

\$1,000 REWARD!

ONE THOUSAND DOLLARS REWARD WILL BE PAID BY THE UNDERSIGNED TO ANY PERSON WHO CAN SHOW BY AUTHENTIC TESTIMONY THAT ANY CITY OR TOWN IN THE UNITED STATES, OUTSIDE OF THE ROGUE RIVER VALLEY, HAS TRIBUTARY TO IT, WITHIN A 10-MILE RADIUS, A 20-MILE RADIUS, A 30-MILE RADIUS OR A 40-MILE RADIUS, AS MANY DIVERSIFIED RESOURCES AS MEDFORD, OREGON, HAS WITHIN A CORRESPONDING RADIUS.
MEDFORD COMMERCIAL CLUB.

MEDFORD DAILY TRIBUNE

FOURTH YEAR.

MEDFORD, OREGON, THURSDAY, AUGUST 26, 1909.

No. 136.

BRIEF IS FILED CRATER CASE SUPREME COURT

Document Is Very Comprehensive,
Filling 62 Pages of Printed
Matter—Full of Quota-
tions of Authorities

BRINGS OUT FACT THAT
ROAD IS NOT LOCAL

Attention Called to Fact That Plain-
Did Not Introduce Any Evi-
dence in the Matter

The brief of the appellants in the case of J. K. Sears vs. George A. Steel as treasurer and F. W. Benson as secretary of state, commonly known as the Crater Lake road case, an appeal from the decree of Judge William Galloway, has been filed in the supreme court. The brief is very comprehensive, filling 62 pages printed matter and is full of quotations to sustain the points of authorities and arguments of the appellant.

The allegation that the act of the legislative assembly making the \$100,000 appropriation is unconstitutional for the reason that it is in violation of section seven of Article 11 of the constitution in that it attempts to create a debt against the state for more than \$50,000, is alleged to be nothing more than a naked allegation of a conclusive law. A statement of respondents, construction or interpretation of the act of the legislature complained of and nothing more. Facts, it is stated, not conclusions of law, must be pleaded.

The second act upon which the respondents predicate their right for relief is that the legislative act is unconstitutional because section 23 of article 4 of the constitution provides that the legislative assembly cannot pass special or local laws for laying, opening and working on highways. Appellants allege that the complaint of the respondent does not state facts sufficient to entitle respondent for relief for the reason that it does not set out facts where in said act is unconstitutional and void or where it contravenes the constitution.

The brief states that by the terms of the act this road is to be a state road from the Pacific ocean to the Idaho boundary via Crater Lake, and the fact that a portion of it passes through Jackson and Klamath county does not change its character from a state road to a local road or make it a local or special law.

There is absolutely nothing in the constitution, states the appellants, prohibiting the legislative assembly from appropriating money for the construction of a state road and the case of Allen vs. Hirsh is cited to sustain the contention as are numerous other cases out of Oregon. Reference is made to the case of Maxwell vs. Tillamook in which it was held the act of appropriating \$10,000 to aid Tillamook in the construction of a wagon road was void for the reason that it applied to and operated in the county of Tillamook entirely and had no force or effect in any other portion of the state. "It seems therefore to be the settled doctrine of this state in the legislative as-

"I MAY AND THEN I MAY NOT"—MULKEY

District Attorney Not as Yet De-
cided Whether He will Contest
With Congressman
Hawley

HAS BEEN URGED TO DO
SO, BUT IS HOLDING BACK

Report That Hawley Met With a
Frost in Coos
Bay

"I have not yet made up my mind whether to contest with Congressman Hawley the nomination for representative from this district," said District Attorney B. F. Mulkey, whose candidacy was recently announced in a Portland paper. "I have been urged by many friends to make the race, for there is great dissatisfaction with Mr. Hawley's course. If I were a wealthy man, I could answer off-hand, but being poor, I do not know as I can afford to run." But "Barkis is willin."

The only other probable candidate against Mr. Hawley at this time is W. K. Newell, president of the state board of horticulture and a former member of the lower house of the Oregon assembly. Mr. Hawley has managed to antagonize the state grange, and it is evident that they will largely support anyone who makes the race.

Congressman Hawley is reported to have met with a frost at Coos Bay, where he made a speech at the development congress. After telling about the tariff and glories of Oregon, he was asked what he had done to deepen the harbor at Coos Bay, and his reply was not very satisfying. Some one told what Binger Hermann had done in congress and Mr. Hermann received an ovation.

Should Mr. Hermann decide to contest the nomination with Mr. Hawley, the latter would have hard sailing.

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Assembly may appropriate money to aid in the construction of a road which does not operate wholly within one county, and which is not limited to a particular county for a special purpose.

"Our constitution has no provision in prohibiting the legislature from passing a law granting aid for the purpose of internal improvements, nor has it a provision requiring all law to be general and uniform in their operation."

Attention is called to the fact that the respondents introduced no evidence, while the appellants introduced testimony showing that this act of the legislature was a general application to the entire state of Oregon, and that the state road mentioned in said act if construed as contemplated therein it will be a benefit to the whole people of this state and aid in the development of the entire state. Parts of the testimony of witnesses is given and this testimony stands uncontradicted and conclusively shows that the act of the legislative assembly is a general law of general application and will result in lasting benefit to the people of the entire state.

HOWELL PEARS BRING \$3.70 PER BOX IN CHICAGO--SECOND CAR BARTLETTS BRING \$3.15

First Car Sold in Chicago Brought \$1549
Gross---Cars Forwarded From
Chicago to New York

CHICAGO, Aug. 27.—No Rogue River Bartletts offered here today, all being diverted to Boston, Baltimore, New York and Eastern markets. Prices here the same as yesterday.

A box of Howell pears sold Wednesday in Chicago for \$3.70, highest price ever paid for Howells. The box was shipped by Reginald H. Parsons, off the Hillcrest orchards, as an experiment.

The second car of Rogue River fruit was sold in Chicago Wednesday, and averaged \$3.15 a box. It was shipped by the Burrell orchards.

Detailed returns from the first car of Rogue River Bartletts sold this season show that the car grossed \$1549. The pears averaged \$3.25, second quality \$3.15. This sale was reported at the first of the week.

Cars from the Bear Creek orchards, the Hillcrest and Burrell have been forwarded to New York, as they were in excellent condition.

Telegraphic reports received by the Tribune today show the following average prices paid for coast fruit in markets East Wednesday.

Boston—Bartletts, \$3.50; Malagas, \$1.22; Tokays, \$1.90; Elbertas, 90c; Susquehannas, 90c; Late Crawford, 95c; Lovells, 65c; Lemon Clings, 60c.

Philadelphia—BaBrtletts, \$3; Giants, \$1.45; Gros, \$1.40; Tokays, \$1.45; Orange Clings, 65c; Lovells, 55c; Malagas, \$1.40.

New York—Eggs, \$1.20; Silvers, \$1.15; Giants, \$1.35; Bartletts, \$3.15; Tokays, \$1.80; Hungarians, \$1.85.

Chicago—Bartletts, \$3.25; Elbertas, 95c; Lovells, 75c; Malagas, \$1.15.

A dispatch from the California Fruit Distributors Company regarding California pears, says:

During past week shipped 145 cars. Pears show a material dropping off in shipments. There are but few Bartletts available. Some Winter pears are now moving and only early orders can be filled as the supply is quite short.

IS WIZARD SICK UNTO HIS DEATH?

Contradictory Reports Out Regarding
Condition of Great
Railroad King

RUMOR HAS IT THAT
HE HAS HAD CANCER

Wild Scenes Enacted on New York
Exchange Yesterday Following
Report Regarding Condition

NEW YORK, Aug. 26.—Wild scenes were enacted on the stock exchange this morning, caused by the alarming reports that the true condition of Edward H. Harriman's health had not been made public but that he was suffering from cancer.

The personal and business friends of Harriman emphatically deny he is so suffering. They say Harriman will soon regain his health and will give battle to James J. Hill if the Minnesota man is still looking for it as reported.

A report is current that an operation is about to be performed upon the railroad king. A recent visit by Dr. Norman Dittman, a noted specialist on kidney diseases, lends color to the report.

PIONEERS OF COUNTY MEET IN ASHLAND

Large Number of Residents From
All Sections of County Gathered
Today in Annual
Reunion

HON. B. L. MULKEY WAS
ORATOR OF THE DAY

Jacksonville, County's First Town,
Sends Largest Delegation of Any
One City in County

Southern Oregon's pioneers met Thursday at Ashland for the annual reunion. A large number of prominent residents of Jacksonville, Medford, Central Point and other districts attended.

B. F. Mulkey was orator of the day. J. C. Howard, who was scheduled for an address, was unable to attend because of the illness of his wife.

Among those attending from Jacksonville were Judge Silas B. Day and wife, Mrs. Dora Harbaugh, Mrs. Chas. Prim, Mr. and Mrs. W. R. Coleman, Mr. and Mrs. C. C. Beckman and daughter, Mrs. J. S. Miller, Judge E. B. Watson and wife of Portland; Mrs. Anton Rose, Mrs. Miller, Sr., Mrs. L. Ulrich, Mrs. Kubli, Mr. and Mrs. Chris Ulrich, Mrs.

LEADER IN THE DESCHUTES WAR VISITING CITY

H. N. Randall, Brother-in-Law of
Johnson Porter, Tells Stirring
Tales of Railroad War in
Central Oregon

WAS GENERAL OF THE
PORTER BROS.' FORCES

Is Here Visiting His Brother, A. C.
Randall, Resting From His Late
Strenuous Duties

Stirring tales of the war between the rival railroads in the Deschutes canon, where the Hill forces under Porter Bros. have completely out-generated the Harriman forces under Twohay Bros. and forced the latter to retire to the vicinity of Madras, where there is no dispute over the right-of-way, while construction of the Hill line proceeds rapidly under protection of the federal court, are told by H. N. Randall, a sub-contractor under Porter Bros., who is in Medford visiting his brother, A. C. Randall, of the Talent orchard. Contractor Randall is also a brother-in-law of Johnson Porter, and had command of the line of battle for Porter Bros.

"Our camp was repeatedly enclosed by barb wire fences and our supplies cut off by the Harriman forces," states Mr. Randall. "Harriman purchased the ranch surrounding our camp and fenced the roads, but as often as the wire was strung, we cut it and went through."

"Our survey was about four feet higher than that of Harriman's, and the rocks our workmen loosened rolled down on the Harriman forces so they couldn't work. Then the latter climbed the hill above our men and rolled boulders down on them, forcing them to desist. Both crews spent several days in idleness, until the federal court's injunction stopped the Harriman forces."

"The rivalry between the two gangs was intense, and frequent quarrels naturally resulted, but as a whole, good order prevailed. There was no bloodshed."

"The Harriman forces had no complete survey to work on and their efforts were simply to block our construction. Their line was full of curves, laid out to spoil our road."

Mr. Randall will return to the Deschutes after a few days rest from by Judge Bean's injunction.

ENGINEERS OFF TO COMPLETE
PACIFIC & EASTERN SURVEY

An engineering party will leave Friday morning to complete the survey for the Pacific & Eastern railroad to Butte Falls. The latest survey now ends at Rizeley Gay, 14 miles from Eagle Point, leaving 10 miles to be surveyed.

Something every business man wants—the merchants' lunch at the Wash grill each noon—an elaborate menu. Price 35 cents.

Taylor, Mrs. Amelia Britt, Mrs. A. K. Hoffman, Ed Day, Mrs. E. Kinney and Mrs. S. P. Jones.

Chas. Gillette, of Ashland, is president, and Judge Day secretary of the Pioneers' Association, which was organized in 1886.

ARGUE MOTION TO DISSOLVE INJUNCTION MONDAY

City Attorney Neff Will Appear Be-
fore Judge H. K. Hanna on
Next Monday to Resume
Case

IF THE INJUNCTION IS
DISSOLVED WORK GO ON

If Motion Is Refused Case Will Go
Over Until September Term
of Court

On next Monday morning at 10 o'clock City Attorney Porter J. Neff will appear before Circuit Court Judge H. K. Hanna to argue his motion to dissolve the temporary injunction restraining the city from entering upon the Hawley premises on Little Butte creek, and completing the gravity water system.

If Judge Hanna grants Attorney Neff's motion to dissolve the injunction the city will be unable to go ahead with the work. If he overrules it the case will go over to the September term and probably to the supreme court.

MAY NOT CUT UP OLD BYBEE TRACT

Planning to Operate Place as One
Large Orchard—Owned by
Potter Palmer Estate

That the Modoc orchard, famous as the old Bybee tract, may not be subdivided and sold in small tracts as first planned, but planted and operated as one of the greatest orchards in the world by the Potter Palmer estate, of Chicago, is a possibility, according to W. A. Sumner, manager of the estate, who has taken the property off the market. There are nearly 1300 acres, mostly of bottom land, in the tract, which lies along both sides of the Rogue for two miles by Bybee bridge. All the property can be irrigated from the Rogue or from Little Butte Creek, which flows through it.

Over two miles of the finest wire fence in Oregon has been stretched along the county road, and it is hog and rabbit proof. The posts are painted white and high gates adorn the entrances. Another mile of fence is being strung and the old fences removed.

Approximately 200 acres will be set to fruit trees this winter. Ninety more acres will be prepared and planted to potatoes. Between 200 and 300 acres will be sown in grain. A complete contour survey of the tract has been made by Cummins & Osgood, and a contour map shows every elevation on the immense area, as well as the character of the soil and physical characteristics.

Who has a furnished house to rent? Three adults. Answer quick. W. care Tribune.