

WHILES OF ROADBED

Sacramento Paralyzes Service on Southern Pacific in California Division.

GREAT LOSS OF LIVESTOCK

Flood Sweeps Houses Away and Overflows Lower Floors in Tehama, Where People Flee for Safety.

RAILROAD OPEN AGAIN. SAN FRANCISCO, Feb. 4.—Flood damage in the vicinity of Tehama has been repaired to such an extent that the Shasta route of the Southern Pacific Company has been reopened and trains to Fortuna and the North are routed through by way of that place.

TEHAMA, Cal., Feb. 4.—Tuesday night was one of the greatest terrors in this town. Three feet of water swept through the streets and flooded nearly every residence and business houses from 10 to 20 inches. Women and children climbed upon tables and beds in mortal terror for fear the buildings would be swept away.

Roadbed Swept Away. The Sacramento River swept across Mooney's field from the mouth of Elder Creek, carried the Southern Pacific roadbed out and landed rails and ties against the right of way fence for a quarter of a mile above the water tank and between the depot and town. The rails and ties were twisted, bent and washed out as though by an earthquake. The division superintendent, Mr. Sheridan, of Sacramento, was caught at Red Bluff by the washouts there, and Resident Engineer Harrington arrived here with a work-train on the West Side on Wednesday afternoon. They are directing the repair work in person, and have 150 men at work filling in the roadbed for a quarter of a mile north of the Tehama depot.

Small dwelling, owned by Charles Bradford, was washed against the trees east of the railroad depot and was wrecked. The Southern Pacific tracks were washed out both north and south of the Tehama depot, about half a mile in all. The Sacramento River swept across Mooney's field from the mouth of Elder Creek, carried the Southern Pacific roadbed out and landed rails and ties against the right of way fence for a quarter of a mile above the water tank and between the depot and town.

RULING IS AID TO LABOR

(Continued From First Page.) that the workman continued to assume the risk. Cannot Escape His Liability. No employer may plead his disobedience of the law as a defense when some victim of his criminal negligence has been damaged. This was the Nafarrows decision that strikes the corporations of the country when Judge Taft announced it from the United States Circuit court for the district of Ohio, some years ago. That potent phrase was reiterated in the Oregon case by the decision of yesterday.

The decision in a new trial, is directed against the Harbort & Whitt Company, of Portland. The amount of damages involved is \$7500, which is asked by Judge Taft, an administrator of the estate of Michael Welsh, who was killed last summer, while working at the company's plant on the East Side. His death was the indirect cause of the present trial. This fact is admitted by both sides. Welsh's brother and administrator of his estate, asked for damages on the grounds that the company was responsible for his death. In carrying the case through to final victory, Henry E. McGinn, an attorney for the estate, has won a complete victory.

Position of Judge Wolverton. When the case was called before United States Circuit Judge Wolverton last September he held against the estate, practitioner instructing the jury in favor of the Asphalt Company. His finding, in effect, was a disputation of the theory of law advanced by Judge Taft. His conclusion, reduced to a phrase, was that Welsh's knowledge of the danger of his employment gave him the assumption of risk. The case was tried before the tribunal at San Francisco in November.

Company Admits Its Negligence. Now the Asphalt Company admitted that the stop arrangement on the machine that killed Welsh was not what it should be. Admission was likewise made that the fatal screw was not boxed. The contention of the corporation was that Welsh knew the factory law and further contending that he was not an employer. The evidence has shown that he had to use a barrel stove. In doing this, he was caught on a set screw and killed. This sentence was given, and the company must be held responsible for the death of the man who was killed.

Text of Factory Act. The Oregon factory act of 1907, which is an important issue in the case, was taken from the Washington factory act of 1906. Section 1 of the Oregon act says: That any person, firm, corporation or as-

sociation operating a factory, mill or workshop where machinery is used shall provide and maintain in use belt-shifters or other mechanical contrivances for the purpose of throwing on or off belts or pulleys while running, when the same are necessary for the safety of the workers. The purpose of said belts and the dangers to employees of the same shall be explained to them by the employer in reasonable language, and for all vats, pans, trimmers, cutoff, gang-edge and other saw, planer, cutter, gear, edge, heling, snatching, cupping, screw, live-rollers, conveyers, mangles in laundries and other machinery, the same shall be so placed, which it is practicable to guard and which can be effectively guarded, as to guard the ordinary use of such machinery, the employees of any such factory, mill or workshop are liable to come in contact with, and the performance of their duties, and if any machine, or part thereof, is in a defective condition and its operation would be extra hazardous because of such defect, or if any machine is not safeguarded as provided in this act, the use thereof is prohibited and a notice to that effect shall be attached to the machine, and the employer shall immediately give notice of such defect or lack of safeguarding and shall not operate the machine until such defect has been remedied or the machine safeguarded as herein provided.

Instruction to Portland Jury. Judge Wolverton, in instructing the jury, held that in the absence of express words in the factory act taking away the defense of assumption of risk, it still remained and the employer might make it, after an exposition along these lines relative to the assumption of risk. Judge Wolverton, in concluding his instruction to the jury, said: "You may hear put yourselves in the place of the deceased, while engaged in the service which called him to disengage the clutches by means of a stove or stick, and exercising your judgment and intelligence as men or reasonable judgment and discretion, determine whether, with the opportunity of observing and determining for himself, the danger is so great and so obvious, and so appreciate the danger, or should have known and appreciated, by the exercise of his intelligence and proper precaution, the danger attending his conduct. If he did or ought to have known and appreciated such danger and hazard, and entered upon the service or continued for some time therein without notice or complaint to his employer, then you will say that he assumed the risk of his mishap, and he cannot recover, though the defendant might have been negligent in the first instance."

FOREST SERVICE HEAD SOUNDLY DRUBBED. Congressmen Say Attempts Have Tried to Extort Blackmail From Miners and Farmers.

WASHINGTON, Feb. 4.—The Forest Service got its usual annual drubbing today, the criticisms against it coming principally from Smith of California, Cook of Colorado and Mondell of Wyoming, all of whom charged extravagance in administration and the extortion of money from miners, farmers and even the owners of beehives.

SAV PINCHOT WANTS SEAT

Mr. Cook attributed to Mr. Pinchot, the Chief Forester, the ulterior motive of scheming for Secretary Wilson's seat in the Cabinet. Both Mr. Pinchot and the Forest Service are vigorously defended by Mann of Illinois and Weeks of Massachusetts. All attempts to amend the agricultural bill in any important manner failed.

BRIDGE CARPENTER KILLED

Charles C. Jensen Falls From Railroad Structure Near Oswego. Charles C. Jensen, a bridge carpenter, died last night at the Good Samaritan Hospital as the result of injuries received yesterday morning by falling from a bridge near Oswego, Or., on the farm, and the owners of beehives. Mr. Cook attributed to Mr. Pinchot, the Chief Forester, the ulterior motive of scheming for Secretary Wilson's seat in the Cabinet.

AMERICAN WOMAN WHO IS INVOLVED IN DIVORCE SUIT

EDINBURGH, Feb. 4.—Tired of having his court turned into a theater filled with curious men and women, who come to regard the striking cross-divorce case as a lurid melodrama produced for their benefit, Judge Guthrie today closed the doors on all except those directly identified with the suit. Lord Northland was on the stand all morning. His evidence consisted largely of flat denials to the statements made by Mr. Stirling and Mrs. Atherton.

NEW YORK, Feb. 4.—(Special.)—An American woman is the center of a startling divorce case now being tried in the English divorce courts. She was Clara Taylor, of Washington, and a "show girl" of the American stage.

MRS. JOHN ALEXANDER STIRLING. Day's Improvement Ceases and Tetanus Sinks Again. LOS ANGELES, Cal., Feb. 4.—The condition of E. J. (Lucky) Baldwin, the widely-known racehorse owner, became worse early tonight, when his heart attack became embolized again, and there are grave fears for his recovery. He is unconscious and very low.

GOTHAM RECEIVES NEW AMBASSADOR

Count von Bernstorff Given a Hearty Welcome to United States.

THINGS THAT COUNT

During this sloppy weather—bodily comforts absolutely essential if one would keep in condition. Here's to Your Health.

NEW YORK, Feb. 4.—Johann Meirlich, Count von Bernstorff, the new German ambassador to the United States, was given an informal reception by the New York Chamber of Commerce today and tonight a dinner was tendered the Ambassador by the New York Staats Zeitung at the Manhattan Club.

FRIENDSHIP IS KEYNOTE. Addresses Pledge Good Feeling in Trade Relations—Echo of Japanese Legislation in Resolutions.

NEW YORK, Feb. 4.—(Special.)—After being cited twice during the past two years on charges of forging of papers tending to prove that she is entitled to the \$49,000 estate of her uncle, J. W. Young, deceased, and each time acquitted after a long struggle, Mrs. Mabel Warner, of this city, has again filed in the Probate Court of this county a will which she says is the true document signed by her uncle on the day of his death, November 21, 1902.

NORTHLAND DENIES ALL SAYS CHARGES OF TWO WOMEN ARE FALSE. Admits Attachment to Mrs. Stirling, but Denies Love—Not Decided to Marry.

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FIGHT FOR TARIFF HELPS Lumber Dealer Believes Lobby at Washington Will Avail. BELLINGHAM, Feb. 4.—(Special.)—"While there is no doubt that the tariff on lumber will be much reduced, I believe that the fight made by lumber and shingle men at the National capital has been successful to some degree, and that the duty will be left on at least in part. It had not been for this fight there is no question that the output of the Canadian mills would have been put on the free list."

"LUCKY" BALDWIN WORSE Day's Improvement Ceases and Tetanus Sinks Again. LOS ANGELES, Cal., Feb. 4.—The condition of E. J. (Lucky) Baldwin, the widely-known racehorse owner, became worse early tonight, when his heart attack became embolized again, and there are grave fears for his recovery. He is unconscious and very low.



Things That Count. During this sloppy weather—bodily comforts absolutely essential if one would keep in condition. Here's to Your Health.

25c Medicot Und'w'r \$1.45 2.00 Fine Pajamas....\$1.35 35c Cashmere Hose.....20c



THE MOON CLOTHES. 166-170 Third Street.

NEW YOUNG WILL IS FILED

MABEL WARNER BELIEVED TO HAVE REAL DOCUMENT. Twice Tried on Forgery Charge, Woman Springs Sensational Paper at Eleventh Hour.

PENDLETON, Or., Feb. 4.—(Special.)—After being cited twice during the past two years on charges of forging of papers tending to prove that she is entitled to the \$49,000 estate of her uncle, J. W. Young, deceased, and each time acquitted after a long struggle, Mrs. Mabel Warner, of this city, has again filed in the Probate Court of this county a will which she says is the true document signed by her uncle on the day of his death, November 21, 1902.

MANY INVOLVED IN PLOT

County Prisoners Planned Wholesale Escape. Jailor Hunter Discovers Weapons and Red Pepper in Cells of Most Dangerous Convicts.

NEW YORK, Feb. 4.—(Special.)—The circumstances surrounding the case are most mysterious. After her second trial for alleged forgery, Mrs. Warner began a civil suit on an alleged verbal contract for the recovery of the estate. She has been balked at each proceeding since the estate, located near Weston, is still in the hands of the administrator.

Enjoy Your Meals. By Simply Eating a Little Pleasant Tablet After Each of Them. A TABLET DIGESTS A MEAL.

When digestion is perfect the fluids necessary to this process come naturally to the aid of the stomach. They are of right proportion and do their work speedily and well. When indigestion and dyspepsia are prevalent, these same juices come slowly if at all, are weak and insufficient or are filled with strong acids and alkalies.

THE POPULAR-PRICE STORE Last Two Days of Sale

We are determined to make TODAY AND TOMORROW two of the most remarkable days for bargains ever known in the City of Portland. We invite one and all to visit this store today and tomorrow. You are sure to find something each day that will appeal to your judgment. Remember that you have now an opportunity to secure bargains impossible to get at any other time.

HOUSEKEEPERS CANNOT AFFORD TO MISS

This opportunity to replenish Linens, Curtains, Sheets and Pillow Cases, Blankets, Comforters, Towels and Napkins at less than wholesale.

Spring Suits. Are in and placed on sale. A full line to select from in serges, broadcloths and novelty suitings, self-strapped, button-trimmed, and with the new dip front. Best value in the city. From.....\$14.95

Sample Line. Of Kimonos, Wrappers, two-piece Wash Suits, Children's Wash Dresses and Infants' Dresses. One-third off from regular prices. Come early for first choice.

Silk Petticoats. Special value in high-grade Taffeta Skirts; well tailored and finished; regular \$7.50 and \$8.00 value.....\$3.98

McAllen-McDonnell

DANIEL McALLEN, President & Manager CORNER THIRD & MORRISON STREETS

CONDENSED NEWS BY WIRE. Rochester, N. Y.—The National Brick Manufacturers Association elected Lemna Parker, of St. Louis, president of the association on Thursday.

Two Girls Perhaps Fatally Hurt by Infuriated Beast That Dashes Into Classroom. SAN FRANCISCO, Feb. 4.—A dog supposed to have been afflicted with rabies dashed through the swinging doors of the John Swett Grammar School shortly after the pupils had assembled, and seriously injured two girls, Ida Fischer and Bessie Bailey.

CONDENSED NEWS BY WIRE. Washington.—The Forest Service promises to cut trails through the Lassen National forest in California and have Angora goats graze on the biggest-used piano sale in Portland's history, and there is no reason why we should not sell more pianos today and tomorrow than we did yesterday and the three days before.

CONDENSED NEWS BY WIRE. New York.—A panic among 500 girls in the Convant of the Sisters of Mercy on Thursday, when they were quickly assembled for prayer on the lower floor of the factory building near 42nd street, by several small manufacturers, was totally dissolved on Thursday.

CONDENSED NEWS BY WIRE. Newcastle, Pa.—The historic Lincoln coach in which President Lincoln rode to Washington for his inaugural ceremony was destroyed in a fire Wednesday at Sharpville, Pa. It was the only passenger equipment of the Little Sharpville Railway, running between that town and Washington Junction, Pa. It was covered with sheepskin and before Lincoln made his famous ride, and was supposed to be bullet-proof.

CONDENSED NEWS BY WIRE. San Francisco.—Major John P. Hain, eldest brother of Captain Peter C. Hain, who shot and killed purchasing agent Henry Hayden at the Presidio in this city, where he will be attached to the 2nd Cavalry.

YESTERDAY'S SALES EXCEEDED WEDNESDAY'S ANOTHER BIG DAY AT EILERS PIANO HOUSE. FOURTEEN BUYERS AND WHAT THEY SECURED.

All Used Pianos and Organs at Greatly Cut Prices. We Accept Small Payment Down—Even as Little as \$15 or \$10—Balance to Be Paid in Small Monthly Amounts to Suit Convenience of Purchaser. If the rate at which pianos were taken Monday, Tuesday, Wednesday and Thursday can be kept up, this will go on record as the biggest-used piano sale in Portland's history, and there is no reason why we should not sell more pianos today and tomorrow than we did yesterday and the three days before.

ring upright, a fine dark oak Electric Piano was taken by Mr. L. F. Bath, one of the famous Kimball was taken by Roy. B. S. Mystrom for the Swedish Lutheran Church at Arleta, and Miss Virginia S. Bryan decided upon a beautiful oak-cased Eilers Orchestral. The fact that that of these used instruments are being sold in exchange as part payment for pianos of higher price in our line of highest quality, explains the seeming mystery as to how we are able to sell such excellent instruments at the unusually low prices. We are not only able to get these pianos off our floors, and we are willing to accept a great deal less than their actual worth.

Here is the opportunity for many who have long felt the need of a good piano but have put off purchasing one because they did not feel financially able to afford the make of instrument they preferred, and who do not care to own a cheap inferior make. This sale and the remarkably low prices offered solves the way for them, and the way is now open for all piano-hungry people to secure an instrument of almost any make at a price that makes buying now a positive duty. Don't wait until the last minute and have none. Be here this morning, early and have first choice. There are still scores of beauties to select from. Remember, you can virtually arrange your own terms. Delivery will be made in order of sale at earliest possible moment. Eilers Piano House, 123 Washington st., at Park (8th).