

The Oregonian

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Portland, Friday, February 8, 1907. REPEAL ALL PERPETUAL FRANCHISES. All perpetual franchises should be repealed. They are bad in law and bad in policy.

The Oregonian has said this repeatedly and now reiterates it. The Oregonian has also said that it is sound logic and proper procedure for the power granting the franchise to revoke it. This is not a question of law, but of policy. The way to revoke is to revoke, and we will not split hairs with any one about procedure, if it bids fair to be effective and correct.

A part of the Multnomah delegation at Salem insists that there should be passed by the Legislature a measure revoking all perpetual franchises. Any genuine measure of that kind will have the unqualified approval of the Oregonian. The people of the state want them repealed and demand that they shall be repealed. The Oregonian only voices their sentiments and desires, and represents their interests when it declares that any effort made in good faith in that direction, and to that end merits commendation.

The franchise of the Portland Gas Company, however, stands in a class by itself. An attempt to treat it upon the same basis as other perpetual franchises which are held by various corporations is a mistake. All other franchises have been granted since Oregon became a state. They fall under the constitutional provision that all franchises may be "altered, repealed or amended." The Gas Company's charter, or one of its charters, and the principal one, was obtained before Oregon became a state. It was conferred by the territorial Legislature and there is a question whether or not the above constitutional provision applies to it. The contention of the company is that it does not, and that this franchise cannot be repealed by the Legislature. No such contention is made for any other franchise. The oldest of them, that of the railroad on Fourth street, dates from 1852. Oregon had then been a state, and the constitution in force for ten years. This franchise, if it is a franchise, ought undoubtedly be revoked. The track on Fourth street is a common nuisance, but the revocation should not be attempted in the same bill that deals with the franchise of the Gas Company. Under the repeal of the Fourth-street franchise, by the general act, and of all others granted under the constitution, there can be no litigation unless confiscation should be attempted. Over the repeal of the gas franchise granted in 1852 litigation is certain. The company will maintain in court that its privilege is not only perpetual, but also irrevocable; that it is above, not only the laws of the state, but the constitution also. The purpose and the necessity of the special bill affecting only the Gas Company, ought to be perfectly clear to every legislator, and there should be no objection to it from any one who desires repeal of any perpetual franchise.

THE AFFRONT TO JAPAN. We have heard a great deal in connection with the Japanese school embargo in San Francisco about the objection to the attendance of full-grown Japanese men along with American children of 10 and 12 years of age.

In point of fact, as stated by William H. Inge, the business of moving the British shipowners carrying our traffic at rates much lower than those which our own shipowners see fit to make. It has been argued that by not owning the ocean carriers we have been placed at a disadvantage in the foreign trade. The fallacy of this argument is quite forcibly shown by the official figures previously mentioned. These show that the British Empire outside of the United Kingdom reached a total value of 641,700,000 pounds sterling, of which only 257,200,000 pounds were done with the United Kingdom. In other words, Great Britain, with all of its enormous prestige and power, is being outdone by her unequalled merchant marine, was unable to secure one-half of the trade with her own possessions. But while she was unable to sell them as many goods as were sold to the United States and other countries, she was still so much lower than the rest of the world with her freight rates that she actually sold transportation to the Americans and other merchants who supplied the goods.

The citizen of Japan, says Mr. Inge, is not only proud, but sensitive, he is like Sir Walter Scott's Highlander, who walked abroad with his nostrils quivering and searching the air for an affront. To throw him in pell-mell among Chinamen and Koreans, whom he despises, was the crowning act of humiliation.

The School Board acted hastily and without tact. The incident is to be regretted, first because of the hostile feeling against the United States to which it gave rise in Japan, and again because it gives every blatherskite in the country, in Congress and out of it, a chance to air his opinions upon race antagonisms. Denis Kearney, of anti-Chinese sandlot memory, has come out of his retirement of a score of years to exclaim: "The Japanese are the yellow peril!" adding:

"They're establishing tailor shops, shoemaker shops, hatters, restaurateurs and everything else. They're getting a larger and larger merchant marine than her famous competitor on whose domain the sun never sets."

By such a method is a million of them here, because this is the finest place in the known world to live. Now one million Japanese would be a menial to our present state. They'll fight. We know that. The Russo-Japanese War shows it. They are a fighting nation, and they are fighters by nature. They mean to win by hook or by crook.

This is Denis Kearney, but the sentiments are not confined to him or his class. It is said that they are shared by ninety-five Californians out of every one hundred. It is against the expression of such sentiments that Secretary Taft warns men in the Nation's high places. This warning is well timed.

OREGON APPROPRIATIONS SAFE. The House yesterday agreed to all of the items in the rivers and harbors bill, the aggregate being more than \$2,200,000, of which nearly one-half is immediately available, the remainder being for continuing contract work.

This action of the House, while almost a foregone conclusion, removes the last vestige of doubt regarding the ultimate success of the river and harbor bill by the Government. It also assures some important work on the upper river obstructions. As has been previously stated, a great deal of credit for these liberal appropriations is due the delegation from our neighboring state.

Senator Fulton has been Oregon's only effectively working member, and the responsibilities upon him have been very heavy. He not only got the rivers and harbors bill through the Senate, but his labors before the House committee were unceasing and were most potent. It ought to be said for him that he worked wherever work was needed for every part of Oregon, and it is only proper acknowledgment to remark that the efforts he put forth for Oregon's appropriations, combined with the friendly attitude of Representative Jones, of Washington, a member of the rivers and harbors committee, resulted in most generous consideration by the House committee and later by the Senate.

The project for a fourteen-foot channel from Chicago to the Gulf of Mexico suffered defeat in the House, not perhaps because it lacked merit, but on account of the large amount involved and the pressure for funds which had badly needed on other work which had already been commenced, and which might suffer by any "paring" measure necessary in order to take care of the new project.

The rivers and harbors appropriation bill, on the whole, has been a good one, and its special value lies in the increasing interest in river and harbor work which is reflected by such approval in that direction, and to that end merits commendation.

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The purpose and the necessity of the special bill affecting only the Gas Company, ought to be perfectly clear to every legislator, and there should be no objection to it from any one who desires repeal of any perpetual franchise.

TRADE AND THE FLAG. The "far-flung empire" of Great Britain, on whose possessions the sun never sets, is the business of moving the British shipowners carrying our traffic at rates much lower than those which our own shipowners see fit to make.

It has been argued that by not owning the ocean carriers we have been placed at a disadvantage in the foreign trade. The fallacy of this argument is quite forcibly shown by the official figures previously mentioned. These show that the British Empire outside of the United Kingdom reached a total value of 641,700,000 pounds sterling, of which only 257,200,000 pounds were done with the United Kingdom.

In other words, Great Britain, with all of its enormous prestige and power, is being outdone by her unequalled merchant marine, was unable to secure one-half of the trade with her own possessions. But while she was unable to sell them as many goods as were sold to the United States and other countries, she was still so much lower than the rest of the world with her freight rates that she actually sold transportation to the Americans and other merchants who supplied the goods.

The figures are of special interest at this time, when some of the chief officials of our own Government are endeavoring to show that our foreign trade is being hampered by reason of our not owning as many ships as some of our competitors. They prove quite conclusively that Great Britain deals heavier proportionately in transport than she does in general traffic, even with her own possessions. They also prove that when the comparative area of the over-sea possessions of the United Kingdom and the United States is taken into consideration, our own country has a proportionately larger merchant marine than her famous competitor on whose domain the sun never sets.

COMMISSIONERS TO BE ELECTED. The joint railroad committee at Salem appears to have made up its mind that the State Railroad Commission should be elected by the people; but not now. There is a mighty effort to give an important piece of patronage to Government channels in the appointment of commissioners. The present Governor ought, in the committee's opinion, to be considered, but no other Governor. After Chamberlain, the deluge, possibly; and then the people only can be trusted.

Why not begin right by placing the power to elect these commissioners with the people in June, 1908, or thereabout, there should be temporary appointments meanwhile, and it is proper that the Governor should appoint them. But it is not best, in the opinion of the Oregonian, that they should hold office after the people shall have had an opportunity to elect their successors. The people in June, 1908, can elect three commissioners, two for one year and one for two years. In 1910 the successor of the short-term commissioner may be elected for a full term of four years.

The railroad committee, we observe, insists that the Commission shall have special authority to employ a special attorney. Very well. The law undoubtedly is a proper provision. A further provision should be made that no person who is the paid attorney of any shipper should be employed in that capacity. The Commission is entitled to have the public interest, and not any private interest, served through the labor and talents of its attorney.

THAW'S DEFENSE. When Stanford White was shot by Thaw the newspapers of the day almost unanimously decided that he had deserved his fate. Few, of course, approved the violent manner of his punishment. It was regretted that the law provides no adequate methods for bringing such characters to justice, and hence the clamor for a more adequate means. Of course we know that the legitimate prey of any man who can accomplish his ruin. Once fallen she is forever fallen. There is no pardon for her sin. While the man who has led her astray is not only forgiven, but, in some quarters at least, his deed is already being forgotten. He may be at full liberty to look upon the world as his own, and to be as free as the wind. Should she endeavor to climb from the gulf of ruin where he has plunged her, he is permitted to thwart her efforts by every means that his depraved imagination may suggest. He may pry her with soliloquy; he may blacken her name; he may slander and deceive her. No matter how vile the methods which he chooses to force his victim to follow in a path of perpetual shame, a certain section of society condones and perhaps approves them. Among the members of the social set to which White belonged the chief of young girls, the recognized variety of sport. They class it as vastly more amusing than grouse shooting and not more immoral than stalking the moose.

The common and statute law governing wrongs committed by men against women represents the opinions of this social class, which includes many of the wealthy, all of the idle and some of the intellectually gifted. It has been contrived to protect rather than hinder them in the pursuit of their favorite sport. Thus, under the law of New York, "knowledge on the part of a man that his wife was being pursued or annoyed by another man, does not constitute such provocation as to reduce a homicide to manslaughter." It would permit him to shoot a burglar who was attempting to steal his silver, but not a "gentleman" like White, who had first assaulted his wife in her innocent girlishhood and afterward sought to drag her back into renewed infamy. No, no, do the courts of New York recognize any "higher law" pertaining to these matters. The privilege of a "gentleman" to pursue a woman who has once been his prey, to blight her life by his wiles and entrap her again if he can, is sacred and inviolable. The father, the husband or the brother is forbidden to invoke against him the primitive law of eye for eye and tooth for tooth. He may invoke this law in defense of his property, but not in defense of his wife, daughter or sister.

Thaw's defense, therefore, could not be placed on the broad basis that his deed was intrinsically just and that he had been compelled by the defects of the law itself to right his own injured and unable wrong. The plea of insanity was his sole recourse. To make this plea good under the law of New York he need only prove that at the time when he shot White his mind was so affected that he did not know "the nature and quality of his act, or did not know that his act was wrong."

The word "wrong" here means "illegal," since if his act was not morally wrong of course it would be absurd to think of his "knowing that it was wrong," whether he was insane or not. Moreover, he need only establish that he was "insane" in this sense, and stand at the moment when he fired the shot.

His mental state before and afterward is of no consequence. This makes the problem of the defense comparatively simple.

To accomplish the one vital purpose of showing that Thaw's mind was so affected at the time when he shot White that he did not know his act was illegal, Mr. Delmas, his lawyer, introduces two lines of evidence. The first tends to show that Thaw is predisposed to insanity by heredity. The second, that White's pursuit of Mrs. Thaw was so persistent and malignant that insanity was actually produced.

Thaw's brooding over the original betrayal of his wife by White in her girlishhood would contribute to the same effect; therefore the particulars of this event, her narrative of White's gentlemanly wiles to accomplish his purpose, are submitted to the jury by the astute attorney for the defense. There seems to be no doubt whatever that Thaw loved his wife passionately. The story tends to show that Thaw is predisposed to insanity by heredity. The second, that White's pursuit of Mrs. Thaw was so persistent and malignant that insanity was actually produced.

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Washington, Feb. 7.—Senator Fulton had a long conference with the President today in regard to the latter's order suspending all public land entries until they can be examined on the ground by a special agent of the Land Office. The Senator said this order was bound to work hardship on homesteaders, and was to his mind conducive to more harm than good.

The President admitted that he had never looked on the matter as Mr. Fulton did, and said he could see advantages that he knew nothing of when the order was issued. While he made no promises, he rather gave the impression that the order would be modified, particularly as it applies to homestead entries.

Where Fraud Comes In. Mr. Fulton told the President that the greatest amount of fraud in the past had been committed under the timber and stone act, but he showed that under the timber and stone act such fraud could be discovered by a special agent visiting the entry. The fraud was usually in the form of an agreement between the entryman and a prospective purchaser of the land, and such agreements would be no more apparent to a special agent examining the timber than to the department in Washington. For all special agents believed examination of the timber entries by a special agent would fail to accomplish the President's purpose.

As applied to homesteads the Senator said it would be a hardship to withhold patents from settlers who had complied with the law, mostly because their entries had not been personally inspected by a special agent. Many times settlers are anxious to obtain title so they can mortgage their land and obtain money for improvement. Sometimes they might want to sell. The long delays incident to examination would defeat these purposes.

Might Bribe Special Agents. On the other hand, he told the President that out of hundreds of special agents at salaries of \$1 a year the Government would be bound to give many men who would not be above accepting bribes, and such special agents, instead of protecting honest settlers and exposing crooked ones, would account money from men who were breaking the law to sustain their records, but would report adversely on honest entries. For all special agents believed that the long delays incident to examination would defeat these purposes.

Washington lawyers approve the Oregon law that sends wifebeaters to the whipping-post, and have under consideration the enactment of a like measure. The law has not found favor in Oregon, chiefly, perhaps, because of its lax administration. Its effect is said to be brutalizing upon the recipient of the penalty, but, after all, appeal can only be made to a brute through means of a law. It is a law, and it is not any other, must be rigidly and impartially enforced if it is to prove salutary. It is a fact, well known, that its enforcement has not been insisted upon by the courts of the state, and it cannot be said, therefore, to have been given a fair and full trial. The human bounds to whose backs the lash has been applied have whined like the cures of the gods under the penalty. There is no evidence that they have been further "brutalized" by its application, while there is good reason to believe that the fear of another dose of their own medicine has deterred some of them from repeating the gross offense of wifebeating.

If the song of the meadow lark is the advance call of Spring, that much-desired season is close at hand. Even in the days when snow was on the ground and ice covered the snow, the trill of these cheerful and hardy little songsters rose and fell on the air, shaming the human grumbler who looked from the windows of his warm room and wondered why he should be so cold. The song of the meadow lark is the advance call of Spring, that much-desired season is close at hand. Even in the days when snow was on the ground and ice covered the snow, the trill of these cheerful and hardy little songsters rose and fell on the air, shaming the human grumbler who looked from the windows of his warm room and wondered why he should be so cold.

Shocking, these revelations about the Franklin Association. A local job printing tract to keep up prices and gouge the public? Cannot be true, or we should have heard ere this from some one who has to do with the matter. Of course we know that with the lynx-eyed guardians of the weal of the plain people, Senator Holston, Senator Beach and Senator Bailey, all about the iniquity of such monopolies, and they would be sitting up nights at Salem to devise ways and means to bust the trust. Yes, indeed.

Councilman Shepherd, too, deserves a little more public attention and sympathy than he has had. He is the hardest-worked man in Portland, to earn his two salaries, one from the Harriman system and the other from the city. But it must be admitted that the associated plutocracy got value received on his vote on gas franchise revocation. But what did the public get?

The point of view over in Bunchgrass is of the right sort. Recently some people were arrested at Harney for killing a calf. They set up the defense that they were lost and hungry. The owner of the animal said he would have done the same and withdrew the case.

Possibly the Thaw witnesses might be able to answer Mr. Delmas' question as to whether Mr. Thaw acted in an "irrational" manner after he killed White if they could learn what is a rational way for a murderer to act just after the crime.

Good judges predict a yield of a million dollars from the placers in the neighborhood of Rogue River. If Rogue River cannot beat Hood River on apples, she can dig up the dust all right.

The virtuous Councilman Sharkey doesn't propose to be "used" by the Oregonian. Probably not, since the Oregonian has not suggested or tried to arrange it. There is no other reason.

For the proposed State of Lincoln, Baker City could hardly furnish the gubernatorial candidates.

HARDSHIP TO POOR SETTLERS. Fulton Confers With Roosevelt on Suspension of Patents.

OREGONIAN NEWS BUREAU, Washington, Feb. 7.—Senator Fulton had a long conference with the President today in regard to the latter's order suspending all public land entries until they can be examined on the ground by a special agent of the Land Office.

The Senator said this order was bound to work hardship on homesteaders, and was to his mind conducive to more harm than good. The President admitted that he had never looked on the matter as Mr. Fulton did, and said he could see advantages that he knew nothing of when the order was issued.

Where Fraud Comes In. Mr. Fulton told the President that the greatest amount of fraud in the past had been committed under the timber and stone act, but he showed that under the timber and stone act such fraud could be discovered by a special agent visiting the entry.

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