

SUPREME COURT VERDICTS

OPINIONS HANDLED DOWN IN SIX APPEALS

Four Judgments of Lower Tribunals Were Sustained and Two Were Reversed—Other Orders.

SALEM, Or., June 10.—The Supreme Court today handed down opinions in six appeals. They are as follows: State of Oregon vs. R. D. French, respondent, vs. Andrew J. Cook, appellant, from Morrow County, W. R. Ellis, Judge; reversed; opinion by Justice Wolcott.

This was a proceeding to determine the title to the office of Road Supervisor of district No. 8, Morrow County. The complaint alleged that French was elected to the office June 4, 1900; that a commission was issued to him by the County Court, and that he duly qualified, but that the defendant usurped his office.

The complaint was signed by G. W. Phelps, attorney for plaintiff, and verified by the relator. The defendant challenged the sufficiency of the complaint, on the grounds that it does not show that the relator was a resident of the district at the time of his election, and that it is not signed by the District Attorney. Before the trial in the court below, the District Attorney had his appearance entered upon the journal showing that the case had been commenced and prosecuted with his assent and approval. The lower court decided in favor of the plaintiff, and the defendant appealed.

The Supreme Court quotes sections 37, 38 and 39 of the Oregon Code, and holds that, "whether the purpose of the action is to oust the relator from office, or to go further and to institute the person entitled to the office, the action should be brought in the name of the state, either upon the information of the prosecuting attorney or upon the relation of a private party." The court says that in either case it is made the duty of the prosecuting attorney to commence and prosecute the action, unless there is some other person who has appropriate allegations or by the official signature indicating that the action has been commenced and is being prosecuted by the state officer, the complaint cannot be held sufficient. Whether in any action the case may be prosecuted by the relator, without the instrumentality of the state's attorney, is a question with which we are not concerned at present. It is also held that the complaint was defective in not stating that the claimant for the office was a resident of the district at the time of his election.

Zoe Houser, respondent, vs. Peter West, appellant, from Umatilla County, S. A. Lovell, Judge; affirmed; opinion by Justice Wolcott.

Houser was Sheriff, and at West's request he levied an execution upon two pieces of hay, as the property of Charles Campbell. Campbell's wife claimed the property and the Sheriff demanded an indemnifying bond. West gave the Sheriff security, in the form of county warrants, until after the trial, when the Sheriff required Mrs. Campbell send the Sheriff and recovered, and then the Sheriff sued West on the bond. West claimed that the bond was given in good faith for the sale, was without consideration and void. The court held the bond good and gave judgment for plaintiff, which is affirmed on appeal. The action had been dismissed as to the hay.

Other questions of minor importance were raised, but the Supreme Court holds that no error was committed.

M. S. Hughes, appellant, vs. H. E. McCullough, respondent, from Baker County, Robert Eakin, Judge; reversed; opinion by Justice Wolcott.

This was an action to recover a commission as a real estate broker. In the court below this instruction was given to the jury: "If there was a contract between the plaintiff and defendant, when the plaintiff was to have the price of selling defendant's land at \$3000, and was to have 5 per cent commission on such sale, but reserving to himself the right to sell for less than \$3000; and if, pursuant to that agreement, plaintiff did procure a purchaser for defendant, ready, able and willing to purchase at the price and on terms satisfactory to defendant, defendant not having himself sold the land, then plaintiff would be entitled to his commission."

The defendant had admitted that he sold the land, so the Supreme Court holds that the instruction was outside the issues and also outside the facts, and that the lower court resulted in a verdict for defendant, and in the Supreme Court this is reversed and a new trial ordered.

T. H. Crawford, respondent, vs. James H. Hutchinson and W. R. Hutchinson, partners, appellants, from Union County, Robert Eakin, Judge; affirmed; opinion by Chief Justice Beas.

This is an action upon an account stated. The only important question raised upon the trial was the lower court is that in which the court says: "An account rendered and delivered to the debtor, exhibiting the creditor's demand, becomes an account stated unless objected to within a reasonable time, and it constitutes a reasonable time is a question of law for the court, when the facts are admitted or are clear and undisputed."

Crown Point Coal Mining Company, respondent vs. S. C. Crisman and F. J. McCarvel, appellants, from Baker County, Robert Eakin, Judge; affirmed; opinion by Chief Justice Beas.

In January, 1898, A. H. Huntington, J. C. Young and A. Olsen posted a discovery notice on the Crown Point coal mine in Baker County, and during the following summer marked the boundaries thereof. They subsequently sold their interest in the Crown Point coal mine to the Crown Point Coal Mining Company. On July 1, 1899, the defendants located the same ground, whereupon the plaintiff brought this suit in equity to quiet title to, and having recovered a judgment in his favor, the defendants appealed.

It was urged that because Huntington, Young and Olsen did not mark their boundaries for six months, but by posting notice, their location is invalid, but the court holds that a subsequent locator cannot raise this question provided the claim was sufficiently marked before his location.

It was insisted that there was no competent proof of the transfer to the plaintiff, according to the documentary evidence offered at the trial, and before the referee; that written documents may be put in evidence on the hearing and it is not necessary to offer them before the referee, whose duties are confined to taking testimony and reporting thereon. The act of 1893 is held to apply only to documentary evidence that might be offered before the referee, and not to oral testimony, which may be offered. Other questions were raised, but the Supreme Court finds no error.

S. O. Swackhamer, respondent, vs. Joseph Johnson, Ung Cuy, Wing Chin Lung Company, and Lee Tung Yin, appellants, from Union County, Robert Eakin, Judge; reversed; opinion by Justice Moore.

This was a suit to enjoin a trespass upon real property and to recover damages for injuries thereto. Johnson undertook to build a railroad from Union to Bear, Idaho, and secured from Swackhamer a deed to 12 acres of land and a right of way across plaintiff's premises. The deed was deposited in a bank and was to be delivered to Johnson when he had paid a deed to 12 acres of land and a right of way across plaintiff's premises.

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latter agreed to furnish 40 Chinese laborers for work on the road under the direction of Johnson and his superintendent. Johnson assigned his interest in the land to Lee Tung Yin, to secure him against loss. Plaintiff refused to consent to this transfer. The laborers, under Johnson's directions, cut a lot of timber on the land over which they had right of way and on the land to which Johnson was to have a deed. Johnson did not build his railroad, but skipped out without paying his labor contracts, whereupon plaintiff began this suit, recovering a perpetual injunction and a judgment for \$750 against Lee Tung Yin, who was the only person upon whom service was made. The Supreme Court holds that since Lee Tung Yin exercised due care in furnishing employees, and the damage was not done in pursuance of his orders or consent, he is not liable for the damages and the judgment against him was improper, for which reason, the lower court is reversed.

Supreme Court Orders.

Newberg Orchard Association, respondent, vs. J. T. Osborne, appellant, affirmed; opinion by Justice Wolcott.

Rosa B. Richards, respondent, vs. Meier & Frank Co., et al. appellants, allowed until June 26 to file brief.

J. T. Noser, respondent, vs. Coos Bay & Eastern Railway Company, et al. appellants, argued and submitted on motion to dismiss.

NEW ORLEANS IS SECOND.

As an Export City, It Is Excelled Only by New York.

NEW YORK, June 10.—A special from Washington to the Tribune says that a study of the figures of the Bureau of Statistics, giving the exports through the various ports of the United States in the fiscal year 1900, shows that in that year and the months which have followed, New Orleans has taken second rank as an exporting port, and has displaced Boston in its position as the second exporting city of the country. The heavy exportations of cotton, and the high price it is bringing, have largely increased the value of the exports through the Southern ports, while it is not improbable that the Galveston disaster may have retarded the exports from that port. New Orleans shows the business which otherwise would have gone through Galveston. The exports from New Orleans in the fiscal year 1900 were \$115,558,764, the highest figures in the history of the port, except 1892, and an increase of \$23,000,000 over the fiscal year 1899. In the nine months of the fiscal year 1901 the exports from New Orleans were \$122,444,000, showing for that city a clear and undisputed title to the rank of second in the list of American export cities.

GOT LOST IN NEW YORK.

Old Man Called on Detective to Find His Hotel and Valuable.

NEW YORK, June 10.—Augustus Rathbone, 78 years old, of San Jose, Cal., was now at a Brooklyn hotel, arrived here Wednesday afternoon with a check for \$500. He had not been in New York for nearly 50 years. The city had changed so much since his last visit that he was unable to find his way, and lost his way. A detective was assigned to the hunt for the old man's cash and check. The detective easily found the first hotel, Rathbone went to, but it was a long time before he found the second. At last the trail led to the Atlantic Hotel, in Brooklyn. The proprietor, Augustus Straus, immediately recognized Rathbone as his father-in-law who had disappeared last Wednesday and left his baggage and valuables and disappeared next day. Straus gave Rathbone's belongings to the detective.

Rathbone is a native of Providence, R. I. In 1853 he left there to go West, where he made his fortune. The old man is on a tour of the world, and came to New York to visit his old home in Providence.

AT TOMB OF GRANT.

Vandals Have Arrested Growth of Trees Planted by Earl Li.

NEW YORK, June 10.—Recent visitors to Grant's tomb, in Riverside Drive, have noticed a tendency toward decay in the trees planted near the mausoleum by Li, the Chinese collector of curiosities and distinguished. Celestial statesman's visit to the final resting place of his friend, the General, several years ago. Vandals and curiosity-seekers have combined to arrest the growth of trees and destroy the life by tearing leaves and branches from their boughs, and although extra vigilance is maintained to guard against the desecration of the tomb, the trees continue to be despoiled. A substantial growth of extra growth will probably be provided by the Park Commissioners. In contrast to the care taken of the Li Hung Chang trees, it is pointed out that the Japanese, ever since the visit of General Grant, have carefully protected and nourished the trees which the General and his wife planted on that occasion.

Holland to Make Test Trip.

NEW YORK, June 10.—Naval men and shipbuilders are interested in the trip, which will be begun tomorrow by the submarine torpedo-boat Holland. Under the direction of Lieutenant Commander U. S. N. Holland, the Holland will be towed from Philadelphia to Newport, where Lieutenant Simpson is stationed, and here experiments will be made with the new submarine. The Holland is expected to serve as a guide in the perfection of the new submarine craft to be built for the Navy. The naval constructors are not unanimous in their opinion as to the value of the Holland. She stood the strain of tow and weather when she went from New York to Philadelphia, but the winds and waves were favorable. When the new craft will ride safely through the bristling westerly winds now prevailing.

Decree of President Dishes.

WASHINGTON, June 10.—The State Department has been informed by Consul Canada, at Vera Cruz, that an executive decree issued by President Diaz authorizing the collection of customs at the principal ports on the Atlantic and Pacific Coasts of Mexico to allow vessels with tonnage restriction as to nationality or tonnage to discharge their cargoes at points on the Mexican coast, where there are no custom-house officers. Another decree exempts Consular invoices, covering cargo of any country or bank notes of any bank established under state or federal law in Mexico, from the Consular fee, provided no other merchandise is covered by the invoice.

Princeton Class Day Exercises.

PRINCETON, N. J., June 10.—The annual class day exercises of Princeton University were held in Alexander Hall to-day. President Pratt presided. The class orators were Edwin M. B. Swift, and Ralph S. Thompson read the class poem. At the close of the exercises Dewitt V. Hutchings delivered the Ivy oration on the steps of Nassau Hall.

Boxer Paddy Peril.

LEADVILLE, Colo., June 10.—Paddy Purcell, well-known as a middle-weight boxer, died suddenly tonight. Purcell who has been ill, got into an altercation this morning, and was buried to the floor. He did not show any ill effects of the fall, but was taken suddenly worse to-night and died soon after.

Mysteriously Murdered in Jail.

PINE BLUFF, Ark., June 10.—A young white man named McClellan, who was in the jail at Hamburg, Ashley County, was mysteriously murdered at midnight by unknown persons. McClellan was charged with larceny.

CONTINUES ITS CAMPAIGN

LONDON PAPER IS NOT AFTER AMERICAN LOCOMOTIVES.

Any Favorable Comments Are Suppressed—Opinions Asked From Home and Abroad.

NEW YORK, June 10.—A dispatch to the Tribune from London says: The Mail continues its campaign against American engines, and has been making inquiries of various railway engineers at home and abroad for some information of the statements by the chairman and the directors of the Midland Railway regarding the alleged unsatisfactory working of locomotives built in the United States. Any favorable comments are suppressed, and this morning the opinion of the assistant engineer of the Orleans Railway is given to the effect that American engines are as costly and are not adapted to French grades.

BECAUSE THEY ARE BEST.

This is Why England Wants American Locomotives.

NEW YORK, June 10.—The Times says: Sir Charles Wilson, president of the Grand Trunk Railway Company, of Canada, who was Controller-General of the National Debt Office of Great Britain from 1874 to 1891, and Finance Minister to Egypt from 1877 to 1879, is in the city, having just completed his annual inspection of the Grand Trunk Railway system in Canada and the United States. In an interview with a reporter regarding American and British locomotives in India and elsewhere, Sir Charles said: "Yes, I have read your article about Sir Alfred Hickman on the contracts placed by Indian railway companies with American firms. I have read also the statements of Lord George Hamilton, Secretary of State for India, in reply. My opinion is that Sir Alfred Hickman will be informed that the British Government placed the contracts for locomotives with American firms because they believed them to be the best—that's all."

FOR SOUTH AMERICAN ROADS.

United States Is Filling Large Order for Locomotives and Rails.

NEW YORK, June 10.—Shipment of cars, locomotives, rails and steel for railroad bridges in Ecuador have commenced in enormous quantities. The American firm of Lord George Hamilton, Secretary of State for India, in reply. My opinion is that Sir Alfred Hickman will be informed that the British Government placed the contracts for locomotives with American firms because they believed them to be the best—that's all."

The American Bridge Company is under contract to build a 20-ton steel bridge material. A certain car company has begun shipments on a contract for 300 flat, box and stock cars, and a Wilmington firm is building passenger coaches, parlor cars and a directors' car for the same road.

Our Locomotives on French Road.

PARIS, June 10.—The assistant chief engineer of the Orleans Railway, when questioned today by the Tribune, said that the company was dissatisfied with the American locomotives purchased last year, said:

but the company is not giving up and the company does not contemplate further purchases except in similar circumstances, as the French locomotives are equally satisfactory, and more economical. The company expects to purchase American coal last year, when quite a quantity was purchased under favorable conditions. It proved satisfactory. The company is now watching the situation and is prepared to make further purchases of American coal when prices will allow."

Our Locomotives Most Powerful.

LONDON, June 10.—The Daily Express publishes an interview with Charles B. Elliott, general manager of the Cape Government Railways, regarding locomotives employed on the lines under his supervision. Mr. Elliott, the state reviewer that the Baldwin locomotives consumed 20 per cent more fuel than the British, but he thought this might be due to the fact that the American type as those supplied to Japan. Discussing the Schnetzler locomotives, he said their hauling power was greater than that of any locomotive before used by the colony, but they were not so durable as one that would require time to decide.

His Views on Epidemic of Industrial Pestilism in England.

LONDON, June 10.—Robert P. Porter, speaking today before the Chamber of Commerce, on the "Epidemic of Industrial Pestilism in the United Kingdom," said:

"It is extremely doubtful whether the United States is prepared to compete in the market of the world with the American undertakings may be impressive, but these have corresponding dangers. In spite of European mutterings, there is little likelihood of a combined European effort against the United States, because the nations concerned are so hopelessly involved in tariff conflicts between themselves. Great Britain's free trade policy may have injured her home industries, but it has strengthened her foreign trade. On the other hand, the United States is finding considerable difficulty, both at home and abroad, in negotiating commercial treaties."

Shock to Telephone Stockholders.

CHICAGO, June 10.—Central Union Telephone stockholders received a shock today in the form of a special circular from John I. Sabin, the new president of the company, requesting them to consider the best way of securing \$300,000 during the coming year to finance the company. The circular is interpreted in the stock of the company, and at the close of the exchange here it had dropped 9 points a share. Mr. Sabin was placed in charge of the Central Union Telephone

Company by the American Telephone Company, owner of the Bell patents, in order to put it on a paying basis. The Central Union Telephone Company was organized 13 years ago, to secure changes and toll stations in the smaller cities of Illinois, Indiana and Ohio.

CARNEGIE WILL DUPLICATE IT

Plans to Give Cooper Union as Much as Did Its Founder.

NEW YORK, June 10.—The Herald says: Andrew Carnegie, who was elected a trustee of Cooper Union last October, is credited with a plan for the extension of the west begun by the late Peter Cooper, which will involve the expenditure of a large sum of money. Cooper Union, it is said by one in authority, will be remodelled and enlarged to the extent of \$300,000 as a special endowment to Cooper Union, and it is said he would have raised this gift to \$500,000 but for the fear that the magnificent west coast plan of the founder of the institution, Peter Cooper, Mr. Carnegie's plan, while not fully matured, has been made known approximately to the trustees of Cooper Union. It was hinted at by ex-Mayor Abram S. Hewitt, in his speech at the commencement exercises a few days ago. It is learned from an authoritative source that Mr. Carnegie's purpose is to add to the Cooper Union endowment as quietly as possible, and very likely in installments, the sum of \$500,000, which he has already received. This means an addition of at least \$200,000 to the general fund.

Before leaving for England, Mr. Carnegie discussed with Mr. Thompson, the trustee of Cooper Union, plans for broadening the scope of the institution's usefulness. It was then decided to do away with the stores on the ground floor of the building and to utilize the space by the establishment of an industrial museum. A nucleus for such a museum was presented to the trustees of Cooper Union by Pierpont Morgan has since contributed four collections of textile fabrics and decorative materials, valued at \$100,000, which make possible the creation of a museum second to none in the world.

SMOKELESS POWDER.

Its Keeping Quality Will Be Investigated—Unexpected Explosions.

NEW YORK, June 10.—While navy smokeless powder has demonstrated its keeping qualities in every test known to science, naval ordnance experts are awaiting with keen interest the result of the investigation at Mare Island, where a magazine was wrecked by an explosion several days ago, says a Washington special to the Herald.

Naval ordnance experts insist that navy smokeless powder is safe, they have lost sight of the fact that explosions have occurred at the Indian Head proving grounds, Mare Island, the Dupont Powder works and the Rock Island Arsenal.

In none of these explosions has the cause been established. Navy smokeless powder is made under the supervision of the Bureau of Ordnance. The gun-cotton from which the powder is developed is subjected to the standard heat test of 150 deg. for 30 minutes. A sample of the finished product is subjected to the test of 32 deg. for 10 minutes. In many cases it stands this temperature for an hour. The ignition test of smokeless powder must not fall below 34 deg. If the sample shows no signs of decomposition as a result of these tests, and the inspection made during manufacture is satisfactory, the lot it represents is accepted.

When stored in magazines, several boxes have their lids loosely in place, and it is the duty of the inspector who visits the magazines daily to examine the powder to ascertain if the lids are in place. When smokeless powder decomposes, it throws off nitrous vapor. The odor and appearance change so that detection is easy.

Rear-Admiral O'Neill states that the force of the explosion destroys the cause, and in the Indian Head proving ground case it was impossible to establish a reason for the explosion.

DAILY CITY STATISTICS.

Marriage License.

G. M. Gunderson, 37, and Catherine Cochran, 30.

Building Permit.

Joseph Bernhard, cottage, East Thirty-first and Anderson streets.

Death Return.

June 6, Ching Tong Yow, 41 years, Japanese; consumption.

Contagious Diseases.

Mr. Smith, fourteenth and Marshall streets; smallpox.

Ferdinand Gilbert, 940 Macadam street; typhoid fever.

Health Statistics for May.

The health officer, Commissioner J. P. Menefee for the month of May has been completed. It shows the number of births reported during the month was 92, male more than female. The number of deaths was 91, one less than in April, males 49, females 42. The number of marriages reported during the month was 57. Number of deaths 91, one less than in April, males 49, females 42. The number of marriages reported during the month was 57. Number of deaths 91, one less than in April, males 49, females 42.

Cases of Contagious Diseases Reported during the Month.

Diphtheria 3, measles 2, chicken-pox 1, typhoid fever 2, scarlet fever 1, smallpox 2. Of the deaths reported, 22 were under 20 years of age and 72 between 20 and 70 years. Causes of death reported: Pneumonia 1, cholera 1, typhoid fever 2, carcinoma 3, apoplexy 2, cystitis 3, dropsy 2, septicaemia, 2, disease of the heart 2, drowning 2, suicide 2, cancer of the stomach 1, cancer of the breast 1, other diseases claimed only 1 each.

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WISH HIM KEPT OUT

CHINESE INVOKE EXCLUSION AGAINST A COUNTRYMAN.

He Is a Leader of the Reform Party in China—Reward of \$50,000 on His Head.

SAN FRANCISCO, June 10.—Collector of the Port Stratton recommended to the Treasury Department today that Su Shih Chin, the Chinese reformer and scholar be allowed to land as a trader, under section 6 of the exclusion act.

The Chinese government in this country are very anxious to keep Su Shih Chin out of this country for political reasons. He is a leader of the reform party, which is seeking to place the Emperor, Kwang Hsu, on the throne, instead of the Dowager Empress. Pending the decision of the Treasury Department, Su Shih Chin is held in the detention shed at the Pacific Mail dock. Collector Stratton says there is a reward of \$50,000 on his head, and he has taken means to protect the Chinaman from assault by any of the sympathizers of the Dowager Empress. Should the Treasury Department set aside the recommendation of the Collector and decide to send Su Shih Chin back to China, his attorneys will apply for a writ of habeas corpus in the United States District Court, on the ground that he is only a political offender, and that the Constitution guarantees asylum to offenders of that class. Su Shih Chin is 35 years of age, and is said to be one of the three leading writers of China.

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