

LABUAN FROM JAPAN

British Tramp Has a Stormy Passage Over.

TATOOSH DUE BACK HERE

High Tides for the Next Five Days Will Dissipate Bar Bound Fleet—Fog Still Hangs on the River—Waterfront News from Many Sources.

The British steamship Labuan, Captain J. T. Gardner on the bridge was the sole steamer to cross in over the Columbia bar yesterday.

New French Line.

A line of French tramp steamers is about to run along the Pacific coast, calling in at San Francisco.

FLOATS AND JETSAM.

The powerful sea tug Dauntless is tied up at the O. R. & N. pier these days, waiting the favorable moment for crossing the bar with her San Francisco tow, the bark Roderick Dhu.

The handsome British ship Durbridge arrived down yesterday afternoon on the Harvest Queen's towline and went to an anchor in the lower bay.

Inspectors Bolles and Edwards, of hulls and boilers, are in the city overhauling the local steam craft on fire equipment and service.

The steamship Columbia did not get down from Portland until 5 o'clock p. m., yesterday, owing to fogs.

The French bark Brissau has arrived in the lower harbor from Portland. She came down under tow of the Oklahama and will leave out for Europe, at the earliest possible moment.

The British ship Blytheswood and the French ship Alice Marie, left up for Portland, yesterday afternoon, on either bow of the Harvest Queen.

The four-masted schooner Expansion was towed to the lower harbor yesterday.

Captain Jensen has decided to make another voyage to Cloverdale, on the Nestucca, in the 14-ton Al steamer Delia. He will get away tomorrow if he can get cargo aboard in season.

The steamer Homer came down at sunset yesterday evening from Portland, en route to San Francisco.

The American ship Henry Villard is about ready for sea, at Portland, and will leave down today or tomorrow.

The steamship Olympia is waiting for the nine foot tides to get over the bar on, today or tomorrow. She has been bar bound a week.

There are six ships, two barkentines, and four schooners in the lower bay, awaiting favorable bar conditions for crossing out to sea.

The schooner Jennie Wand is loading lumber at the Tongue Point mills, for La Paz, at the head of the Gulf of California, on the Mexican coast.

The oil-tank steamer Rosecrans came down from Portland last evening and will leave out for California today with her tow, the oil barge Monterey.

The new launch Companion, from Blind Slough, while trying to make a landing at Fisher's dock slip, yesterday, smashed into the tug G. W. Vosburg, and broke some of her (the Companion's) windows, and put some of her housing out of plumb.

R. M. Leathers is busy fixing up the launch Betty from the effects of her late scorching. She will soon be out of the yard; then he will enter upon the overhauling of the North Star.

The Larline was one hour behind last night but got away, with good business above and below stairs, for Portland, at 9 o'clock.

The bar tug Tatoosh is liable to cross in today, towing one of the square riggers, now standing off the Columbia bar. The Bardowie, Ivergary, Eskasonia and Crillon; or she may pick up the barkentine John Meyer, or the four-masted schooner Georgina.

The ship C. F. Sargent and the bark Harry Morse, now at Clifton, will be taken to Portland very shortly for thorough overhauling in the drydock there, the contract having been closed by their owner Geo. E. Plummer, of San Francisco.

Today sees the heaviest run of tides for the season. The flood will run to 9.6 feet on Sunday, Monday, and Tuesday, and if weather conditions and bar stages permit the tie-up on the outgoing fleet should be broken, and during the next five days they should all get away.

What is the good of howling for the Tatoosh to help the Wallula clear the bar-blockade now in the lower harbor? The Wallula can do anything the Tatoosh can do on the bar or on either side of it.

CHARGED OF USING MAILS WITH INTENT TO DEFRAUD.

San Francisco Lawyers Is Sentenced to San Quentin for Year and Half in Federal Court.

San Francisco, Nov. 23.—Geo. W. Howe, an attorney convicted of using the United States mails with intent to defraud, was sentenced to pay a fine of \$100 and serve eighteen months in San Quentin prison, by Judge DeHaven of the United States District Court today.

The offense consisted of using the mails to promote the sale of the stock of the Yales Gold Mining Company. V. C. VanNatten, of Walla Walla, was the principal witness against the accused.

Best Liniment on Earth.

Henry D. Baldwin, Supt. City Water Works, Shullsburg, Wis. writes: "I have tried many kinds of liniment, but I have never received much benefit until I used Ballard's Snow Liniment for rheumatism and pains. I think it the best liniment on earth."

ROBBERS BLOW POSTOFFICE SAFE AND BURN BUILDING.

Clifton City, Mo., Nov. 23.—The post-office was robbed and burned today. The safe was blown open and looted and the building destroyed. The amount of booty is not known.

Chapped Hands.

Wash your hands with warm water, dry with a towel and apply Chamberlain's Salve just before going to bed, and a speedy cure is certain.

DIKE LAW SCRUTINY

Elaborate Opinion Filed by the District Attorney.

COUNTY COURT ASKED FOR IT

Mr. Allen Has Much to Say in Regard To the Law that is of Definite Interest to Many—Does Not Approve All Its Provisions—His Ideas in Detail.

About one month ago Hon. J. Q. A. Bowly, acting for the owners of about 2000 acres of tide-lands in the Young's Bay district, applied to the Hon. County Court of Clatsop County, for the making of certain levies and the collection of the subsequent tax, upon these properties in behalf of the legal establishment of a diking district in that section; and the County Court, in deference to the mooted issues naturally arising from the initial application of a new and untried law, referred the matter to District Attorney Harrison Allen for his opinion upon certain phases of the law.

Astoria, Oregon, Nov. 23, 1905. To the Honorable County Court of Clatsop County, Oregon.

Gentlemen:—In answer to your request for my opinion as to whether the County Court has authority to make and enforce the necessary tax levies and collections for the construction of dikes under the Dike District Law, and whether any liability thereunder would be construed County indebtedness so as to be subject to Constitutional prohibition, I have the following to say:

I have carefully examined the provisions of Dike District Law, (Sections 4684 to 4699 inclusive, Belling and Cotton's Code,) and the amendments thereto, (pages 328 to 331, Session Laws of 1905), and by the terms of the same the County Court is authorized, upon petition of one half or more of the

owners of lands in the proposed Diking District to form such District for the purpose of improving, by diking or damming lands which are included in the districts which are subject to overflow. Various steps necessary to be taken are designated in the statute including the appointment of certain viewers, "to view out the proposed dikes and dams, along the most practicable route to accomplish the object desired, at the least possible cost and expense."

By section 4687 of the Code, the routine of procedure shall be "as far as practicable, that for the survey, location and establishment of county roads," and by said section, the surveyor and viewers shall meet, trace upon the ground the line of the dikes and dams, shall designate the width of the right of way through which the dikes and dams shall pass, shall define the boundaries of the district, making a list of the land owners therein and description of the legal sub-divisions, plans and estimate of the cost of dikes and dams, etc.

By Section 4689, it is provided that the County Court shall apportion the estimated cost of the dikes and dams among the land owners of the district "in proportion to the valuation of the lands therein, according to the estimated value which shall be placed upon respective tracts by the viewers," the cost to be taxed upon the land and placed upon the assessment roll, and to be collected as county taxes, and the moneys so collected to be paid to the County Treasurer and by him held as a special fund for the credit of the diking district, to be paid out as warrants on such special fund.

Section 4690 provides that when the tax has been collected or the application filed, the County Court shall advertise for bids on the proposed work according to the plans and estimate of the viewers, and that the court may modify the plan so as to bring the cost of the work within the tax levy, "if such modification can be made without detriment to the improvement," and said section also provides that the owner of any tract whose assessment equals \$50.00 may file an application to pay his assessment in five annual installments with interest.

By section 4691, the County Court is authorized to appoint a superintendent of dikes, at such a salary as the County Court shall determine, giving the superintendent certain powers, his salary and labor hire to be also paid by annual tax levies.

Section 4692 provides that all bills against the district shall be, after approval by the County Court, paid by warrants drawn upon the fund of the district upon deposit with the County Treasurer, and that all warrants so drawn shall be receivable as taxes due on account of the fund, and that "the warrants shall be subject to the same regulations with reference to payment and interest as are warrants drawn upon the general fund of the County." Then follows provisions for the payment of damages to owners aggrieved by the establishment of dikes, and for dikes which have already been constructed to be included in the Districts.

In my opinion there is grave doubt as to the sufficiency of this law in several respects, a few of which will suffice to state. First, it is a well known fact that in the construction of dikes it is necessary not only to condemn the lands actually occupied by the dike itself, but also to acquire from adjacent lands sufficient material for the construction of the dike. There is no provision in the law authorizing the condemnation of the land adjacent to such space so occupied by the dike, or for the acquiring of the necessary material for the construction of the dike from such adjacent lands. The right to construct a dike upon a given space, is of course, worthless without the right to acquire material with which to build it.

Second: The law requires the County to enter into the contract in the name of the County, also requires the County Court to audit all claims for the work; provides that the County may even enter into a contract for the expenditure of more money than the tax levy in certain instances, further provides that the warrants shall be drawn in the name of the County upon the special fund of the District, also that those assessed may pay their assessments in installments within five years. The Supreme Court of Oregon has decided in two cases that where a municipal corporation undertakes a public improvement, the cost of which is to be defrayed by a special assessment upon an improvement district, and that the contractor shall be paid in warrants drawn upon the special improvement fund, that if the municipal corporation failed within a reasonable time to supply the special fund with the necessary cash to pay such warrants, an action for damages may be maintained against the County on the special fund warrants and judgment had for the amount with interest.

See:—Commercial National Bank, vs. Portland; 24 Ore. 188.

"Little vs. Portland; 26 Ore. 235. Such judgments are payable out of the general fund of the municipality the insurer of the payment of the special fund warrants.

Taking into consideration also, the decision of the Supreme Court in 'Brix et al. vs. Clatsop County,' 80 Pacific 650, and the provisions of the Diking Law, which we are discussing, it is my opinion that by entering into a contract to construct dikes under such law, the County Court pledges the credit of the County to the payment of the obligation incurred by the construction of the dike, and guarantees that the County will collect, and place in the special fund, a sufficient sum to pay the contractor.

There is no provision in the law that the contractor shall take his pay in installments or shall look solely to the special fund, and even if there was, under the decisions above quoted, the County must see to it that the money is collected. All that the County is unable to collect must come from some other source. There is no provision authorizing the County to acquire it in any way except to take it from the general fund, which is acquired by general taxation. The County therefore, under the authority of the Brix case, incurs a debt when it executes the dike contract. The County being in debt over the constitutional limit, it is unsafe for the County Court to undertake the construction of the dikes at the present time.

For the reasons above stated; First, the lack of power of condemnation; and second, constitutional limit of indebtedness, in my opinion it is unsafe for the County to attempt to construct the dikes in question.

HARRISON ALLEN, District Attorney.

MRS. F. J. KENNEDY DEAD.

The death of Mrs. Sarah Kennedy, wife of F. J. Kennedy of Skamokawa, who died at her home there Wednesday night, after a short illness. Heart disease was the cause of death. She was born in Ireland and was 68 years of age at the time of her death. The flag of the steamer Jordan was half-masted out of respect to Mrs. Kennedy.

CHURCH SALE.

The ladies of St. Mary's Catholic church will open a sale of useful and fancy articles, at the store-room formerly occupied by Chas. Heilborn & Co., beginning at 2 o'clock Saturday, (tomorrow) afternoon and continuing through the evening. Refreshments will be served.

It will wash and not rub off. This complexion all envy me, It's no secret so I'll tell. Take thou Rocky Mountain Tea. Sold by Frank Hart.

HOLIDAY SHOWINGS

A greater assortment for Xmas '05 than ever before. In order to show them all in the limited time, we change our window displays twice a week. This week stationery, athletic goods and books (25 and 35 cent series) will be shown. It will pay you to watch our windows merely for the suggestions they offer.

J. N. Griffin

BOOKS STATIONERY MUSIC

RUBBER

That's what he The Ball Band Brand

goods are made from; and we carry a complete line, too. Also the best in ladies, men and children's shoes.

S. A. GIMRE, 543 Bond Street Opp. Ross Higgins & Co.

THE Grandest Collection. Of finely tailored suits and coats were opened up in Astoria, now on display in our ready to wear department. We Purchased at One-Third Off. The entire sample lines of three large eastern Coat and Suit manufacturers. Dress Coats, Rain Coats, Children's Coats, Suits and Skirts at One-Third Off. THE FOARD & STOKES CO. WHERE THE NEW THINGS ARE FIRST INTRODUCED.



Millinery. The Bee Hive is displaying the newest creations in the very latest.

Millinery Models. The short front belt with the high back.

Cravenette Coats. Sale this week of ladies' cravenette coats.

Cravenette Coats. \$20.00 Coats to ... \$17.00. 17.50 Coats to ... 15.00. 15.00 Coats to ... 13.00.

Cravenette Coats. We have on hand many handsome garments. If you want one now is your time.

