

JURY WILL DECIDE

Mack Libel Suit Will Reach Them Today.

JUDGE FRAZER DENIES NON-SUIT

Levi Card Tells About Lincoln Deal - Editor of The Oregonian Testifies as to So-Called Libelous Publications.

The Mack libel suit against The Oregonian for \$50,000 damage for libel will probably reach the jury this afternoon, and a decision may be expected this evening. The defense took up most of the day yesterday in presenting its evidence, and the argument was begun on the part of Mr. Mack.

Judge Frazer yesterday denied the motion of the defense for non-suit in the libel suit of County Commissioner J. G. Mack. The ground was mainly that, in the opinion of the court, the question of malice, which had been charged against The Oregonian in its publication of the Lincoln deal, could not be taken by the court from the jury.

Levi Card, salesman for the Honeyman Hardware Company, who has been conspicuously mentioned in the Lincoln deal as the "dummy," or agent for J. G. Mack & Co., went on the stand as the first witness for the defense. After a few preliminary questions, Card told the jury the story of his relations with the purchase of the Lincoln deal, which was substantially as follows:

"I am a personal friend of Morris Abraham, partner in the firm of J. G. Mack & Co. Some time before this occurrence I saw Morris Abraham and he told me the county was in the market for certain goods, and there was a chance for me to bid. There was something in it for me. Some time after he came in to see me, and said I was successful in bidding for these goods. Later I went to their store and saw the goods. Mr. Abraham, I asked if the order could be filled. I was assured that there would be no responsibility on my part. Some time afterward was notified that the warrants were ready. I got them and cashed them with Abe Tichner (warrant broker), got a check from Mr. Tichner and turned the check over to Mr. Abraham."

"Did you examine the goods?" asked Mr. Malloy. "No." "What price did you pay?" "The name for the goods were sold to the county."

"Did you make the bid to the County Commissioners?" "No." "Did you ever see the bill?" "No." "Did you go to the County Commissioners' office?" "No." "Did you ever have an interview with the court about the goods?" "The only knowledge I had was through Morris Abraham."

"Did you ever receive any compensation?" "Yes, \$30." "Who gave it to you?" "Mr. Abraham."

Mr. Card's attention was then called to an interview in The Oregonian that appeared in the issue of February 7, 1902 (the day before the alleged libelous publication). This paper, containing the first publication about the Lincoln deal, had been introduced in evidence by the defense. Mr. Card verified the authenticity of the interview in every particular. An error had been made when he told the reporter that he had met Mr. Mack before this transaction, but he (not the reporter) had been mistaken in his statement. He had not met Mr. Mack until after his so-called bid had been put in. "I had no conversation with Mr. Mack," he said, "before this transaction."

Mr. Scott's testimony. H. W. Scott, editor of The Oregonian, was called. There were the usual preliminary questions from which it appeared that Mr. Scott was acquainted with Mr. Mack only slightly, and that he had no business relations with him. The articles of February 7, (entitled "Mack's Nice Gift") and February 8 ("Mack Makes It Pay") were submitted to the witness, and he testified that he did not personally write them. A stenographic reporter of a considerable part of Mr. Scott's testimony follows: Q. What, if anything, had you personally to do with the publication of either of the articles? A. Each article was submitted to me in a general way. I was notified of the contents of them. Q. You knew substantially what the contents of the articles were? A. Yes, sir. Q. You consented to or directed the publication of them? A. I consented to the publication, but whether I did or not, of course, The Oregonian is responsible for their publication. Q. What was the purpose of the publication of them? A. The purpose of the publication was to show what we deemed the official misconduct of a public officer. Q. What other object had you? A. None whatever. Q. What, if any, spirit or feeling of malice or desire to harass or injure Mr. Mack had you? A. I had none. My acquaintance with Mr. Mack is so slight, my knowledge of

him was so slight, it does not seem to me that it could have been possible that I could have entertained any feeling toward him. Q. What is your own conscience on that subject? A. That is my own judgment and conscience on the subject. From my slight knowledge of Mr. Mack I do not see any reason why I should entertain malice toward him. Q. What is the fact about that? A. That is the fact. Q. You had no malice? A. I had none.

Cross-Examination by Mr. Hume.

Q. Who did write those articles? Do you know? A. Mr. Piper, the city editor, can answer that. I think he wrote the last one almost wholly. The first one I understand he wrote in part, but he edited it throughout. Q. Who was the person who procured the information, and who had the interview with Mr. Card? A. So far as I know, it was Mr. Piper. Do you know anything about how the interview with Mr. Card was procured? A. I do not. Q. Did you direct it to be procured? A. I did not. Q. Do you know whether Mr. Piper directed it to be procured? A. I think he did. I have no doubt but what he did, as it was within his line of work. Q. Do you know what steps he took for the purpose of obtaining an interview with Mr. Card? A. I do not. Q. Do you know the reporter who obtained that interview? A. Since this matter has assumed its present prominence and form, I have been informed by Mr. Piper that Mr. Tyler, a reporter, had a good deal to do with obtaining the interview; perhaps, as I have heard here, he was the person who had the interview with him.

Q. Who is responsible for and who writes the editorials in The Oregonian? A. I am responsible for them; I write some of them; four or five other persons write editorials. Q. Did you write the editorial which appears in this paper of February 7, at the bottom of that column, the one referring to Mr. Mack? A. That one I wrote, the lowest one, I am not positive whether I wrote the one before the lowest one. Q. Did you observe it before it was printed? Did you see it? A. That I am not sure of; it may be assumed it is mine. Q. When you base the charge stated in that editorial upon? A. I had learned that a public officer had been interested in the sale of goods contrary to the statute. Q. From whom did you learn that? A. I learned it from our reporters; I have it confirmed by the testimony in this court. Q. Before you wrote that article did you learn it from Mr. Tyler? A. From Mr. Piper. Q. Mr. Piper is the person upon whose statement you based that article? A. From the information which he gathered I learned that the firm of J. G. Mack & Co. had been engaged in the sale of goods to the county, directly or indirectly, contrary to law; that is what I based the article upon. Q. From whom besides Mr. Piper did you get the information that J. G. Mack & Co. had been directly or indirectly engaged in selling goods to the county in violation of the law? A. Mr. Piper, or some one at his direction, brought me the statement from the books of the county, showing the warrants that were to be published in the paper, and that the goods came from J. G. Mack & Co.

Q. Who was that party? A. I do not know the name of that party from the local department of The Oregonian. Q. Outside of Mr. Piper you cannot give the name of the party who gave you that information? A. I cannot. Q. You believed implicitly in the oral statements made to you by a reporter and you printed them? A. I do not now recollect, aside from Mr. Piper, that J. G. Mack had been guilty of misconduct or malfeasance in office; that is what you intend to charge him with there? A. I have stated here distinctly, and I ascertained from Mr. Piper and from information that he had put on foot, and was not a personal friend of his, that the goods caused to be made of the county records, that these goods had come through Levi Card from J. G. Mack & Co. That I stated, and by that I abide. Q. All you investigate the question as to whether Mr. Piper or the employees that gave you this information had any other or different motive in giving you the information, or had any animosity or enmity toward Mr. Mack personally, or had any reason to color their statements? A. It never occurred to me that such could be the case. I did not investigate that. Q. You ascertained from this statement that these goods had come from the firm of J. G. Mack & Co. in violation of law; and you printed them? A. My information then is based solely upon a statement made to you from a conversation with Mr. Piper? A. And what ascertained from the records of the county—that he ascertained from the records of the county. Q. What he said he ascertained he told you he ascertained it? A. He did ascertain it. He told me he ascertained it, and it is true. Q. At the time you wrote this had you ascertained this statement? A. He showed me the number and the amount of these county warrants. Q. Then your information was based entirely on what he told you? You believed him and that was the evidence of it? A. Yes, precisely. As I told you, I required him, when my attention was called to it, to make a close examination into it and ascertain if these goods had come from the store of J. G. Mack & Co., to whom the warrants had been issued, in what amounts and on what dates, and then I interviewed him by interview with Card and others, what the facts were. Q. You did direct an interview with Levi Card? A. I cannot say positively that I did; Mr. Piper said he could do that. It came about in the way work is generally done in a newspaper office. Q. You did not go further than to talk with Mr. Piper? A. It was in Mr. Piper's hands, and was referred to me in a general way. Into the details of it I did not go. Q. Why did you first get information or have any knowledge that these goods had been sold to the county? A. I cannot say that; it was talked about here in the investigation. It was a rumor. Mr. Piper got the rumor and went and inquired into it, and then I conferred in a brief way with him about it, and he went on with the investigation. It was a rumor. It was known and talked about in the Courthouse that these goods came from the store of J. G. Mack & Co. Q. How long ago was it rumored here? A. I never know it until just before the publication. Q. You are stating what somebody told you. I am trying to ask you the state of your own knowledge, not what other people told you. I am asking you to state when the information came to you first that the goods mentioned in this article were purchased from Mr. Mack's store. A. That I cannot tell. It was but a short time. I cannot tell how long before the publication of these articles. Q. How long ago was it rumored here? A. I do not. It makes no sort of difference; the whole question is whether it is true. Q. At the time that you wrote this editorial, as I understand you, your intention was to charge that Mr. Mack had

been guilty of malfeasance, misconduct in office? A. Misconduct in office. Q. How long had you known Mr. Mack? A. About a year or so, and so slight I never was sure I knew him when I met him. Q. Did you know where his place of business was? A. Yes, but only casually. I do not know whether I bought goods there. If I had occasion to I did. Q. He had been quite a prominent figure here for the last four years? A. Yes, sir; he has been a merchant and later was elected County Commissioner. Q. You knew that he had been a merchant prominent before the people as a merchant and also as a public official? A. Oh, yes, he had some prominence. Q. That he was a man of good reputation and character? A. So far as I knew; I knew nothing to the contrary. Q. A substantial business man? A. I suppose so; it never occurred to me otherwise. Q. Did you have any other object in printing that editorial or causing this article to be published in The Oregonian than to accuse Mr. Mack of misconduct in office? A. None, none, positively none. Q. Was it not as a matter of fact published for political purposes; to affect the political campaign? A. I could not say that it was; it would have been done just the same if no political campaign had been on. Q. You examined the memorandum that

you intended to convey by that word was that it was official misappropriation of public funds to an improper and illegal purpose? A. It was improper and illegal, and it was contrary to law. Q. Is that what you meant by the word "Graft"? A. I mean precisely what I say. Q. What do you mean by the word "Divy"? A. I mean by that word dividing illegal profit made by such transactions as this. Q. By whom? A. By the house from whom the goods were obtained, and through J. G. Mack as County Commissioner. Q. Who has authority and directs the contractor to charge Mr. Mack and to have the public believe that you intended to charge him with having illegally let contracts and divided the profits of those contracts with the contractor as a County Commissioner; that is what you intended to charge by the word "Divy"? A. Partly. It has been shown here that he had no right to make profit by dealing directly or indirectly with the county. Q. And that he was doing it? A. And that he was doing it. Q. Who is the managing editor? A. Ernest Brass. Q. Do you examine them before they are placed in the paper? A. Some of them, some now and then, not all of them; they are not always ready in time to be submitted to me. Q. Did you examine that cartoon of

the suit of Lizzie Arbuckle against Merchants National Bank. Nick Anderson charged with Murder in the Second Degree—News of a Day in the Courts.

A suit in which there may be said to have been a double trial was taken up before Judge George and a jury yesterday, and a final disposition of the controversy has not yet been reached. Lizzie Arbuckle sued the Merchants National Bank to recover \$450 on a certificate of deposit which she said she lost on December 27, 1901. She testified that she deposited that sum of money in the bank some months previous. On December 27, 1901, she was on a passenger train of the O. R. & N. Co. Mrs. Arbuckle stated that just after the train arrived at the union depot officers entered to see her, and she was arrested two men who occupied a seat near where she was seated. She said she became somewhat excited as the result of this incident, and as a result left the car and forgot to take along a hand satchel which she carried. In this satchel was contained the certificate of deposit, and the testimony was that satchel and certificate were never recovered, although an attempt was made in that direction. The plaintiff, in answer to a question by her attorney, Dell Stuart, stated that the certificate was not indorsed. The purpose of this evidence was to show that the certificate could not be collected by another when the indorsement of the payee was lacking. On cross-examination, W. T. Muir, attorney for the bank, elicited from Mrs. Arbuckle that she had formerly gone under the name of Floeside Keyes. The jury returned a verdict in favor of Mrs. Arbuckle for the full amount, \$450, and the attorneys next took up the question before Judge George as to whether the bank is entitled to have Mrs. Arbuckle file an indemnity bond. She offered such a bond some time ago, but the surety was unsatisfactory to the bank officers. Mr. Muir argued that the certificate of deposit, according to its terms, is payable upon its surrender to the bank, and is a negotiable instrument. Because it is a negotiable instrument, he asserted that it might turn up after the bank had liquidated with Mrs. Arbuckle, and the bank might be forced to pay it over again to the holder. Mr. Stuart argued to the contrary, and said the bank was liable in paying the money, as the certificate was not indorsed and the bank could not be made liable a second time. He submitted authorities, and Mr. Muir has also prepared a brief showing what the law is on the subject governing the case. He said the bank also desires to be protected from loss. Judge George has not yet rendered a decision.

SAYS HE IS OUT \$140. Claim of H. E. Stelmier Against Tontine Investment Association.

The suit of H. E. Stelmier against the Tontine Savings and Investment Association for an appointment as a receiver, came up before Judge Sears yesterday morning. Stelmier complains that he paid \$140 to J. F. Olson, agent of the company in this city, after the decision of the District Court was rendered in Minnesota restraining the company from doing any further business. Stelmier further alleges that Olson has collected about \$4000 from the Tontine since that time, and that the court here should appoint a receiver to take charge of this money and distribute it to those who paid money, and also prevent Olson from sending the money to the Tontine Company at Minneapolis. It is stated on information and belief that he threatens to so dispose of the money. E. Thomas, attorney for Stelmier, wanted the case argued at once, but on motion of Dell Stuart, attorney for the Tontine Company, Judge George continued the hearing until today. Mr. Stuart stated that George P. Flannery, an attorney of Minneapolis, had been appointed receiver, and is now in Tacoma, arranging for the appointment of a receiver in the Puget Sound country. He said the matter ought to be delayed until his arrival here. "We are contending that the receiver, Mr. Flannery, should not have this money," asserted Mr. Thomas, "and I can see no reason why the case should not come up at once." The court decided that a delay of one day could do no harm, and it was so ordered.

NONSUIT TAKEN. M. Barde Drops Case Against A. C. Albers.

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CASE TRIED IN TWO WAYS

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Stop coughing. Stop it at once, before it gets the start of you. Stop it with Ayer's Cherry Pectoral. Colds, Coughs, Asthma, Bronchitis, Hoarseness, Weak Lungs, Weak Throats.

ings & Loan Association, which he paid in \$4 installments, and the company still demanded \$400, but offered to take \$50, and the offer was accepted.

Court Notes. Harriet M. Carlson was appointed guardian of her sister, Frances Burrows, insane, who is incapable of taking care of her property. Ella M. Clinton, executrix of the will of Howard M. Clinton, deceased, filed her final report yesterday, showing all claims paid. The estate is valued at \$2000. In the divorce suit of A. Routledge against Ella B. Routledge, an order of default was made by Judge Sears yesterday for want of answer by the defendant.

Articles of incorporation of the Mammoth Lode Mining Company were filed in the County Clerk's office yesterday, by Julius C. Proebstel, Henry O. Proebstel, G. Evert Baker and T. T. Burkhardt. Capital stock, \$150,000. Otto Stark, administrator of the estate of Charles L. Stark, deceased, yesterday petitioned the County Court for leave to take a house and lot at Ella and Washington streets, in order to pay \$80 claims. The heirs are the widow and 10 children. In the United States Court yesterday, in the case of Miles C. Moore vs. the Bentley Construction Company, a demurrer to the complaint was overruled on the first ground, and sustained as to the second ground. Defendant was allowed 10 days in which to answer.

E. F. Willis, of Hunter's Station, Multnomah County, yesterday filed a petition in bankruptcy in the United States Court. His liabilities amount to \$7000; assets, nothing. Mr. Willis went through bankruptcy a short time ago, but failed to include in his schedule "A" all his creditors. His present effort is being made to remedy the effects of his forgetfulness. The will of George H. Green, deceased, was admitted to probate in the County Court yesterday. The property is valued at \$5000, and it is to be sold and the proceeds distributed equally among the following children of the testator: Henry Green, Jefferson, Or.; John Green, Sulverton; Philip Green and Pader Green, Colfax, Wash.; Conrad Green, Sunnyside; Jacob Green, Seven Points, O.; Annie C. Roeb and Mary Green, Seattle. John Green is named as executor without bonds.

WAITING FOR THE SITE. Many Prospective Subscribers to the Fair Fund Still Undecided. Subscriptions to the Lewis and Clark fund have reached a total of \$351,012. Many people are disposed to wait, before making subscriptions, until the site of the fair is chosen. If the site is in his pet location, one citizen will give so much. If it is not, he will give less but another man will give more. "How much will I give?" repeated a South Portland citizen. "I will give \$200, but if the fair goes to North Portland I can afford to give \$3000."

Branch houses of Eastern firms nearly always have to refer the matter to headquarters. Sometimes it takes a long time to get a response, and sometimes the response comes slower than it ought to do. "Have you made your decision what amount of stock your house will take?" one was asked. "No, I have not."

"Have you any idea what you will subscribe?" "No." "When will you, do you think?" "In about a month." "Well, Mr. Man, we think a whole lot of you, but don't you think you have had time enough to make up your mind? If you have not more money than this month, do you think you can in one month more?" "Well, the good citizen didn't know, but he would try a month, anyhow. So he is trying a month."

NEW MARKET TAKES SHAPE. Promoters of Co-operative Project Elect Officers. The project of a co-operative produce market has assumed definite shape. The enterprise was organized Tuesday night by the election of officers and directors. Dan Kellaher is president; H. C. Thompson, treasurer, and C. A. Bell, secretary. The board of directors has other members as follows: Fred Dresser, E. J. Partridge, G. C. Burns, and F. W. Funk. The incorporators are Dan Kellaher, F. W. Funk and G. C. Burns. The capital stock is \$100,000, but there is more money than this in sight, and the amount will probably be increased. So far over \$7000 is available, subscribed mainly in Portland, Oregon City, Vancouver and Astoria. Farmers and country merchants will be solicited to join in the enterprise and take stock. Their disposition toward the project has been very favorable, and it is certain that their subscriptions to stock will raise the capital of the corporation above \$100,000. The market apparently has a sound business basis. Its promoters say they will run the enterprise according to business principles; that it has no "boom" elements in it, and that all this will be demonstrated by the success that the project is sure to achieve. "Farmers and country merchants will get just treatment when they consign their goods to this market," said a doctor yesterday. "Heretofore they have got the 'high sign' and the 'horse laugh' when they had the temerity to protest against fraudulent commission houses. Stockholders in the corporation will know just what commission they have to pay to have their produce marketed, and there will be no exorbitant charges."

The enterprise had its inception about two years ago, when the wholesale produce merchants announced the new system of 10-day credits. It began with the association of retail grocers, but has since passed out of their hands. The wholesale produce merchants do not appear to be put out by the advent of the new market. One of them said yesterday that he welcomed it, because it would teach its promoters facts of the business which they now are not wont to consider.

Ladies Can Wear Shoes. One size smaller after using Allen's Foot-Ease, and the shoes will fit. It makes tight or new shoes feel easy; gives instant relief to corns and bunions. Cures and prevents swollen feet, blisters, calluses and sore spots. Allen's Foot-Ease is a certain cure for chafed feet, itching feet. At all druggists and shoe stores. Trial package FREE by mail. Address, Allen S. Olmsted, Le Roy, N. Y.

Dr. Price's Baking Powder. Cream Baking Powder. Used in Millions of Homes. 40 Years the Standard. A Pure Cream of Tartar Powder. Superior to every other known. Makes finest cake and pastry, light, flaky biscuit, delicious griddle cakes—palatable and wholesome. PRICE BAKING POWDER CO., CHICAGO. NOTE.—Avoid baking powders made from alum. They look like pure powders, and may raise the cake, but alum is a poison and no one can eat food mixed with it without injury to health.

NOMINATED FOR UNITED STATES ATTORNEY FOR WASHINGTON.

WASHINGTON, May 7.—The nomination of Jesse Frye, of Whatcom, to be United States Attorney for the State of Washington, was sent in today, and referred to the committee on judiciary. It is expected that an early report will be made, as the argument of ex-Senator John L. Wilson against his appointment was unavailing before the President, and cannot be any stronger before the committee. This nomination is a substantial victory for Senator Foster.



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was presented to you of the statement of the warrants and the time of the sales? A. Yes, casually. Q. You examined it sufficiently to examine the items, did you not? There were certain lines of goods mentioned. A. No, I do not know that the goods were mentioned in the warrants; the amounts I cannot remember, of course. Q. You examined the tabulated statement that was to be published in the paper, the dates and the amounts and who they were payable to? A. Yes, I saw those, but of course the amounts I could not remember. I see them now and they are substantially as I recollect them. Q. You noticed then that some of these goods had been purchased something like 18 months prior to the time the article was written, did you not? A. Yes, I knew some of the goods were purchased prior to that time. Q. Most of the goods had been purchased six months before the publication of the article? A. I did not notice that. Q. Did you make any inquiry among your official staff as to why this matter had not been reported to you before this late date, where the purchases appeared to have been made six months prior to the time they came to you? A. I did not. Q. Did the circumstance of the matter alleged here to be a matter of record in the county, generally known, as you say, did it make any impression on your mind before the publication, and that it should have been reported to you at this particular time this article was written? A. Soon after I first came to the knowledge of this I suggested inquiry into it. I think it came to Mr. Piper before that time, perhaps my suggestion came from him, in a way, and then the statement that it was a general rumor which obtained about the Courthouse. It was soon after I first became acquainted with the knowledge that the inquiry was begun. I had no knowledge of it a fortnight or one week before the publication. Q. With a knowledge of it a week before the publication what direction did you give to Mr. Piper with reference to the manner of conducting the examination? A. I talked the matter over with Mr. Piper and told him to make the fullest inquiry. My information came largely from him. I told him to continue the inquiry and to publish the facts. Q. Did you tell Mr. Piper or did you take steps personally to see Mr. Mack or communicate with Mr. Mack and ascertain his views of the matter before the publication or before you started your reporters around town hunting up the records? A. I did not. I think it was done; I think Mr. Piper undertook to obtain an interview with Mr. Mack, but Mr. Piper can answer that himself. Q. Why did you not interview Mr. Mack personally? A. It was not necessary. Q. Why not? A. Because I had ascertained what the facts were as regarded the sale of these goods by the firm of Mack & Co. and that the warrants had been issued and the money had gone to J. G. Mack & Co.; it was not necessary. "Exhibit A" appearing in the same paper that the article complained of appeared? A. I think I did. Q. I want to ask you what meaning you intended to convey by the words "Official Graft." To what did you refer in a case. I had ascertained the goods were sold to the county here, and that there was a rumor. I meant precisely that. Q. What did you mean by the words "Official Graft"? A. I meant the furnishing of supplies for public use for a profit contrary to law. Q. That would be a dishonest appropriation of public funds, or an appropriation of public funds to a dishonest purpose? A. It would be official misconduct. Q. The word "Graft" is the meaning

February 9, before it was