

# Morning Oregonian

VOL. LI—NO. 15,729.

PORTLAND, OREGON, TUESDAY, APRIL 25, 1911.

PRICE FIVE CENTS.

## RAILROAD LOSES FIGHT FOR LAND

### Government Grant in Oregon at Stake.

## SOUTHERN PACIFIC HARD HIT

### Corporation's Counsel Will Appeal to Supreme Court.

## INTENT OF LAW CONTESTED

### Judge Wolverton Bases Decision Upon Amendment to Original Statute and Gives Government Clean Victory.

**FACTS ABOUT LAND GRANT DECISION.**  
Land involved—2,375,000 acres.  
Value—\$50,000,000 to \$75,000,000.  
Decision—Demurrer of Southern Pacific Company overruled; demurrer of Government to contest of cross-complainants and intervenors sustained; all legal points contested for by R. D. Townsend, special assistant to the Attorney-General, upheld; victory a sweeping one for the Government. Petitions of other persons to intervene denied.  
Future course of litigation—almost days allowed W. D. Fenton, counsel for the Southern Pacific, to file railroad company's answer to Government's suit to cancel patent. Case will go to United States Circuit Court of Appeals and thence to United States Supreme Court. Mr. Fenton is undecided whether to appeal upon his demurrer or to file his answer.  
Effect on intervening settlers—Court decision law does not compel the railroad company to sell to parties who declare their intention to become settlers. Land will not be open to settlement until it is opened by act of Congress.

Judge Wolverton's decision in the famous Southern Pacific land grant suit, if sustained by higher courts, means that 2,375,000 acres of valuable timber and agricultural land will some day be thrown open to entry.

On the demurrer of the Southern Pacific Company to the Government's complaint Judge Wolverton decided all points in the Government's favor, overruling the demurrer and placing the allegations of the complaint in issue. But the facts are not contested by the railroad company, W. D. Fenton, its counsel, maintaining that the court has not taken the correct view of the intent of the law and asserting his confidence that on appeal to the United States Circuit Court of Appeals or to the Supreme Court he will win his point.

Others believe, however, that in view of the exhaustive nature of Judge Wolverton's decision it will be sustained in the higher courts.

Judge Wolverton's decision hinged upon the intent of the amendment of April 16, 1859, to the original land grant of 1854. One of the provisions of the amendment was "that the lands granted by the act aforesaid (July 25, 1854) shall be sold to actual settlers only, in quantities not greater than one-quarter section to one purchaser, and for a price not exceeding \$2.50 per acre."

**Railway's Counsel Summarizes Case.**  
The railway company contends that this provision of the law is a mere "unenforceable, regulative directive covenant, not a condition; that specific performance cannot be enforced because it is not compulsory; that withdrawal of the lands from sale is not a breach; and that the government has waived the breach by apparent acquiescence in the many deeds of record made by the railroad company in violation of the proviso, by acceptance and use of the road, annual issuance of land patents and by effect of the general forfeiture acts of January 21, 1855, and September 23, 1859."

The railway company further contends that the land patents are conclusive, that were they void the title they purport to convey was confirmed by the force and effect of the acts of March 3, 1857, and March 3, 1856, and that these acts bar this suit so far as it refers to lands patented before October, 1852.

Another contention is that the statute of limitations bars the suits of the cross-complainants and intervenors.

**Judge Wolverton Explains.**  
Judge Wolverton held that the grant did not become operative until the railway company filed its assent to the terms of the act and that Congress was wholly authorized to make such amendment to the original grant as it saw fit, for, said he, "it disturbed no vested right of the grantee by so doing and except for the amendment of 1859 the East Side Company would have been in default, and the entire act would have been void."

The act, he held, is a law, not a directive covenant.

"As to the settler clause," said the court, "it is plain that the land department could have nothing to do with any alleged breach of the condition, as by the very order of things such breach would come after the time when it would have passed judgment in relation to the issuance of the patents under the grant. The issuance of patents, therefore, could be taken neither as a waiver

(Continued on Page 4.)

## RAILWAY EARNINGS DISCLOSE INCREASE

### GROSS FIGURES FOR 2 WEEKS OF APRIL FAVORABLE.

### Whittle Reports Show Irregularity, Losses in Some Quarters Are Offset by Gains in Others.

CHICAGO, April 24.—(Special.)—Gross earnings of all United States railroads reporting so far for the first two weeks in April continue in fairly well maintained volume, the total, \$12,348,852, showing an increase as compared with the earnings of the same roads a year ago of five per cent.

The returns now being received show considerable irregularities, but in no instance where a loss is reported is it especially pronounced, while the decreases on such roads as Colorado & Southern, Denver & Rio Grande, Missouri, Kansas & Texas and Texas & Pacific, are offset by gains by International Great Northern, St. Louis Southwestern, Seaboard Air Line, Wabash & Southern.

The following table are given the earnings of all United States railroads reporting to date for the first weeks in April and the increase, as compared with the earnings of the same roads for the corresponding period a year ago; also for the same period in the two preceding months, together with the percentage of gain or loss compared with last year:

1911.	Gain, P.C.
April, two weeks...	\$12,348,852 5.0
March, two weeks...	\$12,348,852 5.0
February, two weeks...	\$12,348,852 5.0
1910, two weeks...	\$11,720,000 0.0

## SAVANT GETS DIVORCE

### Dr. Austin O'Malley Given Freedom On Ground of Desertion.

PHILADELPHIA, April 24.—(Special.)—Following the report of the master upon testimony taken in the suit for divorce instituted by Dr. Austin O'Malley, of 2228 South Broad street, a scholar and scientist of international reputation, and against his wife, formerly Alice Ellis, of San Francisco, to the court of Common Pleas, today, Judge McMichael and Ferguson handed down a decree granting Dr. O'Malley the freedom he sought.

Dr. O'Malley's suit was brought on the grounds of desertion and first came to public notice several weeks ago, when he inserted a newspaper advertisement asking his wife, of whom he had been unable to find any trace, to appear in court this morning. Dr. O'Malley was married in New York in March, 1902, and in July, 1902, his wife was arrested as she was about to leave the O'Malley home, it is charged, with William J. Hearin, son of a New York broker.

Mrs. O'Malley did not appear today when the case was called in court.

## JAPS BEAT BOY THIEVES

### Charges to Be Made Against Them for Alleged Cruelty to Culprits.

WOODLAND, Cal., April 24.—(Special.)—The District Attorney has notified that three small boys of Winters—Willie Betz, Cullen Clegg and Charley Medina—were accused by Japanese of entering their cabin and taking money and tobacco Friday afternoon, afterward hiding the booty.

The Japanese watched the boys when they returned to the cache and caught two of them, giving them a severe beating and were tying them to trees, when a white man appeared on the scene and advised the Japanese to let the peace officers take charge of the boys. So the youngsters were brought to Winters for a hearing Saturday morning.

The District Attorney was unable to be present, so the trial was continued, the boys being placed under bonds.

Some interested persons say that a warrant will be issued for the Japanese, charging them with battery, as soon as the other case is settled.

## DR. E. E. BROWN HONORED

### Commissioner of Education to Be Head of New York University.

NEW YORK, April 24.—(Special.)—Dr. Elmer Ellsworth Brown, of Washington, United States Commissioner of Education under Roosevelt and Taft, was elected successor of Dr. Henry Mitchell MacCracken as chancellor of New York University at a meeting of the council of the university this afternoon.

Dr. Brown was born at Klanton, Chautauqua County, on August 25, 1851. He was educated at the Illinois State Normal University, University of Michigan and University of Halle, Wittenberg.

A councilman of New York University said today that a new building will soon be started at University Heights with the residue of the estate of John Stewart Kennedy. It is said Mr. Havemeyer is willing to make up the deficit.

## QUAKE BEHEADS MOUNTAIN

### Top of "Caesar's Head," Famous North Carolina Peak, Falls.

ASHEVILLE, N. C., April 24.—(Belated report from the mountainous sections of Transylvania County say a portion of "Caesar's Head," a famous peak, had been overturned by an earthquake shock, said to have been felt in western North Carolina Friday night.

It is said part of the mountain top fell with a crash which was heard for miles.

## EVIDENCE CLEAR, DECLARES BURNS

### Detective Positive He Has Dynamiters.

## J. W. McNAMARA IS J. B. BRYCE

### Prisoner Said to Be Man Who Bought Explosive.

## BROTHER PROVIDED CASH

### Two Sticks in Times Building Did Not Explode, and Trace Crime to Chicago Man—McManigal Blew Up Iron Works Alleged.

COLUMBUS, O., April 24.—Detective Burns, who was in Columbus for an hour tonight en route to Indianapolis, divulged for the first time some of the evidence upon which he bases his charges that the McNamara brothers and McManigal were connected with the dynamite outrages in Los Angeles.

Burns said he had learned that J. W. McNamara was in Los Angeles at the time of the explosion, in fact had been there for several days prior to the disaster.

"When J. W. McNamara reaches Los Angeles this week, he will be identified as the man who purchased dynamite from the Giant Powder Company and who used the alias of J. B. Bryce at the time," said Burns. "Aside from saying he fits the description of the man who purchased the dynamite, I am not now privileged to say what other facts we have on which to base our conclusions. But you may say I am absolutely positive he will be recognized as the purchaser of the dynamite. Two sticks placed under the Times building failed to explode. They were taken to the Giant Powder Company and identified as pieces purchased by this man Bryce."

**Kaplan and Schmidt Anarchists.**  
Burns said that with McNamara when he bought the dynamite were David Kaplan and M. A. Schmidt, for whom detectives have been searching since the disaster occurred. These two men, Burns said, were anarchists and had no connection with the International Association of Bridge & Structural Ironworkers.

"We have learned that McNamara (J. W.) was in the pay of J. J. McNamara, secretary of the Ironworkers Association, during the time that he was in Los Angeles and we have also proof that McManigal was in the pay of the secretary," continued Burns.

"Did McManigal have anything to do with the Times blowup?"  
"No, he is not charged with having a hand in that. He was the man who blew up the Llewellyn Ironworks several weeks later."

**McManigal Worked Alone.**  
Burns said McManigal worked single-handed.

(Continued on Page 4.)

## INDEX TO TODAY'S NEWS

**The Weather.**  
YESTERDAY'S—Maximum temperature, 71 degrees; minimum, 47 degrees.  
TODAY'S—Fair and cooler; westerly winds.  
National.  
Old-line Senators plan to block revision of tariff. Page 1.  
Republican factional war in Senate hinges on one place on finance committee. Page 2.  
House Republicans have laugh on Democrats when they propose more clerkships. Page 3.  
Form of Navy officials' apology for "mobbery" incident resented by Representatives. Page 2.  
**Foreign.**  
British House of Commons refuses to leave London free to veto home rule bill. Page 7.  
Madero plans to extend truce in Mexico to all rebel territory and for longer time. Page 2.  
**Domestic.**  
Burns declares evidence against dynamite suspects is positive. Page 2.  
Western miners ready to raise fund for McNamara's defense. Page 4.  
Twenty-two Americans entombed by mine explosion. Page 3.  
Gross earnings for Nation's railroads for two weeks in April show gains. Page 1.  
Henry E. Huntington, of Los Angeles, buys Gutenberg Bible for \$50,000. Page 1.  
Los Angeles girl fights armed burglar and is seriously injured. Page 5.  
J. Foster Kelley and Attorney Cochran released from jail in San Francisco. Page 5.  
**Sports.**  
Northwestern League results yesterday: Portland 10, Seattle 6; Spokane 10, Victoria 9; Vancouver 4, Tacoma 1. Page 8.  
Cleveland offers Olson for Neal Ball; McCredie consents, but says he doesn't need Olson. Page 8.  
Sacramento to open week's series with Beavers here today. Page 8.  
**Pacific Northwest.**  
Seattle's civil service employees form protective association and ask Mayor's support. Page 7.  
Woman horsewife prominent Sara farmer after dispute over land. Page 7.  
Twenty-two patients rescued from fire in Mercy Hospital at Roseburg. Page 6.  
Addison Bennett pictures search for Blue Bucker. Page 6.  
Portland woman Seattle agape wearing anklet, which is exposed as she enters auto. Page 1.  
**Commercial and Marine.**  
Another advance in price of Oregon mohair. Page 19.  
Wheat sellers at Chicago take advantage of unfavorable conditions. Page 15.  
Stock market reflects uncertainty over trade outlook. Page 19.  
Open River line to continue fight for wool business. Page 19.  
**Portland and Vicinity.**  
Lombard and Werten, candidates for Mayor, address audience of 1000 at Oaka. Page 19.  
Grand jury takes new tack in investigation of underworld conditions. Page 15.  
Mrs. Kerch sweeps on eve of departure for penitentiary. Page 13.  
Sale of seats yesterday for coming Kirmess may have reached \$2000. Page 12.  
W. S. U'hen denounced by single-tax advocates in stormy session of Oregon State League. Page 12.  
Taxpayers' League issues circular of interest to Portland. Page 12.  
Fight of county for right to close draws reaches climax today. Page 20.  
Government wins first fight in Southern Pacific land-grant case. Page 1.

## REGULARS PLAN TO BLOCK REVISION

### Old-Line Senators Aim to Uphold Tariff.

## ALSO PUT DEMOCRATS IN HOLE

### Opponents Might Fool Them With Insurgent Aid.

## POLITICAL GAME PLAYED

### If Regulars Reduce Tariff, Democrats May Pass Bill as One Instatement of Revision and Enjoy Loud Laugh.

OREGONIAN NEWS BUREAU, Washington, April 24.—A great many members of the honorable United States Senate are determined that there shall be no tinkering with the Payne-Aldrich tariff law at the special session of Congress, notwithstanding the determination of the Democratic majority of the House, and these Senators are devising various plans to forestall the carrying out of the Democratic program.

The latest legislative coup framed up by the wise ones is to report out the Canadian reciprocity bill at a reasonably early date, allow it to remain before the Senate for indeterminate discussion, and at the same time permit the sundry House bills, revising different schedules of the tariff law, to accumulate in the Senate committee on finance.

## Wise Ones Concoct Scheme.

If, when the Senate has talked itself out on Canadian reciprocity, it has not passed upon the popular election of Senators, publicity of campaign funds, admission of New Mexico and Arizona and sundry other subjects submitted by the House, it can then proceed to dispose of these bits of legislation, and see if the House will be willing to adjourn when they are severally submitted to the President for his approval, still leaving the various tariff bills in the finance committee. If the House is not willing to adjourn, then it is proposed to weld together all the individual schedule bills passed by the House, alter them to suit the will of the majority of the finance committee, add other provisions affecting those schedules of the Payne-Aldrich law which the House may overlook, and report to the Senate a bill making general revision of all tariff rates.

There are some Senators, however, especially those who do not favor Canadian reciprocity, who would argue a general tariff revision bill to the Canadian measure in the form of a rider, in the hope of killing off not only tariff revision but Canadian reciprocity as well.

In these troublous legislative days, (Continued on Page 7.)

## SEATTLE GAPES AT PORTLAND ANKLET

### HOBBLED WOMAN EXPOSES CIRCLE AT AUTO STOP.

### Ornament Sparkles as She Raises Skirt—Wearer Is Miss Stearns of Willamette Metropolis.

SEATTLE, Wash., April 24.—(Special.)—The anklet has arrived in Seattle. Today on Second avenue in front of the new Hotel Washington, about the hour of afternoon tea, a slim woman in a blue tailored suit, slightly higher than usual, hobble skirt and a blue toque hat, stepped into a waiting taxicab that had its "by-the-hour" flag flying.

As she lifted her hobble to step into the waiting vehicle the motor of which was purring like a contented cat, there was a flash and sparkle of sunlight from an ornament on her ankle.

It was the anklet.

"Beg your pardon, but isn't this Miss Hammond?" the owner of the anklet was asked. She was taken by surprise and replied with dignity, "No, I am Miss Stearns of Portland."

"Oh, I beg your pardon," her interviewer implored, "is the anklet all the rage in Portland?"

"I'd rather not talk about it," she said coloring slightly and signaled the driver to start.

"Are you going to introduce the fad here?"

"Really I'd rather not talk about it," she replied firmly and the cab moved away.

The anklet consists of a plain copper-colored gold band, with five small gold bangles.

## MONKEY INVADERS SCHOOL

### Teacher and Pupils Frightened by Disportings of Simian.

Escaping from his cage at the Seven Mile House, on the Section Line road, a monkey ran amuck, made his way to the Buckley schoolhouse, located a short distance east, and took possession of the school, ousting the teacher and frightening the pupils. The incident happened late on Thursday and the news was told in Portland yesterday.

The simian hopped from bench to bench, then back to the desk of the pretty school ma'am, who had retreated to a safe place, the intruder thoroughly enjoying his freedom, much to the alarm of the children.

After disporting about the room for several minutes the monkey dropped into the drinking bucket, full of water. The cold bath, most unexpected, did not halt the animal in his search for entertainment. Emerging from the bucket almost as quickly as he had dropped into it, he took a straight cut across the room over the heads of the pupils.

Finally one of the boys, braver than the others, caught the animal after a hard struggle, placed it in a sack and restored it to its home, but Mr. Monkey had created such a disturbance that the rest of the lessons for the day in the Buckley schoolhouse were called off.

## 56 ALLIGATORS BORN HERE

### Lively Little Fellows Are First Ever Hatched in Oregon.

Fifty-six alligators were born in Portland to a pair of alligators imported from the Everglades of Florida by F. A. Stuhr, of 91 Union avenue.

When the alligators were shipped by express, 70 of the eggs belonging to the family were packed in sand with the mother and father.

They were taken to their new home upon the Pacific Coast and the eggs carefully repacked, with a view to securing the best results from the hatch. As heat is the essential feature regarding the birth of the alligator, Mr. Stuhr spent night and day watching the temperature.

All the baby alligators are lively little fellows, and are kept in a basket lined with cotton. Although four days have passed, many of them have not opened their eyes.

"These are the only alligators, to my knowledge," said Mr. Stuhr, "that were ever born in Oregon. We have now the largest collection of alligators on the Coast, outside of Los Angeles."

## TEN BRING \$1000 EACH.

In addition to these two books, there were ten books which sold for more than \$1000. Of these there was, "Historia di Italia," by Guicciardini, which was knocked down to Mr. Smith for \$2600.

Another handsome fello which was sold to Walter M. Hill, of Chicago, for \$5500, was "Aethiopicæ Historiae" by Heliodorus. The works of Guillaume Coquebert went to Mr. Smith for \$2000, and Bouvella's geometry to Madame Bellin for \$1150.

This was the largest public auction sale of books ever attempted. Experts have estimated the Hoe collection to be worth more than \$1,000,000.

## WOMAN KILLS BIG BEAR

### Former Music Teacher of Portland Shoots 350-Pound Bruin.

CHENOWETH, Wash., April 24.—(Special.)—Miss Guleck, a homesteader, who formerly taught music in Portland, shot and killed a large black bear on her claim "Cedar Brook" late Wednesday. The animal weighed 350 pounds.

Bears have been seen in large number in various parts of the Little White Salmon Valley this Spring, and having just awakened from their winter's sleep, are very bold.

## TOT LOST FOR TEN HOURS

### First Adventure Reaches Climax With Tears, Fruit and Candy.

Little Norman Nelson, aged 4, of 688 East Sixteenth street, started on his first adventure at 10 o'clock yesterday and wound up in the home of S. Grimshaw, 412 Florence street, at 8 o'clock last night, nearly four miles from home.

He was picked up by Mr. Grimshaw at the corner of Alberta street and Union avenue, where he had been sitting on the curb since 3 o'clock in the afternoon, hungry and tired and bravely trying to suppress the big tears that rolled down his cheeks.

The little fellow was taken to the Grimshaw home, where he was fed and dined, given oranges and candy, petted and amused until the tears were gone. In the meantime the Grimshaws telephoned to the police that a stray boy had been found. The description, including red sweater and gray pants, fitted the wanderer, and Alexander Nelson, father of the boy, was notified and went after him.

Norman breaks all records at the police station for distances traveled by lost children of his age. How the policeman overlooked him they do not know, unless it was the "brave front" the little fellow wore which misled them.

## DOWIE CREDITORS PAID

### Final Dividend of 2.8 Per Cent Ordered by Judge Landis.

CHICAGO, April 24.—Creditors of the late John Alexander Dowie were paid a final dividend of 2.8 per cent on their claims today by order of United States District Judge Landis. A prior dividend of 10 per cent was paid by Receiver G. D. Thomas on the claims which amount to \$4,900,461.

Judge Landis also allowed the receiver to destroy a quantity of intimate correspondence between the former Zion City leader and persons asking spiritual or material advice.

## \$50,000 PAID FOR GUTENBERG BIBLE

### Henry E. Huntington of Los Angeles Buys It.

## PRICE BREAKS ALL RECORDS

### First Book Printed From Movable Type Brings Fortune.

## BIDDERS ARE PROMINENT

### Greatest Auction of Kind Ever Held, Disposing of Famous Hoe Collection, Attracts Wealthy Bibliophiles of Nation.

NEW YORK, April 24.—(Special.)—Henry E. Huntington, of Los Angeles, nephew of the late Collis P. Huntington, tonight paid \$50,000 for the famous Gutenberg Bible, the first book ever printed from movable type, from the Robert Hoe collection. The price is almost double the price ever paid for a book in the history of book dealing.

The purchase was made at the auction sale which began this afternoon at Anderson's auction rooms. There were 450 persons present, an assemblage probably most representative of prominent bibliophiles ever congregated in this country, and perhaps in any country.

Men and women were there in about equal numbers, but with the exception of Miss Green, librarian for J. P. Morgan, and Madame Bellin, of France, the women did little bidding.

Interest Becomes Keen.

While the bidding opened with unusual briskness, keen interest did not become apparent until two massive volumes (the Gutenberg Bible) were placed on the auction block. The first bid made was \$10,000; immediately this was jumped to \$15,000, thence to \$21,000 and by thousands up to \$27,000. Then there was a jump to \$30,000, then to \$42,000.

Then with alternate bids ranging from \$250 to \$750, the amount quickly jumped to \$49,000, which was the under-bidding price of Joseph Widener, of Philadelphia. At that, George D. Smith put in his bid for \$50,000, and the book was knocked to him at that price.

After Smith had announced that the famous books were purchased for Henry E. Huntington, there was much applause from the audience.

## \$22,500 Previous Price.

The highest previous price paid for the Gutenberg Bible was \$25,500, at which the late Robert Hoe bought it from Bernard Quaritch, at a private sale. Quaritch bought it in England for \$20,000. The copy was printed some time between 1450 and 1455.

Total receipts for the evening were \$110,255.50, exceeding the afternoon receipts by more than \$55,000.

The second highest price paid during the evening was \$12,000 for Berner's "Book of Saint Albans." This was the first English book in which color-printing was used. George D. Smith was the purchaser.

In addition to these two books, there were ten books which sold for more than \$1000. Of these there was, "Historia di Italia," by Guicciardini, which was knocked down to Mr. Smith for \$2600.

Another handsome fello which was sold to Walter M. Hill, of Chicago, for \$5500, was "Aethiopicæ Historiae" by Heliodorus. The works of Guillaume Coquebert went to Mr. Smith for \$2000, and Bouvella's geometry to Madame Bellin for \$1150.

This was the largest public auction sale of books ever attempted. Experts have estimated the Hoe collection to be worth more than \$1,000,000.

## WILL HE NEED ASSISTANCE?



HARRY MURRAY