

Polk County Observer

J. C. HAYTER,
EDITOR AND PUBLISHER

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DALLAS, OREGON, MAY 12, 1911

The way to build up Dallas is to put
the sewerage people.



THE SEWER CASE.

If the Observer correctly under-
stands the decision of the Oregon
Supreme Court in the case of E. C.
Kirkpatrick vs. City of Dallas, it is
held that the city has power to en-
force the collection of a sewer assess-
ment against all property directly or
indirectly benefited by such improve-
ment; in other words, that the council
is not necessarily limited to assess-
ment of the property immediately ad-
jacent to or abutting upon those
streets in which the sewers are laid.
But we also take it from the court's
opinion that the exercise of such
power is optional with the city, and
that if the council desires to include
property not abutting, but benefited
by the improvement, it must so
clearly specify its intention in the
ordinance providing for the improve-
ment.

The Supreme Court holds that in
the Dallas case the improvement or-
dinance did not clearly indicate such
intention on the part of the council.
Justice McBride says: "The language
used, 'the cost of such sewer shall be
assessed to the property abutting up-
on the streets where the same are
laid or benefited thereby,' if given its
usual or ordinary meaning, indicates
an intention that only abutting prop-
erty shall be assessed, and that only
when it is benefited by the improve-
ment." In this instance the plaintiff
is the owner of property platted as
two separate and distinct lots, one
abutting upon Main street and the
other abutting upon Robb street.
The city sought to assess both lots
to pay for a sewer on Robb
street only, resulting in the owner
paying the assessment on the Robb
street lot and refusing to pay on the
other.

The decision in this suit recalls to
mind an interesting incident connect-
ed with the recent city campaign,
when Mr. Kirkpatrick was a candi-
date for the office of Mayor. During
the contest, some person signing him-
self "Citizen," wrote a letter to a
local newspaper in which the impres-
sion was given-out that Mr. Kirk-
patrick was seeking to avoid the pay-
ment of a just assessment against his
property, and that he had even gone
to the length of carrying his suit to
the Supreme Court, thereby putting
the city to great and needless ex-
pense. This incorrect statement of
the situation had its effect among the
voters, many of whom never stopped
to think that Mr. Kirkpatrick had
won his suit in the Circuit Court, and
would therefore have no object in
appealing a case in which he had
been victorious. The impression was
created that Mr. Kirkpatrick was ap-
pealing the case and putting the
taxpayers to a heavy expense, when,
in fact, it was the city council that
was keeping up the fight.

It is right for the council to pro-
tect the people's interest at all times
and under all circumstances, even if
it should take every dollar in the city
treasury to do it; but it is the part
of wisdom to avoid litigation as far
as possible.

No property owner can be right-
fully blamed for protecting his prop-
erty from what he has cause to be-
lieve to be an unwarranted or unrea-
sonable act on the part of the city. He
has a right to demand that when the
city takes of his means for public
purposes, nothing that is unreason-
able or unjust shall be required of
him. It is a noteworthy fact in this
connection that the courts are al-
ways watchful for the protection of
the taxpayer to the extent of insuring
that no lien or assessment shall be
enforced unless the rights of such
taxpayer shall have been closely
observed and guarded at every step.
When there has been a close exami-
nation of the legality of taxation proceed-
ings, the courts have almost invariably
given the taxpayer the benefit of the
doubt.

Williams House Moved.

The house which was for many
years occupied by Otto Williams on
Court street, between Church and
Main, has been torn loose from its
foundation and moved into the street
preparatory to starting on its journey
to a new location. It was bought re-
cently from Mr. Williams by Edwin
Jacobson, but in turn has been sold
by him to A. J. Barham, who is hav-
ing it moved to the corner of Wash-
ington street and Taylor avenue.
The small store buildings now on the
southwest corner of Main and Court
will be moved to the newly vacated
Williams lot, to make room for the
brick structure to be put up by R. E.
Williams.

Go As Delegates.

President A. A. Winter and C. C.
Futing left yesterday to attend the
Oregon Conference of the Evangelical
Association, which is in session in
Milwaukee. They go as delegates
from the recent Oregon Conference of
the United Evangelical Church, and
their purpose is to urge the federation
of the two church bodies in accord-
ance with a concerted movement in
that direction.

Eighth Grade Examinations.

The eighth grade examinations for
the public schools of Polk County
are being held in the public school
building in this city, under the super-
vision of Professor W. I. Ford and
Professor J. R. Hatch. The exami-
nation began yesterday morning and
will continue this afternoon. About
25 students are in attendance.

CITY LOSES ITS SUIT

SUPREME COURT DECIDES IN
FAVOR OF MR. KIRKPATRICK.

Decision of Judge Galloway Is Affirm-
ed in Dallas Sever
Case.

The City of Dallas loses in its ap-
peal to the Oregon Supreme Court in
the Kirkpatrick sewer case, and as a
result the taxpayers will have a neat
bill of costs to pay. Circuit Judge
Galloway's decision in favor of Mr.
Kirkpatrick was affirmed by the
higher court Tuesday, the opinion
being written by Justice McBride.

The suit was brought by E. C.
Kirkpatrick to restrain the city from
selling plaintiff's real property for
the collection of an alleged delin-
quent sewer assessment, the ground
being taken that such property was
not an "abutting" lot and that no
benefit had been secured by the con-
struction of the sewer. Plaintiff's
property consisted of two lots—one
fronting on Main street and the other
on Robb street. The city refused to
pay a sewer on Main street, as that
street had been macadamized and the
council did not desire to tear up the
pavement. Mr. Kirkpatrick was given
a lateral from the Robb street
main to his lot on that street, and it
was suggested to him that he extend
this lateral across the Robb street lot
to his residence on the Main street
lot. As an inducement to him to ac-
cept this proposal, the council offered
to pay to Mr. Kirkpatrick some \$8 or \$9
to assist him in extending the lateral
across his back lot. This proposal was
rejected on the ground that the
amount offered would be only a frac-
tion of the cost of the extension, and
for the further reason that it would
be impossible to lay a deep sewer and
secure the proper fall in a lateral of
such length.

The city then proceeded to build
the Robb street main and to assess
both lots for the improvement. Mr.
Kirkpatrick paid the assessment on
the Robb street lot, but refused to
pay on the lot fronting on Main
street. The city then undertook to en-
force the collection of the assessment
and advertised the property for sale.
Mr. Kirkpatrick immediately brought
suit to enjoin the city from selling
the property, and an injunction was
granted by Circuit Judge Galloway.

When the case came on for hearing
before Judge Galloway, the attorneys
for the city interposed a demurrer
upon several grounds, chief of which
was that the plaintiff's remedy lay
in a review of the acts of the council
in a court of law, rather than in an
injunction proceeding. The demurrer
was overruled by Judge Galloway,
and the city, choosing to rely there-
on, refused to answer, whereupon the
court rendered a decree in favor of
Mr. Kirkpatrick. From this decree,
the city appealed.

As the suit has created much in-
terest among the taxpayers, and as
several important points are involved
in the Supreme Court's decision, the
opinion of Justice McBride is here
printed in full. He says:

City's Powers Defined.
"We are of the opinion that the
complaint stated a cause of suit and
that the interposition of a court of
equity was properly invoked. We will
now consider the right of the city,
under its charter and ordinances, to
levy an assessment against plaintiff's
property."

"Section 84 of the charter of Dal-
las reads as follows: 'The council
shall have the power and is author-
ized to lay down all necessary sewers
and drains and ditches, and cause the
cost of the same to be paid out of the
General Fund of the city, or to be ap-
portioned and assessed on all the
property directly or indirectly bene-
fitted,.... provided, the council shall
not necessarily be limited to the prop-
erty immediately adjacent there-
to or abutting thereon in such ap-
portionment and assessment.'"

"Sections 1 and 4, Ordinance 112,
which is the ordinance authorizing
the improvements in question, read
as follows: 'Sewers, with branches or
laterals extending from such sewers
to the property line of each lot, tract
or parcel of ground adjacent to and
abutting upon the streets or parts of
streets where such sewers are to be
laid, as hereinafter specified, shall be
constructed and laid on each of the
following streets and parts of streets
.... and the cost of such sewers
shall be assessed to the property
abutting upon the streets or parts of
streets where the same are laid and
benefited thereby.'"

Must Clearly Explain Intention.
"The power of the city to assess
property adjacent to the proposed
sewer, but benefited thereby, is ample
under Section 84 of its charter, but
the exercise of that power is optional
with the council, and we do not think
the ordinance employed in Section 4 of
the ordinance above mentioned in-
dicates clearly an intention to exercise
it in this instance. The language
used, 'the cost of such sewer shall be
assessed to the property abutting up-
on the streets or parts of streets
where the same are laid or benefited
thereby,' if given its usual and ordi-
nary meaning, indicates an intention
that only abutting property shall be
assessed, and that only when it is
benefited by the improvement. Stat-
utes imposing burdens upon the
property by way of lien or assessment
should not be enlarged by construc-
tion."

"It is contended that the remedy
in this case should be by review, and
not by resort to equity. Both reme-
dies have been employed in this
case, but the complaint here pre-
sents several insurmountable facts. For in-
stance, the location of the property
would not necessarily appear upon
the record of the proceedings of the
council; besides, we think the general
trend of authority in this state is that
equity will interfere to prevent the
sale of property upon a void assess-
ment or for an illegal tax, although
the right to do so seems to be
doubted by Thayer, Chief Justice, in
Sperry v. Albina, 17 Or. 481."

"This court has so frequently exer-
cised the jurisdiction to enjoin such
sales that it may be said to be the
settled practice in this jurisdiction so
to do. Such a sale must necessarily
cloud the title of the owner, even if
the proceedings antecedent to it are
entirely void. In the case at bar, for
instance, suppose that the City Mar-
shal should be permitted to sell the
plaintiff's property on this void as-
sessment. The next step naturally
would be the issuance to the purchaser
of a deed regular upon its face and
apparently conveying title; the next
step would be the recording of this
deed. A person seeking to purchase
the property from the plaintiff would
naturally search the records and find
this deed, making an apparent breach

in plaintiff's title. Should he seek the
advice of attorneys, he would be told
that it was valid and that plaintiff had
nothing to convey. If able counsel
differ a court upon the validity of
these proceedings, it is fair to pre-
sume that they would differ to a like
degree outside of court and the in-
tending purchaser would avoid the
chance of buying a lawsuit by refus-
ing to purchase. It is idle to say that
such an instrument would not be a
cloud upon the title as a matter of
law, when every attorney knows that
it would be a cloud as a matter of
fact."

"It is suggested that the complaint
in this case does not allege that the
sale would constitute a cloud upon
plaintiff's title, and while this is true
to the extent that the exact words
'cloud upon title' are not employed,
yet the facts that must necessarily
result in a cloud are stated, followed
by the allegation that such sale would
be 'to the great and irreparable in-
jury to plaintiff's title.' Upon general
demurrer, we think this allegation is
sufficient."

"The decree of the Circuit Court is
affirmed."

DEVOTED MOTHER PASSES

Mrs. Charlotte Seymour Brown Dies
at Advanced Age of 72 Years.

Mrs. Charlotte Seymour Brown, a
prominent resident of this city, died
at the home of her son, County Super-
intendent H. C. Seymour, Wednesday
morning, May 10, at the age of 72
years and 5 months. The funeral
was held from the Christian Church
Thursday, May 11, at 1 p. m. The
services were conducted by the Rev-
erend Leon L. Myers, minister of the
church. The body was taken to Salt
Creek cemetery for burial, and there
the Reverend B. Z. Riggs, who was
her pastor for several years, spoke
feelingly of her past life.

Her maiden name was Charlotte
Case, and she was born in Alexandria,
Ohio, December 10, 1838, the young-
est of a family of 11 children. She
was married to C. H. Seymour in
Rock Island, Illinois, in 1873, and
lived there until the death of her
husband in 1881. To this union was
born one child, Harry, of this city.

She lived in Ohio and other states
until she came to Oregon in 1888.
She was married to M. C. Brown, of
this city, in 1890, and lived in Dallas
and Salt Creek until Mr. Brown's
death in 1900. Since then she has
made her home with her son, H. C.
Seymour, Superintendent of Schools
for Polk County.
She became a member of the
Christian Church at about the age of
18 years and had lived a Christian life
continually with the greatest of
faith in her Lord at all times. It can
be said of her that she never had an
enemy, as all who knew her loved
her and always had a good word to
say about her. She had many friends
in Dallas, and Polk County, and will
long be remembered for her sterling
qualities.

She leaves to mourn her departure,
besides her son Harry and his wife,
a daughter, Mrs. C. T. Brown, a niece,
Mrs. T. S. Brown, a niece,
Mrs. Hamilton, a niece, of Grants Pass;
Ray Garner, a nephew, of Newberg;
and in addition many other relatives
in the Eastern states.

Church of Christ.

Services Sunday May 14:
Bible school 10 a. m. Every mother
attending. 11 a. m. Sermon with a
cantata. Special program.
Sermon 11 a. m.; subject "Mothers."
Junior Christian Endeavor, 3 p. m.
Senior Christian Endeavor, 5 p. m.
Evening sermon, 8 p. m.; subject,
"Spiritual Diseases."
Two hundred and thirty-five were
present at the Bible school last Sun-
day. There were five confessions at
the morning and evening services.
LEON L. MYERS, Minister.

Methodist Episcopal Church.

Services Sunday, May 14:
9:45 a. m.—Sunday school.
11:00 a. m.—Preaching by the pas-
tor; subject, "Mother."
2:30 p. m.—Junior League.
7:00 p. m.—Epworth League.
8:00 p. m.—Preaching by the pas-
tor.
Thursday evening each week, pray-
er services.
It being "Mothers Day," the morn-
ing service will be in harmony with
the day. We welcome all to any and
all our services.
GEORGE F. HOPKINS, Pastor.

United Evangelical Church.

Services Sunday, May 14:
10:00 a. m.—Sunday school.
11:00 a. m.—Sermon by the pastor.
2:30 p. m.—Junior League League
Christian Endeavor.
7:00 p. m.—Keystone League Chris-
tian Endeavor.
8:00 p. m.—Sermon by the pastor;
subject, "The Mothers of Men."
Thursday evening at 8:00 o'clock,
prayer service.
To all these services the public is
invited most cordially.
C. F. GATES, Pastor.

Satisfaction of Mortgage.

The Observer has added Satisfaction
of Mortgage to its stock of legal
blanks. Notaries and attorneys may
now secure them in any quantity de-
sired. Phone orders for legal blanks
given prompt attention.

Summons for Publication in Foreclosure of Tax Lien.

In the Circuit Court of the State of Oregon, Department
Ruth Graves, Plaintiff, vs. Daniel Rodgers, Defendant.
To Daniel Rodgers, the above named defendant:
You are hereby notified that
Ruth Graves, the holder of Certificate of Delinquency numbered 7, issued on
the 8th day of December, 1908, by the Tax Collector of the County of Polk,
State of Oregon, for the amount of Three & 66-100 (\$3.66) Dollars, the same
being the amount then due and delinquent for taxes for the year 1907, to-
gether with penalty, interest and costs thereon upon the real property as-
sessed to you, of which you are the owner as appears of record, situated in
said County and State, and particularly bounded and described as follows,
to-wit:
South West 1/4 of South East 1/4 in Section Fifteen (15), Township Seven
(7) South, Range Six (6) West of the Willamette Meridian, in Polk County,
State of Oregon.
You are further notified that said Ruth Graves has paid taxes on said
premises for prior or subsequent years with the rate of interest on said
amounts as follows:

Year's Tax.	Date Paid.	No.	Amount	Rate of
1908.	March 11, 1909	1122	\$2.91	15 per cent
1909, 1st half.	March 15, 1910	2725	2.75	15 per cent
1909, 2nd half.	Sept. 12, 1910	2882	1.45	15 per cent
1910.	March 15, 1911	2945	2.15	15 per cent

Said Daniel Rodgers, as the owner of the legal title of the above de-
scribed property as the same appears of record, and each of the other per-
sons above named are hereby further notified that Ruth Graves will apply
to the Circuit Court of the County of Polk, State of Oregon, for a decree fore-
closing the lien against the property above described, and mentioned in said
certificate. And you are hereby summoned to appear within sixty days after
the first publication of this summons exclusive of the day of said first pub-
lication, and defend this action or pay the amount due as above shown to-
gether with costs and accrued interest, and in case of your failure to do so,
a decree will be rendered foreclosing the lien of said taxes and costs against
the land and premises above named.
This summons is published by order of the Honorable Ed F. Cook,
Judge of the County Court of the State of Oregon for the County of Polk,
and said order was made and dated this 15th day of April, 1911, and the date
of the first publication of this summons is the 14th day of April, 1911.
All process and papers in this proceeding may be served upon the under-
signed, residing within the State of Oregon, at the address herein men-
tioned.
L. D. BROWN, Attorney for the Plaintiff.
Address, 510 Mill Street, Dallas, Oregon.

COMMITTEES ARE SELECTED

List of Those to Have Charge of Me-
morial Exercises.

In preparation for the Memorial
Day program, which is to be given
here Tuesday, May 30, Mayor J. R.
Craven and President A. B. Muir, of
the Commercial Club, met in the
rooms of the LaCroce Club last Tues-
day evening and selected the names
of those who are to have charge of
the various details. H. L. Fenton
was chosen grand marshal, and it was
decided that the parade should start
at 9 a. m. or as soon thereafter as
possible. The schools, militia, and
fraternal orders, and citizens in gen-
eral, will take part in the parade, and
at the I. O. O. F. cemetery a mem-
orial address will be delivered by the
Reverend George F. Hopkins.

The following is a list of the or-
ganizations which are expected to
march, together with the aids from
each appointed to assist the grand
marshal in the formation and move-
ment of the parade:
Grand Army of the Republic—B.
Lovelace.

Spanish-American War Veterans—
T. C. Stockwell.

Dallas College—Professor H. L.
Dunkelberger.

Public Schools—Professor W. I.
Ford.

Militia—Lieutenant Conrad Stafrin,
commanding Company H. O. N. G.

Dallas Band—August Riser.

Independent Order of Odd Fellows
—Tracy Strats.

Rebekahs—Miss Vera Cosper.

Woodmen of the World—W. A.
Ayres.

Women of Woodcraft—Mrs. V. P.
Fiske.

The following committees were ap-
pointed:

Music—The Reverend E. W. Miles,
Willis Simonton, Professor H. L.
Dunkelberger, Mrs. C. G. Cook, Mrs.
J. E. Miller, M. D. Ellis, Miss Edna
Morrison.

Preparing graves and decoration—
H. L. Fenton and W. V. Fuller on the
part of the city; W. L. Soehren and
Edwin Jacobson on the part of the
Commercial Club.

Program—U. S. Grant, Willis Sim-
onton, J. E. Miller.

Presbyterian Church.

Services Sunday, May 14:
Sunday school, 10 a. m.

Mother's Day service, 11 a. m.

Christian Endeavor meeting, 7 p. m.

Evening service, 8 p. m.

Special Music—Evening.

Cantata, "Under the Palms."

PART II.

"Come, Let Us Rejoice." Chorus.

"O, Bless the Lord," bass solo and
chorus.

"O, Lord of Harvest," alto solo.

"Stand Up Today," bass solo and
chorus.

"By the Dark Euphrates Stream,"
alto solo and male quartet.

"The Graves of Our Fathers," so-
prano solo.

"From Tents of Pine," chorus.

"The Lord is Nigh," tenor solo.

"From Bondage Awake," chorus.

In eight days 3780 dozen eggs, worth
\$605, were shipped from here, and the
Hepburn Gazette asks why not adver-
tise Marrow county as a great chicken
country?

Dr. Bell's Antiseptic Salve

Is guaranteed for letter, ringworm,
eczema, chapped hands and lips, run-
ning sores, ulcers and in fact all skin
diseases. Good to use after having. 25c
a box.

GUTENBERG

Invented Printing,
and Since His Day



TYPE has done more for the
world's advancement
than any other thing. Our type
will ADVANCE YOUR BUSINESS.
Let Us Do Your Printing

MOTHERS' DAY

will be observed at the

CHRISTIAN CHURCH

The Loyal Sons' Class will present every Mother

at the Bible School with a beautiful white carnation.

A special program has been arranged

Everybody Come Everybody Welcome

AMERICAN WIRE FENCE

BETTER THAN OTHERS

BECAUSE—It Has Patent Hinge Joint

It Weighs The Most Per Rod

Lateral and Stay Wire Same Size

It Has Heavier Galvanizing

American Poultry Fence Excels Them All

We Sell For CASH Hence Our Prices Are Low

CRAVEN BROS., Agents

DALLAS, OREGON

Open Season For Trout

Fishing April 1st

Long recognized as Fishermen's Headquarters for

Polk County, we are better than ever prepared to

supply your needs.

Rods, Lines, - Reels, Leaders

and the Best Flies on Earth

Baskets to carry the fish in when you catch them

W. R. Ellis' Confectionery

DENTIST

B. F. BUTLER

Office over Fuller Pharmacy.

Office hours from 9 to 12 a. m. 1
to 5 p. m.

Dallas Oregon Dallas

MR. FARR

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WHILE THE SUN

This is true in more than

Lumber is cheaper now

been for several years.

Doors and Windows, Lath

and Cement are in propo

We have them all and

fied with one Profit on t

We Can Save You

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Mt. Diablo Cement—A

"Best on the Mar

Falls City Lumber

Polk County's leading Lumber Firm

ing Mills at Falls City. Retail

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