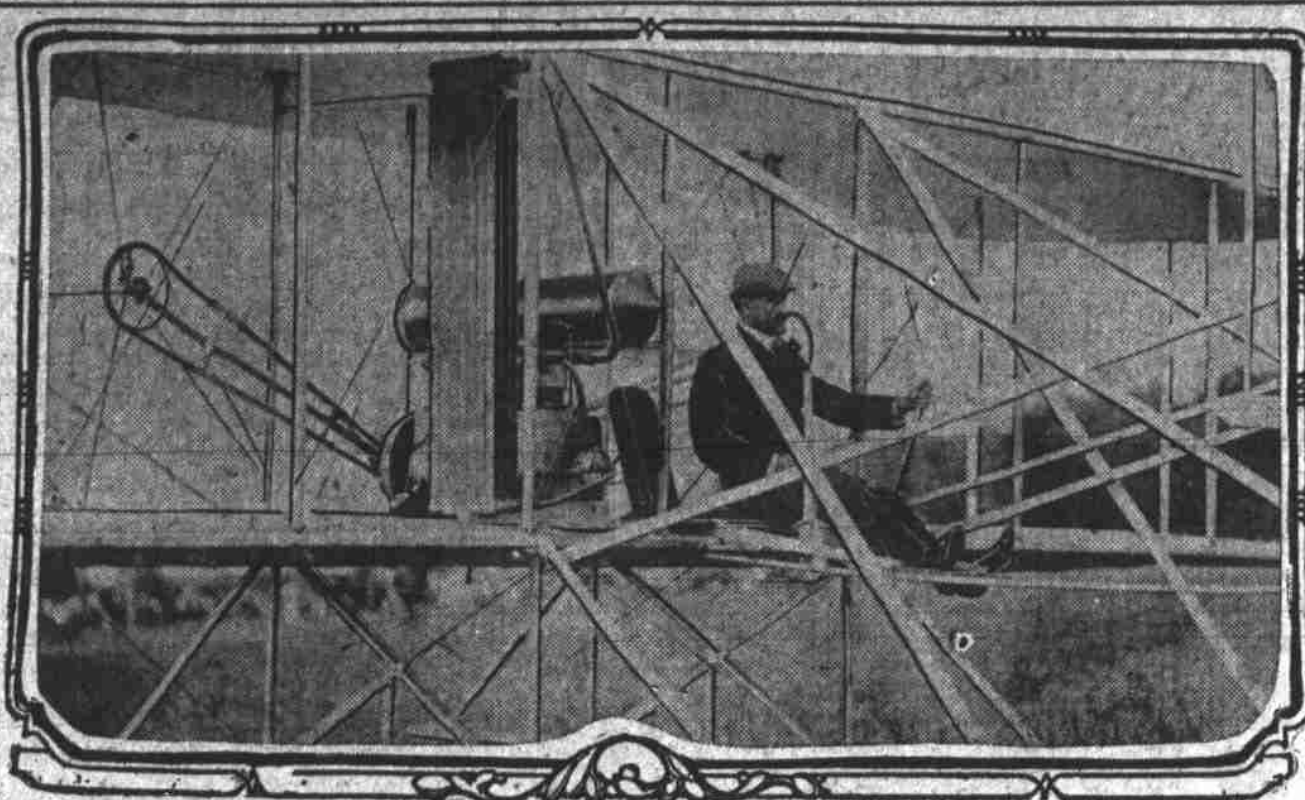


Orville Wright in His Wonderful Flying Machine



Picture Shows Wright and His Aeroplane Ready to Start on Trial Flight. (Copyright by George Grantham Bain.)

Supreme Court Will Listen to Arguments in Behalf of Portland Banker Sentenced to Five Years in the Penitentiary.

(By Journal Leased Salem Wire.)

Salem, Or., July 28.—Among the contentions advanced by the counsel for J. Thorburn Ross, that upon which most reliance is placed is put forward by William P. Lord, which holds that under the section of the statute for the alleged violation of which the conviction was procured, no person can be indicted or charged with a crime except a public officer having in custody funds belonging to a state, county or other municipality.

Assuming that Mr. Steel put public funds in the hands of Mr. Ross when he was indicted, and that he has committed no breach of trust in doing it and is not amenable to the penalties of this section of the statute, which is intended only to punish those rightfully in the possession of public money as its custodians, who abuse their trust and divert the funds for the misuse or perversion of public funds entrusted to them by the state.

Basis for Information.

The section referred to is section 1807 of the Beilings and Cotton statutes and codes of Oregon, upon which the information was based and the ultimate conviction of the bank president a year ago last April secured. It reads as follows:

"If any person shall have in his possession any money whatever for the state, or shall have in his possession any money belonging to it, who shall convert, loan or refuse to pay over when demanded, such person shall be deemed guilty of larceny and punished by imprisonment in the penitentiary not less than one nor more than 15 years and by a fine equal to twice the amount so converted."

"This section applies, first to a person who receives money for the state, and second, to a person who is in possession of money belonging to the state," reads Justice Lord's brief for person authorized by law to receive money for the state as tax collector or other officer deriving it from the state's resources would necessarily have in his possession money belonging to the state. The person receiving the money and having its possession might be the same person unless the person receiving the money from the state for use in the possession of some other person as a tax collector paying funds over to a treasurer.

"When the statute says, 'if any person shall receive, etc., or have in charge, etc., and then proceeds to make a criminal offense of the loaning or conversion or failure of such person to pay over on demand such funds, we know that the person receiving the money is a person entitled to receive public funds for the state or into whose hands such funds have come lawfully as their custodian and that such person sustains a relation of trust to the state. The statute is designed to punish the larceny of public funds, not simply a breach of trust and not simply larceny of them."

What Constitutes "Person."

"A person in his private capacity cannot be a custodian of public funds. The duties and responsibilities of that position involve official relations and are prescribed by law to safeguard the public interest. The 'any person' to whom the statute applies is not a private person who has no legal right to receive or hold public funds, nor is he bound by any duties and liabilities for their safe keeping, but he is such a person as is authorized by law to receive public funds or take charge of them for the state as its custodian, or officer whose duties are prescribed by law to safeguard the public interest for the safe keeping of such funds are secured by bonds and sureties and whose liability for a breach of his trust in the use of such funds is enforced by high penal sanctions."

"The defendant in this case, Mr. Ross, is a resident of this state, distinguished from an official person, and is not authorized under the law to receive any money for the state or to have in his possession any money belonging to it; he is a private citizen and occupies no official relation to the state and is not bound by law to devote to him no duties or responsibilities which would include the receipt or possession of public funds."

State Treasurer Responsible.

At this point the brief of Judge Lord refers to the authority vested in State Treasurer Steel. It is Judge Lord's contention that the state treasurer alone is responsible for the funds placed in his hands by the tax collectors and no other person can be held accountable for their loss.

In legal contemplation, says Judge Lord, "the state treasurer is the only person competent to receive and hold public money and liable for its losses or misuse, unless he is authorized by law to vest his possession in some designated person and in that case such person might be read into section 1807, and be subject to its penalties."

"But there is no such law giving such authority or having such effect and without it 'any person' in section 1807 cannot include or apply to private persons. The state treasurer is chosen by the people for his office, which is provided with spacious and secure vaults for the safe keeping of the public funds, and his duties require him to receive take charge and pay out such funds in the manner and for the purposes directed by law. He is the custodian of such funds, having no right to use them, for his own purpose or to allow others to possess or use them."

Two Briefs Conflicted.

In this contention the brief of the appellee Ross conflicts directly with the brief of Judge Martin L. Pipes. Judge Pipes asserts that the law of this state provides that the state treasurer may designate depositories for certain state funds, including the educational funds held in the Title Guaranty & Trust company at the time of its failure. The contention is that the state treasurer was authorized to designate the title guaranty company as a depository for the funds, and that the company was directly accountable to the people and indictable under the provisions of section 1807.

The J. Thorburn Ross appeal will be argued tomorrow before the supreme court and there will probably be other arguments advanced in behalf of Ross not set down here. Ross was convicted April 20, 1908, in the circuit court of Marion county. Judge Burnett sentenced Ross to five years in the penitentiary and in addition imposed a fine of twice the amount found to be converted, which was \$18,187. It is from this conviction and sentence that the appeal to be argued tomorrow is taken.

Notification of Tax Amendment.

(United Press Leased Wire.)

Washington, July 28.—The house yesterday passed unanimously the senate resolution requesting the president to notify the governors of the various states of the action of congress in submitting to them the income tax amendment.

(United Press Leased Wire.)

Washington, July 28.—Captive balloons were placed today along the straightaway course over which Orville Wright will make his final aeroplane test for the government this afternoon. Wright said this morning that he would make the test flight unless several conditions were unfavorable. Wright's test today will be to fulfill speed requirements imposed by the government. He will be accompanied by Lieutenant Benjamin Ponder.

Endurance requirements were met by Wright in his flight at Fort Myer late yesterday when he carried Lieutenant Frank P. Lahm for one hour 12 minutes and 40 seconds on a circular flight over the parade grounds. The flight was made without the slightest hitch and the aviator declared he could have remained in the air three hours and a half, the time allowed for the capacity of the aeroplane's gasoline tank.

It was growing dark when the aviator alighted and he decided to wait until today before attempting to take the speed test.

This afternoon's flight will be from Fort Myer to Alexandria, Virginia. The captive balloons plainly mark the course to be taken by the Wright machine, and thousands of persons left here this afternoon to witness the attempt.

Under his agreement with the government, Wright is to be allowed three attempts to pass the test. He said today, however, that he was confident he would not have to make more than one trial, as was the case in the endurance flight.

Several other fine scores were made yesterday by members of the fourth infantry both on the range and in skirmish practice. Sergeant Snodgrass and Sergeant Potts of the Cottage Grove company, each made 90 in skirmish firing. Private Singley of McMinnville, made 89; Private Bennett of the same command, 88; and Private McCallan of Ashland, 78.

McCallan's battalion, the first, spent the forenoon on the mid range, several of the members of this command making scores of 400, 500 and 600 yards that were little less than remarkable. Lieutenant Compton of McMinnville, secured the unusual score of 47 out of 50 on the 500 yard range. Firing over the 1000 yard range, Private Marquand of Albany, Lieutenant Cunningham of McMinnville, and Sergeant Potts and Private Mooney of Cottage Grove, each firing 10 shots and each shot having a possible value of 5, made the following scores: Lieutenant Cunningham 38, Potts 33, Mooney 30 and Marquand 26.

The first battalion occupied the entire forenoon of today in reconnaissance, advance and rear guard movements, using blank ammunition, and the second battalion occupied the rifle range. This afternoon the two battalions were opposing forces in advance and rear guard maneuvers. Adjutant General Finzer was a visitor at camp yesterday afternoon and was honored with a regimental dress parade at 7 o'clock in the evening.

Hotel Van Nuys Leased.

(United Press Leased Wire.)

Los Angeles, July 28.—E. L. Potter, lessee of a string of hotels in Florida and on the south Atlantic seaboard, has assumed the lease of the Hotel Van Nuys of this city, according to an announcement made today. The transfer, as announced, involves \$150,000. The Van Nuys is one of the oldest hotels in the city.

Covey Held to Grand Jury.

(Special Dispatch to The Journal.)

The Dalles, Or., July 28.—L. M. Cooley, charged with having assaulted Frank M. Smith with a dangerous weapon on July 20, waived examination in justice court yesterday afternoon and was held to the grand jury in bonds of \$500. Smith has almost recovered from his injuries.

Roseburg Church Dedicated.

(Special Dispatch to The Journal.)

Roseburg, Or., July 28.—Several hundred people witnessed the laying of the cornerstone Sunday afternoon of the new Presbyterian church in this city. The services were opened by the pastor, Rev. J. E. Burkhardt. Rev. W. A. Snick, pastor of the Presbyterian church in Roseburg for 20 years, told of the early history and organization of the church in 1873, when Roseburg was a country village.

The foundation and full basement of the church building are in place and work has commenced on the superstructure. It is expected that the building will be ready for occupancy in October. The exterior will be of red pressed brick and the interior when completed, will be about \$12,000.

Railway Complaint Dismissed.

(By Journal Leased Salem Wire.)

Salem, Or., July 28.—The railroad commission today dismissed the complaint of Charles P. Church against the Oregon Electric company because of the failure of the plaintiff to appear at the time set for the hearing. Church complained because better station facilities have not been furnished at Ryan Place.

Loss Estimated at \$150,000.

(Special Dispatch to The Journal.)

Colfax, Wash., July 28.—The heaviest rain ever experienced in this section at this time of year fell here between 8 and 12 o'clock last night. The precipitation for the three hours was .83 inch. The storm was accompanied by heavy wind and hundreds of acres of standing grain, particularly oats and barley, have been laid flat.

Henry Ennsley, who owns a section of land near Pendwaw, reports this morning that 40 acres of his finest wheat is lodged so that it will be impossible to cut it, and reports from Pullman, Colton and Uniontown and the country lying south between here and Lewiston, indicate equally heavy loss.

Local hay dealers say that reports from the Nes Perce county, the principal hay producing section of northern Idaho, are that heavy damage has resulted from the rain, and the majority of the crop had become moldy and shocky, preparatory to stacking.

In western Whitman county, and in the central Washington counties, the precipitation was not so great nor the grain so heavy, and the damage is correspondingly limited. The rain ceased about daylight this morning, and the

MAY BE RUNAWAY MARRIAGES NULL

Status of Washington People Married in Canada Is Questioned.

(United Press Leased Wire.)

Seattle, July 28.—Are marriage contracts made in Canada to avoid the restrictions of the marriage laws of Washington void? The question is likely to be brought into the courts for settlement in a short time.

At the last session of the legislature marriage laws were passed designed primarily to secure revenue to the counties and incidentally to prevent hasty marriages of irresponsible young people.

The hasty couples, however, have found it cheaper to travel to Canada, where there are no impediments, and the counties are losing money on the marriage business. Thus the law fails in both of its intents.

One of the most prominent lawyers in the state today told the United Press that the made-in-Canada marriages were undoubtedly void from a legal standpoint. He cited the decisions of a number of southern courts to prove his assertion. The principle of law laid down by the courts was that a marriage of a citizen of one state in another to avoid the restriction of his state was void.

If the question is taken into the courts it will be watched with great interest here as scarcely a day passes but half a dozen couples leave Seattle to be married in Victoria.

TEARS FINGER OFF WHILE LEAVING CAR

(United Press Leased Wire.)

Stockton, Cal., July 28.—Mrs. E. H. Nelson of Tracy is minus a finger as the result of a peculiar accident. A steel rheumatism ring on her index finger caught in the handrail of a car as she was alighting from a train and tore the finger nearly off. It was necessary to amputate the mutilated finger when she was taken to a hospital.

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HEAVY LOSS IN WHITMAN COUNTY

Thirty-six Hours of Rain Makes Heaviest Loss Since 1893—Hogs in Demand.

(Special Dispatch to The Journal.)

Pullman, Wash., July 28.—The heaviest rain ever known in the Palouse country at this time of year, has fallen during the past 36 hours. Two and a half inches of water fell. Thousands of acres of wheat that would have yielded 35 to 40 bushels per acre, is lying flat and will be almost a total loss. It was the heaviest wheat that went down.

The loss in Whitman county is estimated at 25 per cent of the total crop. Farmers will try to save a portion of the fallen wheat and others are trying to buy hogs to turn into their fields to eat the grain. But hogs cannot be bought at any price and arrangements are being made to send east for several carloads of stockers.

This is the worst loss in Whitman county since 1893. Some farmers have lost most of their crops while others have lost but a few acres.

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indications at noon favor hopes that the heaviest of the storm is over, but conservative estimates place the loss in Whitman county at \$150,000.

HARSH TREATMENT FOR ALLEGED THIEF

(Special Dispatch to The Journal.)

Baker City, Or., July 28.—That Page Hawley, the alleged Copperfield horse thief, was assaulted and practically murdered at Copperfield, Monday, is evidenced by the fact that he was brought into Copperfield tied on a horse. A rope was tied tightly around Hawley's neck, the other end was fastened to the horn of the saddle, his hands were tied to the saddle and his feet tied under the horse. In this manner Page Hawley was carried four miles into Copperfield in a dying condition, the result of a fracture at the base of the skull and other injuries believed to have been inflicted by J. J. Burns and G. Pratt, members of a pursuing posse who captured Hawley.

Burns and Pratt who claim that Hawley received his injuries by falling from his horse are under arrest, and the sheriff and prosecuting attorney of Baker county are now in Copperfield conducting an investigation. Hawley was supposed to have stolen a horse from a man by the name of Stevens. It is reported that Hawley sold the horse to Stevens the night before for \$20. It is said that Hawley spent the money in drinking during the night and in the morning he went to the livery

barn, paid for the horse's keeping over night, took the horse out and started toward Huntington. He was overtaken by Burns and Pratt about four miles out of Copperfield, where they are said to have fired several shots at him, none of which took effect. It is said that Hawley surrendered without a fight and gave up his gun. If he had one.

"NIGHT ON BROADWAY" TOO MUCH FOR LESLIE

Oakland, Cal., July 28.—After two uncomfortable hours in jail, Walter M. Leslie, one of the backers of the Murray & Mack company, is at liberty to leave by paying \$442 to E. P. Foote, manager of the Grand opera house at Los Angeles, who caused the arrest.

According to the story told by Foote at the police station here yesterday afternoon, Leslie was made treasurer of the "Night on Broadway" company when it was organized at Los Angeles recently. Foote, Ollie Mack and Leslie were to have divided the money and each was to put up \$500. Foote alleged that Leslie failed to put up his share of the money and was spending that posted by his partners. Mrs. Leslie agreed to compromise for \$442 and the Los Angeles "angel" agreed to the release of her husband on those terms.

In the meantime the chorus girls of the "Night on Broadway" company are in San Francisco hunting a meal ticket while the managers are seeking transportation to Portland.

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Varieties grown are Baldwins, Spitzenbergs, Yellow Newtowns and Ben Davis. All in their prime as producing trees.

Present earnings will be more than doubled when unproductive land has been improved as the 300 acres have been.

These orchards are now paying ENORMOUS DIVIDENDS and have been for a long time.

The property is entirely free of all encumbrance, and the ownership has been divided into a certain number of individual ownerships, each represented by a Profit-Sharing Bond.

Each bond carries an actual ownership in the property, receives its pro rata share of the net earnings of the orchards and participates in the increase value derived from the property.

The bonds are exempt from taxation, may be transferred at will, sold or used as collateral security for loans.

Conservative investors or men of small means, by becoming part owner of these world-famous trees, may reap the large profits of expert fruit culture at once. By purchasing and developing small tracts of their own, they would have enormous expenses to meet for many years, besides hazarding the amount of their investments.

Mr. M. O. Lownsdale has agreed to train superintendents to carry on the work as scientifically as he has, while his equipment and magnificent packing plants come into the possession of this company.

Definite ownerships in this orchard, in any amount, in multiples of \$100, may be had now for cash in full or upon favorable periodical payments.

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