

FOUR OPINIONS GIVEN

SUPREME COURT REVERSES THREE LOWER DECISIONS.

Henry M. Wagner loses in suit for damages—New Trial Ordered in Morris Case.

SALEM, Jan. 20.—The City of Portland today won in the Supreme Court, the damage suit brought by Henry M. Wagner to recover for injuries sustained while taking down electric wires.

Henry M. Wagner, respondent, vs. City of Portland, appellant; from Multnomah County; Alfred F. Sears, Judge; reversed; opinion by Justice Tolsted.

A board of three Commissioners appointed by the Mayor is given by the charter of the city full, complete and exclusive power and authority to conduct the city to perform all executive functions thereof in the organization, management and control of its fire department, and all powers and duties incident thereto.

"By defendant's separate defense, which was stricken out on motion, two questions are presented, which lie at the very threshold of the controversy."

"Touching the liability of municipalities in their corporate capacity, the rule is succinctly stated as follows: 'Whenever the negligence of the ordinary agents and servants of the corporation, being distinguished from that of its officers, causes the injury, or when the loss results from acts merely ministerial, as distinguished from such as are legislative and governmental in character, the corporation is liable for its negligence, and, therefore, it cannot be held amenable for the negligence of its officers and agents.'

"We think the charter settles the first question of the controversy. It stands in the place of the City Council and its acts become the acts of the city as if the Council had performed them had not the authority been transferred to the board."

"The testimony showed that Wagner had worked with fire alarm wires for some time that he had heard men talk about getting shocks from handling wires, that he had seen a horse injured by coming in contact with a sagging wire; that he had, on a previous occasion, been told that a man had been killed by a sagging wire with a live wire. He continued in the service of the city, knowing the dangers of his employment, and hence is held to have assumed the risk. The plaintiff endeavored to prove that the duty of the city to provide such rules and regulations as would prevent this accident, and such safeguards as would protect the women, but this was not practicable, and to be an expert in electricity, so his evidence was properly rejected. The court cannot say, of its own knowledge, that certain rules and safeguards, such as plaintiff suggests, are practicable or useful in the prevention of accidents, and in the absence of proof upon this point, the plaintiff is held to have failed to make a case of negligence against the city, in this particular."

Mary A. Lazelle and Ella C. Duncan, respondents, vs. G. R. Miller, appellant, and J. G. Pillsbury, defendant, from Clatsop County; Thomas A. McBride, Judge, reversed; opinion by Chief Justice Bean.

This was an action on a note executed by Miller and Pillsbury. The plaintiff recovered a judgment against both defendants, and on appeal this is reversed so far as Miller is concerned. The ground of the reversal is that the note was not a note of law, laid down by the court.

"On the dissolution of a partnership, if one partner agrees to pay the debts of the firm, as between himself and the retiring partner, he becomes the principal, and the other the surety as to such debts, and a creditor of the firm with knowledge of their agreement is bound so to treat them in his subsequent dealings."

"The acceptance of interest in advance is of itself evidence of an agreement to extend the time of credit for the period for which the interest is paid, and (under the rule stated above), works the discharge of the surety."

It is therefore held that Miller was released from his obligation to pay the note, by the extension of time to Pillsbury.

Linn County, respondent vs. P. G. Morris, et al., appellants, from Linn County; George H. Burnett, Judge, reversed; opinion by Justice Tolsted.

Morris was formerly County Treasurer of Linn County and after the expiration of his term he was charged with the embezzlement of public money. He was proceeded against criminally and at the same time a civil action was brought against him and his bondsmen. In the civil action the bondsmen asked for a continuance, and in support thereof showed by an affidavit that they relied upon the testimony of Morris to prove that the defalcation took place in his second term of office, but that Morris, during the pendency of the criminal action, would take advantage of his statutory right to refuse to give testimony which would incriminate himself.

The trial judge refused to grant a continuance after trial judgment was rendered against the bondsmen. An appeal was taken to the Supreme Court where it held that the trial court was correct in denying the petition for a continuance. A new trial is ordered.

Peter Schlosser, respondent vs. Emily Beemer, appellant, from Linn County; R. P. Boise, Judge, affirmed; opinion by Chief Justice Bean.

This was a suit to determine an adverse claim to real estate, and the legal question involved relates to the validity of a judgment. The rule laid down by the Supreme Court is that "the judgment of a Superior Court against a non-resident cannot be attacked collaterally for any defect in the attachment proceedings, where such proceedings are not made, by statute, jurisdictional, unless the record affirmatively shows a want of jurisdiction. The lien of an attachment depends upon the date of the filing of the certificate, and a mere clerical error by the clerk in copying it into the record will not defeat the lien."

Peter Adamson, respondent vs. W. J. Manner, appellant, petition for rehearing denied.

George H. Williams, respondent, vs. Commercial National Bank, appellant, and Henry Weinhard, respondent, vs. Commercial National Bank, appellant, motion to advance overruled.

State vs. Henry E. Eastham, disbarment proceedings, A. L. Veslie appointed as referee to take and report the testimony.

Marcus W. Robbins admitted to the bar for nine months on certificate from the Supreme Court of Indiana.

C. A. Moore, appellant, vs. J. C. Shofner, respondent, argued and submitted.

"TEMPEST IN A TEAPOT"

GOVERNOR GEER SAYS IT IS A POLITICAL GAME.

Land Board Made the Johnson Loan on Sufficient Security—Value Now Depreciated.

SALEM, Or., Jan. 20.—The State Land Board today issued a statement regarding the loan of \$2500 recently made to H. A. Johnson, of this city, on 22 acres of land near Salem. This loan has been the subject of considerable local political talk, for the reason that the amount loaned on the security was greater than the rules of the board allow. In this application for a loan, Mr. Johnson swore that the tract contained 42.28 acres, but the County Surveyor has ascertained that the tract contained but 31.28 acres. A difference of 11 acres, in land valued at \$15 per acre, is of considerable importance, and while the land is still sufficient to

make the loan good, the board will endeavor to arrange with the borrower so as to make the security comply with the requirements. The statement issued today was given out by Governor Geer, acting for the State Land Board. It is as follows:

"This whole thing is only one of several little tempests in a local teapot, which boils spasmodically for political effect. The business of the State Land Board is done publicly and always with the intention of promoting the public welfare. We are glad this question has come up, because it has disclosed a mistake of which we were not aware. We have never been in the past and do not now pretend to be infallible."

"Mr. Johnson's first application was rejected, the same as was from respect to a second application. The information supplied by him was not correct, and the security was inadequate. The loan in this respect does not differ from many others, because often, where there seems any doubt as to the value of some actual sales in that vicinity, furnished by an abstractor, certifying that one tract, for instance, of 20 acres had sold in 1899 for \$2700, another of some seven actual sales in that vicinity, sold for \$250 an acre, and still another of four acres for \$2100. These tracts in actual sales brought from \$25 an acre to \$325. One tract of 46 acres, three acres more than was supposed this security contained, sold for \$25 an acre. Although these figures may be above what the same land would have sold for since, yet, as is well known, Salem has never had a boom, but making this allowance, the valuation we made on this supposed 42 acres was only \$115 an acre to cover the rules of the board, whereas, the instances furnished from the records reach as high as \$250 an acre."

"The application as furnished us declares there are 42.28 acres under cultivation. We accepted this statement as true because it was sworn to. It has originally been stated that much land was so described in former mortgages, but it had been sold off, and this fact in some way escaped the attention of the County Attorney and abstractor. The state is in no danger of losing a dollar on the loan, because the 22 acres are worth much more than the loan, but the security is not within the law, which requires three times the value

of the loan. The intention of the law was right, and the error is simply a mistake that better men than we often make. We have loaned over \$1,500,000 since we have been handling the same fund. While this mistake will result in no loss to the school fund, it is to be regretted. The avidity with which it is seized upon merely testifies to the excellence of the management, and it has not been exceeded by any banking firm anywhere doing a similar volume of business. We have been frequently abused by men for refusing them loans, but here is a case where censure comes for making a loan. It is always a question of judgment, and the public officer is to be congratulated who does not catch it going and coming."

What Board Has Never Done.—The board has never instructed an agent to make any particular kind of report upon an application. His judgment is always left perfectly free so far as the board is concerned. In this case the attorney's recommendation was based on no doubt, on the list of actual sales that had been made, as was the board's conclusion to allow the loan. The only mistake was in the matter of the amount of the security, but not a dollar of loss will result from it, although it is to be regretted.

James Lucas, Charged With Larceny by Bailie—Requisition Issued.

SALEM, Or., Jan. 20.—Governor Geer today issued a requisition upon the Governor of Washington for the rendition of James Lucas, who is under arrest at Seattle, and who is wanted here to answer a charge of larceny by bailie. Deputy District Attorney John H. McNary looked into the case thoroughly and found that Lucas was not a sub-contractor at Chemawa, but was an agent working under the contractor. He received his pay and shipped without paying his laborers and the men will now undertake to prove that he received the money as agent for the contractors. Upon this showing, Mr. McNary asked that a requisition be issued, and the request was granted. It is expected that a vigorous effort will be made to prevent the honoring of the requisition by the Governor of Washington.

If Baby Is Cutting Teeth.—Be sure and use that old and well-tried remedy, Mrs. Winslow's Soothing Syrup, for children teething. It soothes the child, cures the gum, allays all pain, cures wind colic and diarrhoea.

CLAIMS ARE WITHDRAWN.

Irrigation Company Abandons Tract in the Des Chutes Country.

SALEM, Jan. 20.—The Oregon Irrigation Company has abandoned its claim to the tract of land in the Des Chutes country, over which a contest has been pending. This company filed an application for some 200,000 acres of arid land to be reclaimed under the provisions of the Carey act. The Pilot Butte Development Company thereafter filed an application for some 86,000 acres, nearly all of which was covered by the Oregon Irrigation Company's application. As there was a conflict, the State Land Board notified the parties that they could have a hearing today as to their respective rights. C. U. Hutchinson, president of the Oregon Irrigation Company, has withdrawn the claims of his company to the land in question, because "the maps filed by us are defective in some minor particulars." The letter also states that the maps cannot be corrected immediately, and the company does not desire to cause any delay in the matter.

The contest over this tract of land was of considerable interest to people owning property in the Des Chutes country, as

both these companies propose to construct ditches for the reclamation of arid land. The tracts applied for are in the territory to be traversed by the extension of the Columbia Southern Railway. A. Drake is the president and moving spirit of the Pilot Butte Development Company.

WISH OLD MEN RETAINED.

Salem Citizens Against Displacement of Oregonians in Forestry Service.

SALEM, Or., Jan. 20.—A petition has been circulated in Salem and generally signed, asking the department of the interior not to displace Oregon men in the forestry service. It has been the understanding since a reorganization of the forestry service was ordered last fall that some of the men sent out to the forest rangers will be employed from among graduates of forestry schools. The contention of the petitioners is that it will be better to employ men who reside in this state and who have had an extensive knowledge of the forest rangers were men familiar with mountain forests, while others were city men who secured such positions in order to have an inexpensive outing. Though the latter class know nothing of forestry when they were first employed they probably may now be classed as experienced foresters.

Deputy Stringer, of Seattle, has joined the hunt for the desperadoes. Chief Deputy Crosby has given the order that the deputies, if they meet any of the convicts, are to order "hands up," and if not instantly obeyed, are to shoot to kill. More deputies are being armed, and exciting times are expected on the island tonight.

Farmer Alleged Inmate.

SALEM, Or., Jan. 20.—Proceedings were commenced today to have Peter Rasmussen committed to the Inmate Asylum. Rasmussen is a well-known farmer of this

county, and upon his recommendation will rest the continuance of the prison as a Government penal institution or its abandonment. In the days before Washington was admitted to statehood, when secure places for the confinement of prisoners were few and long distances apart, the McNeil Island prison was established, and was under the direct charge of the Marshal of the territory. To this day it is in the immediate jurisdiction of this United States Marshal of Washington, instead of the Department of Justice, as are the other penitentiaries.

ANNUAL REPORTS FILED.

Review of the Several State Institutions of Washington.

OLYMPIA, Wash., Jan. 15.—The State Board of Control has received reports of the superintendents of the several state institutions, with the exception of the school for defective youth. The State of Washington has approximately 2300 wards, in the two asylums, the penitentiary, the reform school and the school for defective youth.

At the close of the year 1901 there were 225 inmates in the penitentiary, very nearly all being males. At the Western Washington Inmate Asylum there were 71 inmates, of whom 53 were males and 23 females. At the Medical Lake Asylum there were 47 inmates, about 38 of them girls. December 31, 1901, the figures were as follows: Penitentiary, 45; Western Washington Asylum, 70; Medical Lake Asylum, 22; Soldiers' Home, 22; reform school, 12. The only exception to the general gain in the number of inmates is in the case of the Soldiers' Home, where there are three less names on the rolls than there were a year ago.

The daily cost of maintenance per capita varies from month to month, but the secretary of the Board of Control figures the average cost per capita during 1901 about as follows: Penitentiary, 44 cents; Western Washington Asylum, 36 cents; Medical Lake Asylum, 47 cents; Soldiers' Home, 47 cents; reform school, 33 cents.

Evidence of Smuggling.

SANTA BARBARA, Cal., Jan. 20.—The United States revenue cutter Bear is in the harbor, having come from San Diego under orders from Washington to investigate the alleged smuggling of opium into the country at this port. The cutter has visited several islands in the Santa Barbara channel, and, according to the statement of one of the officers, evidence has been obtained that opium was carried on within the past few months was found on Santa Cruz and the other four islands of the group.

Strayed—Loss \$50,000.

HOQUIAM, Wash., Jan. 20.—The Western Basket Manufacturing Company's plant at Hoquiam burned this morning. The loss is estimated at \$50,000, covered with less than half insurance. The plant was owned by H. P. Martin, of Sacramento, and O. W. Crawford, of San Francisco. There will be a salvage on machinery. The fire throws 60 persons out of employment.

No Inquest Necessary.

ASTORIA, Or., Jan. 20.—The body of the late Guy W. Burnett, which was found near Swensen yesterday, was brought to this city this morning by Coroner Pohl. As the surrounding circumstances show a pure case of drowning, no inquest was held. The funeral will be held tomorrow and interment will be in the Knappa cemetery.

Valentine Brauner.

SALEM, Or., Jan. 20.—Valentine Brauner, aged 72 years, died in this city last night of dropsy. Deceased was born in Germany, and came to the United States in 1855. He came to Salem from Illinois 13 years ago. He was a well-known citizen, and was a member of the First National Bank of Vancouver, Wash.

House Burned.

DAYTON, Wash., Jan. 20.—Yesterday afternoon the house of A. P. Slade was discovered on fire. The fire had gained such headway that it was impossible to save the house. There was no one at home, and not a thing was saved. Considerable money and valuables were burned.

Bank Dividend for Vancouver.

WASHINGTON, Jan. 20.—The Controller of the Currency has declared a second dividend of 25 per cent in favor of the creditors of the First National Bank of Vancouver, Wash.

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EIGHT MEN ARE AT LARGE

THREE OF McNEIL ISLAND JAIL-BREAKERS AGAIN IN THE TAILS.

A Fourth, Who Had Been Captured, Again Made His Escape—A Close Patrol Is Kept.

TACOMA, Wash., Jan. 20.—A Ledger reporter, who returned at 11 o'clock from the chase after the Federal convicts, reports that W. D. Snyder, sent up from Idaho, and James Carroll, an Alaska murderer, and Harry Davis, a Nome jarvis, were captured this evening about 8 o'clock by Deputy Sheriff Johnson and a sailor from the revenue cutter Manning. The posse ran into the trio as the latter was leaving the woods for the beach. Snyder and Carroll were handcuffed together and the party started for the shore. When they came to a farmhouse the sailor was sent for a piece of rope with which to bind the convicts. He was out of sight Davis made a jump into the brush alongside the narrow path. Johnson fired, and Davis cried out "My God, as if in pain, and disappeared into the thickets. As it was very dark, pursuit was impossible. Snyder was learned of the convicts have not yet secured firearms or food, and must soon be starved out.

There was a report that the desperadoes were congregated near the beach in the northern part of the island, but a careful search of the vicinity gave the searchers no clew. It is still the belief of the officials that the convicts have been unable to reach the islands, and a systematic search is under way.

One man, Frank Moran, alias O'Neill, sent from Spokane for eight years for counterfeiting, was captured about midnight by a squad of deputies, who were patrolling the shore. Moran slipped out of the timber, and approached the water's edge, and it is thought, was about to attempt to swim to the mainland, one mile distant, when he was taken.

Thirty armed deputies are now scouring the island, and two steam launches are patrolling its shores. A launch from the United States revenue cutter Manning has been sent to the island with 10 heavily armed marines, who will take part in the man-hunt.

McNeil's island is about five miles long and three miles wide, and United States Marshal Ide feels sure that none of the convicts has succeeded in getting to the mainland. He has seized the boats and arms of the 30 ranchers who live on the island, and thinks that it is only a question of time until the 10 remaining convicts are hunted down by the marines. The morning was very foggy, but if any of the men reached the mainland they did so by swimming or floating on logs. The growth of timber on the island is very heavy, affording splendid hiding places for the eight desperado men who are at large.

The escape was planned by Convicts Snyder and Davis, escapee of weeks ago, shackled for previous attempts at escape. While in the tunnel leading underground from their cell, these two fled off the island.

During the forenoon eight or ten rifle shots have been heard, but with what result has not been learned, as word can only be received by boat.

Moran, who has been captured, was in the jailbreak at Spokane last March, and was the first man to surrender on that occasion. It is believed that, seeing his chances for leaving the island were not good, Moran walked to the beach, gave himself up and informed the guards of the direction taken by the other convicts. When Moran was captured he said that several other convicts were hiding near the shore. He was taken to the island and secured this end of the island, and found only the footprints of Moran. His story was undoubtedly a blind.

It is believed that the attempt of the trusty, Hanson, to escape two weeks ago was a part of this plot. Had he escaped it is thought that he would have caused arms to be hidden on the island. Hanson, Moran, Mortality and several others belonged to a gang of Spokane counterfeiters.

Deputy Stringer, of Seattle, has joined the hunt for the desperadoes. Chief Deputy Crosby has given the order that the deputies, if they meet any of the convicts, are to order "hands up," and if not instantly obeyed, are to shoot to kill. More deputies are being armed, and exciting times are expected on the island tonight.

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CANDIDATE FOR SENATOR FROM IDAHO.

BOISE, Idaho, Jan. 20.—James H. Hawley, of this city, is a candidate for United States Senator, to succeed Henry Hatfield, whose term of office expires today at 12 o'clock. Mr. Hawley is a Democrat, and a well-known attorney of this city. He has been prominent in politics for some time, and is regarded as a very able man. There is some talk that he will be named as the next state convention will name the candidate for Senator. There promises to be a hot fight on this proposition. Mr. Hawley has announced that, no matter how the candidates for Senator is named, he will not be a candidate. He has all honorable means to accomplish his election. There will be several candidates in the field, and the contest will be a most spirited one.

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SALEM, Or., Jan. 20.—Governor Geer today issued a requisition upon the Governor of Washington for the rendition of James Lucas, who is under arrest at Seattle, and who is wanted here to answer a charge of larceny by bailie. Deputy District Attorney John H. McNary looked into the case thoroughly and found that Lucas was not a sub-contractor at Chemawa, but was an agent working under the contractor. He received his pay and shipped without paying his laborers and the men will now undertake to prove that he received the money as agent for the contractors. Upon this showing, Mr. McNary asked that a requisition be issued, and the request was granted. It is expected that a vigorous effort will be made to prevent the honoring of the requisition by the Governor of Washington.

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