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Westinghouse's New Scheme.

NOGALES, Ariz., Dec. 10.—It is learned on good authority that George Westinghouse, of Pittsburg, has bought the entire Buena Vista grant, comprising 7000 acres of land, and intends to erect at some point on the Santa Cruz River colossal reduction works and smelters and build a railway connecting the mines, the reduction works and Nogales.

Chicago Embezzler Arrested.

CHICAGO, Dec. 10.—Walter D. Glenn, formerly cashier of the Traders' Loan & Building Association, who disappeared last Summer with a charge of being over $30,000 short in his accounts hanging over him, was placed in the county jail today, pending trial. Glenn was arrested at Rawlins, Wyo., where he had secured a position as clerk in a hotel.

UPHOLDS THE CITY

Supreme Court Affirms Portland Street Assessment.

THE CASE OF A. N. KING ET AL.

Street Improvement Sections of the City Charter Held to Be Valid, but a Change in the Law Is Suggested.

SALEM, Or., Dec. 10.—One of the most important decisions rendered by the Supreme Court in many months was handed down today, when that tribunal affirmed the case of A. N. King et al., vs. the City of Portland et al., thus upholding the street improvement sections of the Portland city charter.

This was a suit to test the validity of an assessment for the improvement of East Yamhill street, between East Water street and Union avenue. The case was decided in the Circuit Court for Multnomah County, by Judge John B. Cleland, and on appeal has been affirmed in a very long and exhaustive opinion by Justice C. E. Wolverton. Though the case primarily affects only the assessment in question, it determines the validity of street assessments under the Portland charter and the charters of other cities of this state. The extent of the effect of an adverse decision in this case is shown in the following comment, made by the Supreme Court, after affirming the case:

"We have arrived at this conclusion not without some misgivings. But, in view of the fact that the manner of the assessment as here found to exist has been followed substantially in its present form since 1864; that many miles of street improvements in various forms have been made and constructed in pursuance of it; that hundreds of thousands of dollars have been expended under the rule; that numerous titles are depending upon it; and to that extent it has become a rule of property; that tax bills issued in pursuance of it are bought and sold in the market upon the faith of it; that many bonds are outstanding, depending for their validity upon its legality, and that it has time and time again been before the courts of the state and sustained, although not upon the exact point here involved (which was never mooted until after the decision in the Norwood case), we deem it unwise at this late date to disturb it, and set the whole matter at large, as if there had never been a law upon the subject, thus unsettling the financial anatomy of the city government and perhaps many titles in its domain. It would be far better that the Legislature should change the procedure than that we should nullify it ab initio, with a long train of evils to follow in its wake; and to that source of power resort should be had, if an evil exists, for its reparation."

The decision in this case involves a consideration of nearly every section of the Portland charter, from section 126 to section 158 (Session Laws of 1898, page 150). Two questions were presented—whether the charter provides for an apportionment of the burden of the cost of improvement under a uniform rule, as required by the constitution, and whether the provisions are invalid under the Federal and State Constitution because in violation of the inhibition against taking private property for public use without due process of law. The opinion of the Supreme Court holds, at the outset, that the Legislature "may authorize local improvements to be made, and authorize the expense thereof to be assessed upon the land benefited thereby. But, in all cases, there must be an apportionment of the burdens, either among all the property-owners of the state, or of the local division of the state, or the property-owners specifically benefited by the improvements. In either case, if one is required to pay more than his share, he receives no corresponding benefit for the excess, and that may properly be styled extortion or confiscation. A tax or assessment upon property, arbitrarily imposed, without reference to some system of just apportionment, could not be upheld.

"This brings us to the rule of apportionment, and in this connection may be considered the second objection, which is that the mode and manner of assessment for street improvements adopted and prescribed by the Legislature through the city charter, do not take into consideration the benefits, or limit or apportion the assessment by and in accordance with the benefits received, and, therefore, that the charter is in violation of the fifth and fourteenth amendments to the National Constitution, which inhibit the taking of private property for public use and without due process of law."

On the question of "due process of law," so far as notice is concerned, the opinion says: "There are four several notices required along the way: First, of the proposed improvement; second, inviting proposals for doing the work; third, touching the acceptance of the work; fourth, 10 days' notice of the entry of the assessment in the docket of the city liens. Ample opportunity was thus afforded the owners to appear and interpose the constitutional objections, which is all that is sought to be done in this proceeding."

On the subject of uniformity in the apportionment of the burden of the improvement is the following:

"Local or special assessments for local improvements . . . are made and sustained upon the assumption that a prescribed portion of the community is to be especially benefited in the enhancement of the value of the property peculiarly situated as regards the proposed expenditure of the funds to be raised by the assessment. It is but a demand of simple justice that special contributions in consideration of special benefits should be made by those receiving the benefits, but such contributions ought not, by the same demand of justice, to be enforced in any case beyond the benefits received. Such an assessment is not in conflict with the provision of our state constitution requiring that all taxation shall be equal and uniform. It must be conceded, therefore, as was said by Mr. Justice Harlan (in Norwood vs. Baker, 172 U. S., 269, 279), that 'the exaction from the owner of private property of the cost of a public improvement in substantial excess of the special benefits accruing to him, is to the extent of such excess, a taking, under the guise of taxation, of private property for public use without compensation.' The eminent jurist used the words 'substantial excess' advisedly, because, as he explains, exact equality in taxation is not always attainable, and for that reason the excess of cost over special benefits, unless it be of a material character, ought not to be regarded by a court of equity when its aid is invoked to restrain the enforcement of a special assessment.'"

Again, quoting from a Massachusetts case, the opinion says:

"It is well established that taxation of this kind is permissible . . . only when founded upon special and peculiar benefits to the property from the expenditure on account of which the tax is laid, and then only to an amount not exceeding such special and peculiar benefits. This marks the boundary beyond which it is not within the power of the Legislature to go."

"The mode (of apportionment) which the Legislature has prescribed (in the Portland charter) is, in substance, that the cost of the half street in front shall be assessed upon the abutting lot or part of lot, and that the cost of street intersections shall be assessed, five-ninths upon the corner lot, and the remainder upon the adjacent lot in the quarter block. The rule is invariable, and, when the cost of the improvement in front or at an intersection is ascertained, it must be assessed upon the property; and no discretion, legislative or judicial, abides with the municipal authorities to modify or abate it in the slightest measure. The method is, perhaps, the least justifiable, as a general rule, of any that has been devised; but that does not signify that it is not proper in any case. The Norwood case would seem, at first thought, to forbid the application under all conditions of the front-foot rule; but it was probably not intended that it should be so far-reaching in its significance. As applied to that case, and all similar cases, it must be accepted as controlling. The rule has been many times upheld, and it is believed it yet may be, where the conditions are such that it may reasonably be supposed that the method adopted will secure a proportional distribution of the burden, according to benefits.

". . . The improvements consists of an elevated roadway . . and it is apparent that the cost of the work was practically uniform throughout, and the assessment against the lots was therefore as nearly proportional according to benefits as could be devised. At least, it is not apparent that there is any substantial excess of costs above benefits, nor is there such a disproportionate distribution of the burden as to justify the court in declaring the assessment an arbitrary exaction by the Legislature."

In re the Chambers Estate.

Robert Chambers, appellant, vs. Dorcas Chambers, S. J. Chambers and Polly Ann McCabe, respondents, in the matter of the estate of William J. Chambers, deceased, from Marion County, George H. Burnett, Judge; affirmed. Opinion by Wolverton, J.

On March 26, 1898, E. J. Chambers was appointed administrator of the estate of William J. Chambers, deceased. Subsequently Robert Chambers presented a claim aggregating $382 46, which was allowed by the administrator and filed with his final account in the County Court, December 3, 1898. At the time appointed for hearing, the respondents, being heirs of the deceased, filed objections to the allowance and approval by the County Court of two items of the claim amounting to $715 46. No evidence was produced for or against the claim, the claimant relying wholly upon the allowance by the administrator as establishing prima facie its validity. Upon this state of the record the court decreed that the items objected to be disallowed. The claimant prosecuted an appeal to the Circuit Court, and, being again unsuccessful, he appealed to the Supreme Court.

The Supreme Court, in sustaining the lower court, holds that the administrator is an auditor only, in approving claims filed, and that his approval is not prima facie evidence of the justness of the claim, but that if he reports the allowance of the claim in his semiannual account, and this account be approved by the County Court, this approval is prima facie evidence of the justness of the claim. Continuing, the opinion says:

"In the present case the allowed claim was brought to the attention of the court for the first time on hearing of the final account, and it has never made any order with reference to it. . . The court acts judicially, and, when objections are interposed to a claim, it must be supported by proof, as in other litigated controversies, or the claim must fail of its establishment, and the simple allowance by the administrator will not avail to make a prima facie case."

Two cases of the State of Oregon vs. Andrew Carlson, convicted in Multnomah County of the crime of assault and robbery, being armed with a dangerous weapon, were affirmed. Both cases were tried by Judge M. C. George, and the defendant having been sentenced to 14 years' imprisonment, he appealed. The opinion of the Supreme Court was written by Justice Moore.

NO HOPE FOR CARTER.

Swindling Engineer Must Serve the Rest of His Term.

ST. LOUIS, Dec. 10.—In a decision handed down by Judge Hook, of the Federal District Court, of Kansas, and concurred in by United States Circuit Judge Amos Thayer this afternoon, Oberlin M. Carter, formerly Captain in the United States Army, under sentence of five years' imprisonment for misappropriation of Government funds, while in charge of the harbor work of Savannah, Ga., is remanded to the custody of Robert W. McLaughey, warden of the Federal penitentiary at Leavenworth, where Carter has been confined, the court overruling the petitioner's demurrer on the habeas corpus writ issued some time ago and sustaining the rule of the trial courts, together with the subsequent action of President McKinley in setting aside 12 of the charges under which he was convicted, but making no change of the sentence imposed by the court-martial.

In addition to the prison sentence, Carter was fined $5000, which was paid, and he was dismissed from the Army. Judges Thayer and Hook find these proceedings were entirely regular. One of the chief contentions urged in Carter's behalf was that the President in reducing the number of specifications preferred, thereby made void the entire punishment inflicted. On this point Judge Thayer says:

"The punishment prescribed by the articles of war is attached to the charge, and not the specifications made thereunder, the latter being merely in the way of exemplification and detailed statement of the principal charges to which they properly relate; but even if this were not so, the rule is well established that when a sentence in gross is pronounced upon a conviction under an indictment containing several counts, and upon a proposal of review some of them are held bad and others are sustained, the sentence will not be disturbed, provided it is such as could lawfully have been imposed under the counts which were upheld."

Captain Carter entered prison in April last. With one year off for good behavior he still has a little more than three years to serve.

Steel Company Resumes Work.

LORAIN, O., Dec. 10.—The Lorain Steel Company resumed work today at its blooming, converting, finishing and shape mills, with more than 3000 men employed in the entire plant.

THE STATUS OF CUBA

Case Was Before the United States Supreme Court.

THE EXTRADITION OF NEELY

Argument Begun Yesterday Developed Interesting and Important Questions—John D. Lindsay Opened for the Prisoner.

WASHINGTON, Dec. 10.—The Neely extradition case was argued in the Supreme Court today. All the Judges were present. The argument developed interesting and important questions of law with reference to the right of the United States to extradite a fugitive criminal in the absence of an extradition treaty, and especially with reference to the right of the President, since the ratification of the Treaty of Paris, to maintain a military form of government in the Island of Cuba. The latter feature of the argument made it the first of the arguments which bring up for final decision by the Supreme Court the constitutional relations between this country and the territorial acquisitions which it has gained as a result of the Spanish-American War. The Neely case referred exclusively to the character of these relations so far as the Island of Cuba was concerned, and thus presented an independent question from that which will be argued December 17, when the character of the relations with Porto Rico and the Philippines will be under consideration.

John D. Lindsay, of the New York bar, opened the argument for Neely. He claimed that there existed in Cuba, prior to our intervention, a Cuban Republic. This republic, he argued, the United States recognized in April, 1898, when it passed a joint resolution, signed by the President, which declared "that the people of the Island of Cuba are of right and ought to be free and independent." He claimed that the United States did not make war against the Cuban Republic thus recognized, but was its ally, and that, therefore, the success of the American Army did not mean that Cuba was conquered, but that the Spanish troops were driven out of the territory of a friendly ally. He contended, therefore, that when the Treaty of Paris was ratified the war ceased, and as no war had been declared against the Cuban Republic, all further justification under the warmaking power to occupy Cuba ceased, and the President should immediately upon the ratification of the treaty, or within a reasonable time thereafter, have withdrawn the Army.

He claimed, therefore, that the institution and maintenance by the President of a military government in Cuba was and is without authority under international law, and in flagrant contravention of the Constitution of the United States. He further urged that such military government was unconstitutional, and essentially a war against the Cuban Republic, and as Congress alone had the authority to declare war against the Cuban Republic, the control of Cuba by the President, as Commander-in-Chief, was a virtual prosecution of war without the authority of Congress. He denied that such government could be justified under the war power, as the war power has no existence, except in time of war, when the war is authorized by Congress, and that the President could not use the National forces for the purpose of governing Cuba. He relied especially upon the case of ex parte Milligan. He argued finally that, in any event, as trial in the Cuban courts is without a grand jury or a petit jury, Neely could not be tried before them without violation of the sixth, seventh and eighth amendments to the Constitution.

Owing to the lateness of the hour when Mr. Lindsay concluded his argument, Assistant Attorney-General Beck did not speak. He expects to speak tomorrow.

Wichita Case Decided.

The Supreme Court rendered an opinion in the claim of the Wichita, Choctaw and Chickasaw Indians in connection with the old Wichita reservation, Justice Harlan handing down the opinion. In 1861 the Indians made a treaty with the United States Government, ceding the Wichita reservation, and agreeing to take 160 acres in severalty. The Indians claimed they were entitled to the proceeds of the sale of the surplus land. The Court of Claims sustained the contention of the Indians, but today's opinion reverses that position, the Supreme Court holding that in the treaty of 1861 the Choctaws had made an absolute cession of the lands included in the reservation. The court also remanded the case to the Court of Claims, with directions to dismiss the claims of the Choctaws and the Chickasaws, and to fix such compensation to the Wichitas as is consistent with law. The reservation is a part of the old leased district of 7,500,000 acres of land lying between the Red River and the Canadian River and the 98th and 100th degree of west longitude.

CHIRIQUI COALING STATION.

United States May Buy the Port From Colombia.

WASHINGTON, Dec. 10.—The gunboat Bancroft sailed today from Colon for Almirante Bay. It is understood that her mission is to look into the advantages offered by the port of Chiriqui as a coaling station. The harbor is capable of floating the entire fleet of a nation, and the water is deep enough for the heaviest battle-ship. Approaches were made to the Colombian Government, with a view of learning whether it would entertain a proposition to grant Chiriqui as a coaling station. At that time, Colombia was not in a position to make a definite answer, as the territory, including this harbor, had been in dispute between Colombia and Costa Rica. The answer, therefore, was to the effect that the grant could not be made while the question of sovereignty remained open between the two countries. Since then, however, Colombia and Costa Rica have arranged to arbitrate the differences, and there is a prospect of an early settlement of sovereignty. With this point removed, it is believed that there will be no serious objections from Colombia or Costa Rica to granting a coaling station.

Liberation of May.

WASHINGTON, Dec. 10.—Except as it may serve as a basis for a claim in the future, the incident growing out of the detention by Guatemalan officials of the American engineer, George May, has been closed. Minister Hunter, at Guatemala City, has telegraphed Solicitor Penfield, of the State Department, that he had presented the matter to the President, who directed that the order of detention be revoked and the same transmitted by telegraph to the proper authority. Minister Hunter also said that he had notified May by telegraph of his liberation.

Major Henry Sweeny Dead.

SAN DIEGO, Cal., Dec. 10.—Major Henry Sweeny, United States Army, retired, is dead in this city, aged 69 years. He entered the Army in New York in 1854. Last year he was chancellor of the California Commandery of the Loyal Legion.

CHARLES F. W. NEELY

THE EMBEZZLER OF CUBAN POSTAL FUNDS, WHOSE CASE IS BEFORE THE UNITED STATES SUPREME COU RT.

SUMMARY OF IMPORTANT NEWS.

Federal Government.

Argument in the Neely case was begun before the United States Supreme Court. Page 1.

Hay may resign if the canal treaty is amended. Page 1.

The United States wants Chiriqui for a coaling station. Page 1.

Congress.

Charles A. Towne was sworn in as Senator from Minnesota. Page 1.

The House passed the legislative, executive and judicial bill. Page 2.

A House Republican caucus decided to stand by the war-tax bill. Page 2.

Foreign.

Attacks on Salisbury and Chamberlain were made in the British House of Commons. Page 3.

Von Bulow explained why Emperor William would not receive Kruger. Page 3.

Lord Roberts was given an ovation at Cape Town. Page 3.

The tension between Holland and Portugal is increasing. Page 3.

The Sultan of Turkey dined officers of the battle-ship Kentucky. Page 3.

Domestic.

There is little change in the Santa Fe strike situation. Page 2.

Four men were killed by an explosion in the Union Pacific tunnel at Aspen. Page 2.

The Federation of Labor adopted numerous resolutions. Page 5.

Pacific Coast.

The Oregon Supreme Court upholds the street-improvement section of the Portland city charter. Page 1.

Only $600,000 can be obtained from this session of Congress for the Columbia jetty. Page 4.

Benjamin Wise was held at Salem for arson at Silverton. Page 5.

The Idaho Supreme Court decides that patented mining property is to be regarded the same as other realty for purposed of taxation. Page 4.

Erection of poles and wires for another lighting system" began in Salem yesterday. Page 4.

Commercial and Marine.

The cotton market suffers violent fluctuations. Page 11.

Russian wheat crop estimated at over 400,000,000 bushels. Page 11.

Cedarbank's flying passage to Europe. Page 5.

Monmouthshire's big cargo. Page 5.

Three more grain carriers arrive. Page 5.

Portland and Vicinity.

Portland merchants generally favor holding an Oriental fair. Page 8.

Marquam block sold by the Sheriff for $363,000. Page 7.

City & Suburban engineer fatally wounded by a footpad. Page 12.

Box of bones, evidently those of a murdered man, found in Gresham cemetery. Page 8.

Oregon stockgrowers form a state association. Page 10.

WILL HAY RESIGN?

He May if the Canal Treaty Is Amended.

FRYE MADE THE AMENDMENT

Discussion of Clayton-Bulwer Convention in Executive Session of Senate—Senator Towne Was Sworn In.

WASHINGTON, Dec. 10.—Charles A. Towne, the recently appointed successor to the late Senator Davis, of Minnesota, attended today's session of the Senate and took the oath of office. No business of importance was transacted in open session, the Senate going into secret session on the Hay-Pauncefote treaty as soon as routine business had been concluded.

When the Senate convened, Chandler (Rep. N. H.), Bate (Dem. Tenn.) and Turley (Dem. Tenn.), who heretofore during the present session had not been in attendance, were in their seats. Nelson (Rep. Minn.) at once presented the credentials of Mr. Towne, and they were read. Chandler directed attention to the last clause of the credentials, which was that Towne should hold his seat until "his successor was elected and qualified." He said the Constitution provided simply that the appointee should hold office until the Legislature had met.

"In the credentials presented," said Chandler, "the Governor has undertaken to prescribe the length of the new Senator's term. The added clause of the credentials, of course, is superfluous. I desire simply to call attention to the fact, and have no intention to object to the swearing-in of Mr. Towne."

The new Senator was conducted to the desk by Nelson, and the oath of office was administered by Frye, the President pro tem. Towne was congratulated warmly by many of his colleagues as he took his seat on the Democratic side of the chamber.

A bill to provide for the appointment of an additional District Judge in the Northern judicial district of Ohio was passed.

Hanna (Rep. O.) offered a resolution that a committee of three Senators be appointed by the President pro tem. to make the necessary arrangements for the inauguration of the President of the United States March 4 next. Under the rules, the resolution went over.

The Senate, after the transaction of some routine business, at 12:35, on motion of Lodge (Rep. Mass.) went into executive session.

The Executive Session.

The Senate spent almost five hours in executive session considering the Hay-Pauncefote treaty. There were five or six set speeches, made, some of them, by Senators who had not spoken hitherto upon the treaty, and others by Senators who had previously expressed themselves. Among the latter was Morgan (Dem. Ala.), who returned to his former speech, elaborating somewhat his position as to the effect of the Clayton-Bulwer treaty. He took issue with Teller (Sil. Colo.) as to the purport of the first clause of that treaty, claiming that it applied only to Great Britain's right to fortify the Nicaragua Canal itself. Teller replied at some length, asserting that the provision was of more general import, as he said any one could ascertain for himself by reading President Buchanan's views upon the subject when he was Minister to England. The declaration then made showed plainly, he said, that England had attempted to extend her rights beyond the immediate vicinity of the canal. Teller then proceeded again to elaborate his views upon the general subject, repeating his declaration that the United States should construct the canal, if at all, regardless of the English position, and without going through the formality of ratifying the pending treaty.

During the day speeches were made by Money (Dem. Miss.), Stewart (Rep. Nev.), Frye and others. Stewart announced that he was for the treaty without amendment, and Money that he was against the treaty in any form. He wanted the canal built as much as any Senator could, he said, but he considered the pending treaty little less than an insult to the intelligence of the American people. He had no doubt that, if proper diplomatic efforts had been made, it would be possible to secure the complete abrogation of the Clayton-Bulwer treaty, and that was what he wanted. He did not, indeed, believe the people of this country would be satisfied so long as any vestige of that instrument remained among existing international obligations. That convention, he said, was contrary to the wishes of the people of the United States, and they could be satisfied only by definitely erasing it once and forever. There also should be new conventions between the United States and both Nicaragua and Costa Rica, giving absolute control of the waterway to this country. He wanted no partnerships with any country in ownership or management of the canal, when built.

The possibility of Secretary Hay's resigning in case the foreign relations committee's amendment to the treaty should prevail having been alluded to, Frye said he was in a position to make official denial of that report. The Secretary had no such intention. Frye announced himself as favorable to the Hay-Pauncefote treaty. He said that, deny the effect of the Clayton-Bulwer treaty as much as we may, it still is on the international records of this country, and is given more or less recognition by the Administration that has to deal with the question of the construction of an isthmian canal. It had been a constant source of vexation in connection with the canal subject, and he apprehended that it would continue to be such until that portion of it relating to the canal should be disposed of. He was satisfied, for instance, that the canal would have been constructed during the Administration of President Arthur if the old negotiation had not been in existence. Chandler asked Frye to make Secretary Hay's position with reference to resigning public, but the Maine Senator declined, saying that he was only authorized to make the statement to the Senate. Chandler retorted that to do that was equivalent to giving it to the public, and the Senate then lapsed into a discussion of the ways in which their executive secrets get into the newspapers.

Without resuming business in open session, the Senate, at 5:05 P. M., adjourned.

Montana Ore Purchasing Suit.

HELENA, Mont., Dec. 10.—Judge Knowles, in the United States Circuit Court, today, granted a new trial of the case of E. Rollins Morse against the Montana Ore Purchasing Company. The question involved was the ownership of a rich vein of copper ore in the Michael Davitt mine, in Butte, owned by the plaintiff as receiver for the Butte & Boston Mining Company. The former verdict was in favor of the defendant.