretary; M. E. Manderson, clerk; J. L. Demaree, clerk; E. G. Gabbler, correspondent.

Those who are fortunate enough to be charter members of the new lodge are: C. E. Taylor, L. M. Lyon, J. L. Demaree, E. C. Gabbler, B. P. Clark, M. L. Meadows, P. R. Sanderson, J. W. Meadows, E. E. Boyden, J. W. Day, W. T. York, J. E. Day, N. J. Wiley, J. S. Tapp, C. P. Tapp, F. Hubbard, M. M. Taylor, J. S. Wells, T. J. Lewis, J. Wolff, William S. Crowell, J. L. Wood, M. McGowley, W. W. Mitchell, W. J. Vassar, M. H. Teyer, S. T. Howard, Jr., J. H. Bowman, H. G. Volney Dixon, Lee Phillips, Thomas L. Taylor, Homer H. Harvey, P. E. Bolden, Charles H. Barry, George P. Flater, Harry Goss, P. M. Wilson, A. T. Lund, 2000.

Charles G. King, who was recently operated upon for hernia, is rapidly recovering and will soon be able to be discharged from custody.

MINERS UP IN ARMS OVER DECISION IN CONTESTS

HARRINGTON CASE IS STILL BEFORE COURT

Expect to Finish Late Today—Opinion as Handed Down by the Supreme Court Regarding Matter

The Harrington case is being argued this afternoon in the circuit court in Jacksonville, the taking of evidence having been completed Monday morning. It is probable that the arguments will be concluded late today and the case taken under advisement by Judge H. K. Hanna.

Supreme Court's Opinion. The opinion of the supreme court in the matter is as follows:

This is an appeal from an order made by the judge of the circuit court for the First judicial district, refusing to issue a writ of habeas corpus to inquire into the cause of the imprisonment of John Harrington. From the petition and accompanying documents it appears that in April, 1907, Frances M. Snyder was appointed administratrix of the partnership estate of Victor E. Snyder and John Harrington by the county court of Jackson county; that such court made an order requiring petitioners, or the surviving partner, to deliver and turn over to the executrix the partnership property; that he refused to deliver to her all the property which she claims belonged to the partnership, and in January, 1909, a citation issued from the county court requiring him to appear and show cause, if any, why he should not be required to do so.

In obedience to this citation, he appeared and for answer thereto stated, that he claimed the property in controversy as his own, and that the title to the same was involved in a suit in equity between himself and the administratrix of the partnership estate, notwithstanding which answer the county court ordered and directed him to deliver to the executrix such property, and that he be imprisoned in the county jail until he complied therewith. A warrant of arrest was thereupon issued and petitioners arrested and committed to imprisonment.

The petition further alleges, that after the order of the county court was made the petitioner delivered to the administratrix all the property in his possession, which she alleges belongs to the partnership estate, but notwithstanding such delivery, the sheriff still retains him in custody, for the alleged reason that she claims that he did not deliver all such property. The circuit judge refused to allow the writ and the petitioner appeals.

Habeas Corpus Not an Appeal. The refusal to grant the writ of habeas corpus was apparently based on the theory that the petitioner was in prison by virtue of a judgment or decree of a competent tribunal and, therefore, under section 660, R. & C. Comp., was not entitled to prosecute the writ. It is familiar law that habeas corpus proceedings cannot be resorted to for the purpose of reviewing judgments of a court of competent jurisdiction for either errors of fact or law. It cannot be made to serve the purpose of an appeal. Had the court's issuing commitment had jurisdiction of the person and the subject matter its judgment is void and may be questioned in a habeas corpus proceeding. The statute provides that the surviving partner, or the administrator of a partnership estate, shall deliver to him all the property of the partnership, and that if he refuses or neglects to do so he may be cited to appear before the county court or judge, and unless he show cause to the contrary, the court or judge shall require him to comply therewith. (Sections 1123, R. & C. Comp.) It has been repeatedly held by this court that a county court has no power or authority to determine a dispute between the administrator of an estate and a third person concerning the title to property, but that such question, if an adjudication becomes necessary, must be tried in a court of ordinary jurisdiction. (Gardner vs. Gilman, 20 Or. 398; Day vs. Block, 20 Or. 347; Re Bolander's Estate, 28 Or. 490.)

County Court's Power. Under these decisions it is very doubtful whether a county court has the power or authority to determine the question of title between the administrator of a partnership estate and a surviving partner, who, by a writ of habeas corpus, seeks that writ granted and said Harrington released from custody.

VALUABLE MINING PROPERTY AWARDED TO TIMBER INTERESTS

Roy Cooper States That Recent Decisions Are in Favor of Timbermen in Cases Where Mines Are Valuable and Timber Almost Valueless.

Miners in the Blue Ledge district are much worked up over a decision by the Roseburg land office, which turns over as timber claims mine prospects on which continuous development has been done for years. Almost any prospect can be forfeited under this ruling. Among the claims affected are those of Sullivan and Buck at Squaw Lake and the "Little Six" placer mine at Seattle bar, owned by Robert S. Towne, owner of the Blue Ledge.

The ruling in the case of the quartz prospects has been appealed. It was rendered by Registrar B. L. Eddy and Receiver J. M. Lawrence in the case of James T. Hendy against Ed Spenser and John Spiker, involving the S. W. 1/4 of section 4, township 41 south, range 3 west, and the same ruling applied in the cases of Edwin E. McKinney and Charles E. Smith against P. J. Sullivan and Bruce Buck, involving claims at Squaw Lake. The land office ruled as follows:

Land Office Ruling. "The testimony has been carefully examined and shows nothing more as to the mineral character of the land than that some prospecting has been done, without the development of any valuable ore deposit. There is no showing made that will justify a finding that the land is of any value for mineral therein contained, while it appears that it is valuable for its timber and is otherwise subject to entry under the timber and stone act. We are therefore of opinion that the protest ought to be dismissed."

In these cases, Attorney G. W. Treffer of Astoria represented the defendants and Attorney W. M. Colvig the plaintiffs. Evidence showed that the prospectors had found gossan croppings on the surface and expected by going down to find copper sulphide.

Roy Cooper, engineer and surveyor of Coquille City, who led out the claims in the Blue Ledge district and several patents for the Blue Ledge claims, arrived in Medford Sunday and reports a great deal of excitement among the miners, as any claim can be attached and perhaps declared forfeited. He states that the timber is not valuable, while the prospects are, and doubts very much from the evidence given if the contestants knew what land they were acquiring.

"Little Six" in Case. "One of the mines turned over to the timber," said Mr. Cooper, "is the 'Little Six' placer, purchased by Robert S. Towne of New York from the Phoenix Mining company in 1906 and since operated by him. For this mine, which is near Seattle bar, a strip 200 feet long, 200 feet wide and 200 feet deep has been worked. Development work to the extent of over \$5000 has been done. It is a mile long and 500 feet of slope being the water to the workings. Yet I understand that the contestant, a lumberman named Spaulding, asserts that no mining development had been done and no trails or roads made."

"The timber on the land cannot amount to much. Another fact against payment is that the patent was issued within two weeks of the contest, whereas it usually takes months to secure a patent, and the contest is allowed 30 days to appeal."

Does not belong to the partnership. And, therefore, when cited to appear, in accordance with the provisions of section 1124, he sets up title in himself. This is claiming "mine to the contrary" and is a proper interpretation of the law. The order or judgment of the county court directing the petitioner to deliver the property is contrary to the administrative of the partnership and, therefore, without authority and void, and its enforcement is not by virtue of a judgment or decree of a competent court. But, however that may be, the institutions alleges that he has complied with such order and delivered to the administratrix all the property belonging to the partnership. If that were the case, he is under the terms of the statute, is entitled to discharge, and this matter can be brought up in a habeas corpus proceeding. The statute provides that after the officer has made his return to the writ the plaintiff may, by repudiation, controvert any of the material facts set forth in the return, or may allege any fact to show, either that his imprisonment or restraint is unlawful, or that he is entitled to his discharge; and thereupon the court or judge shall proceed in a summary way to try the issues, and judgment may be pronounced thereon.

BENSON TAKES OATH OF OFFICE AS GOVERNOR

Draws Salary as Governor and as Secretary of State, Making Total of \$9,500 a Year

SALEM, Or., March 1.—Oregon today has a new governor in the person of F. W. Benson, secretary of state, who took the oath at 10:10 o'clock this morning. It was administered by Chief Justice Moore in the presence of 50 employees of the capital.

His first official act was to appoint S. A. Koser as insurance commissioner. Koser has been chief clerk in Benson's office.

Governor Benson is still secretary of state and chairman of all administrative boards upon which he votes as secretary and as governor. He will draw both salaries—one as governor of \$5000 a year and the other as secretary, \$4500 a year.

Governor Benson appointed Peter Applegate of Jacksonville, son of pioneer parents of southern Oregon, state land agent, succeeding G. V. Galloway.

CHAMBERLAIN HAS SUITE OF ROOMS ASSIGNED

The suite of offices assigned to Chamberlain by the senate are in the new office building, on the second or main floor. They have a south front.

The program prepared by the senate managers has Chamberlain on the list to be sworn in in regular order when Oregon's name is called in the roll of states with the new senators.

According to the present expectation he will be sworn in with Burton of Ohio, Gore of Oklahoma and Pearse of Pennsylvania.

SALOON MEN PAY BIG FINES TOTALING \$3000 IN ASTORIA

ASTORIA, Or., March 1.—The grand jury for the February term of court returned a total of 677 true bills and convictions were secured on all excepting one. As a result of the efforts of the grand jury's work 34 saloon men have been fined for violation of the Sunday closing law, and four or five "blind pigs" have been broken up.

Two blind pig men pleaded guilty, and the first, Knute J. Hermunstadt, was fined \$400 on the first indictment against him, and \$500 on each of six other indictments for the same offense. The last six fines, aggregating \$3000, were suspended, however, during good behavior.

or restrain, or against the same, and to dispose of the party as the law and justice of the case may require (Section 649, B. & C. Comp.) And if no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, the court or judge shall discharge such party from the custody or restraint under which he is held (Section 632, B. & C. Comp.)

Under these provisions, it was, in our opinion, the duty of the judge to whom the petition was presented to have allowed the writ and required the officer having the custody of the petitioner to bring the proper return thereto, so that it could have been determined whether the imprisonment was unlawful, either because the order committing him was void or he had complied therewith. For these reasons we think the judgment or order appealed from must be reversed and the cause remanded with directions to issue the writ.

SUGGEST MANY TUNES FOR TAFT INAUGURAL

NEW YORK, March 1.—United statesmen throughout the United States are today expressing their opinions regarding the most fitting air that should be played at the inauguration parade, as it is passing Taft's reviewing stand. The air selected run from "On the Banks of the Wabash" to "Dixie." One suggests "Sweetheart" as a tribute to Mrs. Taft. Another says "Hon. Mr. Taft" which is typical of Taft's smile. Charles Hazelrigg says most any old tune from "Fra Diavolo" will do.