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JUDGE PHELPS ISSUES RESTRAINING ORDER

Any Taxes Collected from Land Owners in John Day Irrigation District to Be Held Pending Further Order of the Court.—Demurrer in Election Case Overruled.—Opinion Rendered.

In the suit of the Northern Pacific Railway and a number of the land owners within the John Day Irrigation District against John Day Irrigation District, M. D. Clark, C. C. Clark, Edward Rietmann, F. A. McMenamin, E. R. Brown, Lewis and Clark John H. Lewis, Morrow County, Gilliam County and Umatilla County, and having for its purpose the holding up of the collection of the tax levied on the lands within the irrigation district, and now extended upon the rolls of each county above named.

In this connection, also, there is a suit filed wherein the recent election held in the John Day Irrigation District is contested, this suit being entitled Edward A. L. Henderson vs. Clay C. Clark, Edward Rietmann and M. D. Clark. To this proceeding, Judge Gilbert W. Phelps has handed down the following opinion on the demurrer of contest:

This is a proceeding brought under section 732 Oregon Laws to contest the election of certain directors of the John Day Irrigation District. A demurrer has been interposed by the defendants to the notice of contest upon the grounds:

1. That the defendants are named as such in their individual capacity rather than by their official title, and
2. That the notice does not state facts sufficient to constitute a basis of contest.

As to the first ground of demurrer it may be said that a proceeding of this nature is not to be confused with the ordinary action or suit, and in my opinion the sufficiency of the title is not to be measured in the same manner. The alleged cause of contest named each of the defendants as directors of the irrigation district, and specifically notified the individuals that the will and does contest the election of Ed Rietmann and Clay C. Clark, "as Directors of the John Day Irrigation District." This I think is sufficient.

The second ground of demurrer raises the question as to whether a candidate for the office of director must be nominated as provided for by the Irrigation District Act, before he may legally be elected to that office.

In the consideration of this question it is well always to keep in mind the basic idea running with the growth of constitutions and laws, to the effect that no qualified voter shall be denied the privilege of casting the vote for whomsoever he pleases and of having his vote counted. The constitution of the State of Oregon provides that "all elections shall be free, equal and open, and the Supreme Court of this state in its construction of this language has said:

"To be free means that the voter shall be left in the exercise untrammelled, whether by civil or military authority, of his right or privilege, no impediment or restraint of any character being imposed upon him, either directly or indirectly, so shall hinder or prevent him from participation at the polls. The word equal has a different significance, every elector has the right to have his vote counted for all it is worth in proportion to the whole number of qualified electors desiring to exercise their privilege, so that the terms 'free and equal' used as they are here, signifies that the elections shall not only be opened and untrammelled to all persons endowed with the elective franchise but shall be closed to all not in enjoyment of such privilege."

While it is not necessary to a decision in this matter that the constitutional question be considered, it would seem that a holding to the effect that only those persons placed in nomination through the privileges of the law, would be void, would be to hold the act itself unconstitutional, as denying the right of the elector to vote for whom he pleases. The qualification of the parties for whom the votes are claimed to have been cast is not in the issue.

But in my opinion the Act which provides for the election of directors of an irrigation district is in itself sufficient to negate any constitutional question, because evidently the Legislature sought to avoid the question by such question by providing for the "writing in" the names of the electors' choice for the office of director. We find that by Section 7310, "Candidates may be nominated for any election held hereunder in the same manner as candidates may be nominated at the organization election," and by Section 7311 which deals with the manner of conducting the organization election of members of the general election laws so as to provide a similar manner of nominating candidates and a direction that, "the county clerk shall name the names of all persons so nominated to be placed on the ballots as candidates for the respective offices for which said persons shall have been nominated, provided, such ballots shall have a blank line thereon under the names printed thereon, and it shall be the name of any candidate voted for."

This last provision is merely a recognition of the constitutional rights and privileges above mentioned, and at any rate it is a part of this law, and it must be apparent to any disinterested person that the blank line on the ballot was required so that it might be used by the elector in designating his choice of candidates, and voting for such person of his choice.

(Candidates for the office of director may without great trouble or difficulty procure a nomination, and thus have the decided advantage over any other candidate who is not thus nominated. For in the one case the name of the candidate is printed upon the ballot and in the other the name is not printed.

Moonshiner Is Corralled and Assessed Heavy Fine

Sheriff McDuffee and F. R. Brown rounded up Lum Gordon and brought him to town yesterday morning. Lum was out in the hills beyond Big Butte creek and engaged in the occupation of distilling moonshine liquor. At the time he was taken he had some 350 gallons of corn mash going through the process of distillation, and this was taken charge of also by the officers. Upon being taken before Justice Connet, Gordon pleaded guilty and he was assessed a fine of \$400, to which was added \$42.50 as costs. Lum seemed to be sorry for only one thing, and that was that he had been taken in before he had finished his making of the booze, as he would have disposed of the stuff for 500 sufficient money to greatly aided in the paying of his fine. Only recently he had been able to get rid of some ten quarts here and he thinks Heppner, a good field for such operations. From some appearances we are led to accept the assertion of Mr. Gordon, as there is much evidence that some such dope was being prepared in some hidden place in the hills near here. Mr. Gordon has arranged to settle his fine with the court.

BERT MASON MAKES FURTHER REPLY TO HERALD

June, Oregon, April 12, 1921.

My friend (Herald) is using considerable space in regard to a taxpayers meeting held in June and tries to give the public to understand that said meeting was entirely my affair. For the information of all concerned let me state that said meeting was called by country taxpayers who do not reside in June, that few June residents attended; that two or three June residents took part in the discussion; that Mr. Woodson received about as much notice as anyone for having voted increased salaries after same had been voted down on the same ballot on which he was elected. No objection was raised against salary paid committee nor that of Judge Campbell before the increase was put on. I as well as others stated that we should pay our judge and commissioners a sufficient salary to induce capable business men to take the offices and that we cannot expect a business administration from officials who have not made a success of their private affairs. This is not a charity affair and there is much important financing connected with it.

The Herald states, "Perhaps after all, the failure of the highway builders to give June's principal thoroughfare is about the biggest dead fly in June's ointment jar." I made answer to this slip at June and he excused the issue by stating that I had agreed with him regarding most of the points at issue. Did my answer in last week's issue, independent agree with him? Did he have any comeback on that "dead fly" issue?

For the information of readers who do not read the June paper I will ask you to print my side of the highway situation through June.

Leaching Engineer Baldock spent considerable time in surveying and studying the different routes and after making estimates on cost and the matter of danger to the traveling public he decided that it was cheaper to build through on a straight, level street where not a single rock would be found in nearly a mile of grade than to build on a rocky hillside where much blisters would be necessary. Also that there was much less danger in having at least one crossing at each end of Main street than at the point of the present approach to the highway which is decidedly a death trap. Mr. Baldock proposed that in order to insure a permanent unobstructed view at the eastern crossing that June should buy a quarter block of land. We did so and he located on Main street. The county court and highway officials evidently thought Baldock's route right as they advertised for bids and let the contract on his survey and so matters stood until E. L. Vinton had been on the job several months. The first heard of a change was when one of Vinton's surveyors let it out that Vinton had some grade against some June citizens and that he was going to "show them" by running the road around them. Vinton was the man to demand a change. We asked the counsel of the county officials they had not a word for the street route, but upheld Vinton. We took the matter up with highway officials, they could make no excuse, except that they would not come into June unless we would build overhead crossings, but did promise to meet with us again before changing the route. The next word heard was that they had eliminated the crossings (at an additional cost of \$15,000 to the taxpayers).

Didn't the same commission know that they had allowed a grade crossing on a sharp curve behind a backdrop at Arlington on the main Columbia highway? Is this a more important road?

What would have happened if Heppner had been so treated?

Would "Pat" have discovered a "dead fly"?

Let him devour the fly from his own stomach before looking to June.

I would like for him to publish a statement of the total expenses of operation of the county outstrip from the time it pulled off Rhio creek, including wages paid for operator and assistants and all items connected therewith, also state just how many hours were spent with said caterpillar on actual construction of grade.

Yours for a business administration,
BERT MASON.

Industrial insurance in northwestern states is secured as low as one per cent on the payroll under optional system not used in Oregon.

APRIL SHOWERS



MORROW WOOLGROWERS BILL HANLY TO ADVERTISE OREGON IN EAST

(By L. A. Hunt.)

The executive committee of the Morrow County Wool Growers with a large number of prominent shepherms met in the local Farm Bureau office at Heppner, to discuss matters of importance to their industry Saturday evening.

Reports were read covering the coyote campaign as so far conducted in this county showing that since February first, 1921 the government trappers which have been brought into the county through the co-operative effort of the Farm Bureau and shepherms have accounted for 164 coyotes and 29 badgers. The expense to the county accounting for this number of animals to date has been \$251.68. This is certainly a very economical way in doing business. Some twenty-five members have made themselves financially responsible for carrying on this campaign and in order to spread the cost of same as equitable as possible have decided to ask every wool grower in the county to pay the proportionate expense and the assessment for the first six months of the campaign will amount to \$2.00 per thousand head.

Harold Dolbys who is working for the shepherms in this county has been very successful individually in doing his part of the work. Altogether there are four men who are catching some coyotes in this county. The shepherms undertook a spirited discussion of sheep shearing. The fact was pointed out that during the time of high prices of wool the shepherms divided with the shearers and paid as high as 22-23 cents per head for shearing sheep. That was while wool was 50 cents a pound or better. At the present time it is doubtful if there is any sale for wool at all. No sales are reported as high as 23 cents.

This week indicate that the shepherms are facing a very serious market condition this year. In view of the fact that the shearers reaped a good harvest when prices were high the shepherms find that it is only fair that they divide losses. The meeting was unanimous in going on record favoring 20 cents a head price for shearing sheep with a double pay for bucks. In some places in Idaho the price is 9 cents a head with the shepherms to pay a \$1 a day board. It is the understanding of the meeting that the price to be paid around Condon is not to be above 10 cents. This seems to the wool growers to be a fair price and they stated that every effort would be made to see that their neighborhood shepherms conformed to this price.

Hand Badly Hurt.
George Thomson is carrying about a badly hurt hand this week. Just because he thought he was still young, he is suffering from a bad injury. He claims to know, says that George was trying to "show off" before the ladies, but what ever thoughts he might have entertained at the time does not save his hurts. George had received information that his cabin on Willow creek, just a short distance below the Slocum sawmill, and where his family spends their summer vacation, had been broken into; so he traveled up that way Sunday afternoon to make an investigation. Arriving opposite the cabin he found it necessary to get across Willow creek; so he picked up a pole lying in the edge of the stream that seemed just the proper size, and proceeded to vault the creek. The pole was slick from lying in the water and when the weight of Mr. Thomson bore down on it his left hand slipped over a broken rail or two, with the result that the member was badly torn and lacerated in a zig-zag fashion. Luckily there was a bottle of peroxide in the cabin and Mr. Thomson used this liberally on the wound and it was thoroughly cleaned. While at present he is caused considerable pain, he does not anticipate any serious results. He found the cabin had not been disturbed.

Turner Shearing Plant Begins Work.
The Frank Turner shearing plant and crew started up work with the L. V. Gentry sheep on the John Curran ranch northeast of Condon the last of the week, and were compelled to lay off on Tuesday on account of the rain. The John Glascock crew began operations at the Mike Marshall place on Friday. These ewes will be kept busy from now on to the end of the shearing season in Morrow county.

Is Given Fine of \$30.
Dr. Haylen was brought to Heppner Saturday and taken before Justice Connet on a charge of disorderly conduct. The judge, after investigation of the case, assessed a fine of \$30 and costs, which was paid. By pleading guilty to this charge, we understand that what may have been a more serious charge against Haylen was dropped.

HEPPNER HIGH WINS SECOND BALL GAME

(By L. A. Hunt County Agent.)

Peterson pitched a 3 hit game. Heppner high school's baseball team journeyed to Pilot Rock last Saturday where they met the high school team of the Umatilla county town in what proved to be a well-played game of baseball. Pilot Rock had played at Echo the day previous and started their relief pitcher against Heppner. But the Morrow county boys held a regular sweat feat and ran in five runs. In the third inning Jordan entered the box for Pilot Rock and, while he checked the scoring to some extent the Heppnerites were still able to put over six runs in the remaining seven innings.

Peterson who pitched for Heppner had the opposing batters eating out of his hand most of the time. Only three scratch hits were made off his delivery during the first three innings not a man reached first. He allowed Pilot Rock one earned run, the other two being made through errors. The final score was 11 to 1.

Heppner played much better ball, particularly in certain innings, than during the game the week previous with Lexington. There was a fine feeling of confidence throughout the infield which served to check errors and scoring. Boyd's first play got errorless ball in the field but he had just found his batting eye. Irwin and Ferguson at second and short are going to form a good combination around the keystone sack. Ferguson knocked down several hard hit grounders and threw out the runners at first in good style. Irwin took throws from the catcher in good form and put out several men. Both men played a prominent part in the scoring.

Connet at third had an off day in the field but redeemed himself in the batter's box. His batting was excellent. The outfield had little chance to show anything in the field as only one ball was hit past the infield. Chidsey and Logan hit better than the week previous. Shurtle playing his first game was unable to connect for a hit. Young catching his initial game this season was a trifle weak on low pitches, allowing several to get by him. But he worked the batters well and put out several men with fine throws to the bases.

Providing weekly competition can be secured the high school promises to have a fair ball team. There is much room for improvement particularly in hitting but if neighboring high schools can find sufficient funds for guarantees and trips a few more games will remedy a number of defects.

The Sophomore English class dramatized the classic, "A Tale of Two Cities" and presented a two act drama before the school Tuesday afternoon. The students taking part were Alvin Boyd, Elizabeth Huston, Ray McDuffee, Mary Clark and Margaret Woodson. The girls have formed a tennis club and have elected Bette Neil manager. The new court which was a gift of the P. T. A. is quite an improvement to our grounds and also will give the girls much needed exercise.

A meeting of all the girls who played tennis was called Monday in Miss Palmer's room at the school. The girls were long while the meeting was in progress looked in. In the first seat in front of the manager sat a distinguished senior boy. Some call him Eddy for short.

The boys quartet sang at the Brotherhood meeting Monday and made a big hit with the B. H. The boys in the quartet were Alvin Boyd, Paul Alken, James Elmer Peterson and Roland Humphreys.

Heppner H. has a new student this week, Holt Grimes by name. He registered from Halsey, Oregon. The girls are going to know the country around Halsey pretty well if Holt will only talk.

The ladies of the Christian church will hold a cooked food sale on Saturday, the articles to be on display at the big window at the Humphreys Drug store. All ladies of the church are requested to prepare and send in some article of cooked food for this sale.

Big Rabbit Drive to Be in Juniper Canyon April 17
(By L. A. Hunt County Agent.)
The farmers around Will Springs and Alpine have been seriously troubled with rabbits during this spring which are becoming quite numerous in this section because of the break down of the campaign in that territory a year ago. In order to relieve this situation there will be a rabbit drive put on at the Dennis Curran place, between McDuffee's and Cart's in Juniper canyon, on Sunday, April 17. Everybody is cordially invited to attend. Coffee and sandwiches will be served at noon. The drive will start at 10:30. It is hoped to put on two drives this day. Everybody expecting to drive please report at the Curran place for instruction and distribution. Fens will be prepared and everything in readiness for a lot of real sport. People who have not been to a rabbit drive in recent years can renew their acquaintance. Everybody is expected to bring a club and no guns.

Farm Bureau Votes Market Road Money for Farmers

(By L. A. Hunt County Agent.)

The referendum decided upon by the joint committee of the Farm Bureau and Commercial Club at its last meeting asked to ascertain the will of the farmers regarding the use of market road funds in this county on the Willow creek highway resulted in a very decided defeat of the use of this money for this purpose. The farmers feel that market road money should be placed on market roads. We are not positive on this issue was clearly understood by all the farmers but believe that this referendum expressed the sentiments of the majority of the people in the county. There was a considerable complaint from various places that they did not receive the ballots sent. We must say that this must have been through some error of distribution as a copy was mailed to every farmer in the county. The Irrigon people held their meeting and took a strong vote in favor of the use of the money strictly on farmers roads. The Farm Bureau officials are very much gratified at the result of the referendum and feel that they will submit other referendums to the farmers as the occasion demands. The final vote stood at the ratio of three to two against the use of the market road money on the Willow creek highway.

News of a highly gratifying nature to the people of this section was conveyed in a telegram received early Friday morning from Commissioner Harratt stating that the Oregon-Washington highway across Morrow County would be completed, and that further bids would be called for to close up the gap existing between Heppner and Lexington, this to be followed by letting of contracts for the surfacing from the Beymer place by units on through Little Butte creek, just as rapidly as possible.

Mr. Harratt returned home on Sunday and in speaking of the matter stated that it was the intention of the commissioner at first to call for bids on the grading of the Lexington gap to be opened at the meeting of the commissioners on April 22nd, but owing to the fact that the engineer would be unable to get in his final estimates in time to have the unit properly advertised, it will not come up until the regular May meeting. At that time it is expected the contract will be let and the work of grading will be immediately proceeded with.

As stated above, the present program carries the work only as far as Little Butte creek, which takes in the Hinton creek section and Jones Hill. This will leave several miles yet to be disposed of, and it is presumed that as soon as the route around Franklin Hill is definitely located, the commission will then proceed with the letting of contracts that will join up with the Umatilla county section. This will then leave a short section in Gilliam county to be disposed of in order to connect with the Columbia river highway at Heppner Junction.

We understand that Commissioner Booth did not hesitate long in making his decision on this matter after he had traveled over the route of the highway on through to the Umatilla county line. He was fully impressed with the importance of getting the Oregon-Washington highway completed through Morrow county and was ready to help this county in putting over the job that has proceeded to a point where some financial aid was absolutely necessary. The commission seemed to recognize, too, that through the fault and mismanagement of their own engineers, the county's money did not go as far as it should have, hence their desire to help out in this manner at this critical time. Their action is a source of great gratification to our people.

P-T. HAVE MEETING TUESDAY AFTERNOON

A Fine Program by School Children—Nomination of Officers for Coming Year—Election at Next Meeting.

There was a splendid meeting of the Patron-Teachers Association at the high school auditorium on Tuesday afternoon, with a goodly attendance of members and visitors. Before the regular order of business was taken up, there was an interesting program, furnished by the pupils of the grades and high school.

The first was a dramatized reading lesson by the pupils from the second grade, under the direction of their teacher, Miss Daisy Slate, and the little tots acted out their lesson about Cinderella. Eight of the pupils made up the cast of characters and the reading lesson was thus presented in the form of a playlet in which each separate character was fully sustained. This is a practical demonstration of what real reading is, and it was really remarkable the interpretation of the little children gave of the several characters as set out in the story of Cinderella as they have it in their readers.

The girls quartette of the high school then sang "Maw" were heartily endorsed and responded by a fine rendition of "The Gingerbread Man," Miss Dofee presiding at the piano.

This was followed by a presentation by the Sophomore English class under the direction of Miss Palmer, of two scenes from Dickens' "A Tale of Two Cities," one from the second chapter and the other from chapter 14. The characters represented were Mr. Cruncher, Alvin Boyd; Mrs. Crunchee, Elizabeth Huston; Jerry, Ray McDuffee; Miss Pross, Margaret Woodson and Madam Defarge, Mary Clark. These young people acted out the parts well. The setting of the scenes were given by Evelyn Henderson and Verna Cass and the entire performance was good.

A poll of the attendance as represented by the several grades of the school was taken which proved the fifth grade to be the winners. The awarding of the picture followed, this going to the 5th grade as a permanent possession. This grade was the winner for three months and established the best record for attendance upon the meetings of the association of members and visitors.

The business session followed, the minutes of the last meeting being read and approved. The playground committee made a report on the completion of the tennis court, with a financial statement covering its erection; also presenting the statement that Janitor Driscoll was entitled to much credit for the work he had done in getting this court ready for use, for which service he would accept no compensation. The association accepted the report of the committee, also extended a written vote of thanks to the janitor, this to be accompanied by a financial gift. An amendment to the constitution was adopted so that it requires 25 members to constitute a quorum instead of one-fourth of the membership as originally provided. The high school tendered its thanks in writing to the association for the gift of the tennis court. A number of bills were presented and allowed, these having to do with the building of the tennis court. The \$71.90 realized from the gymnasium, was upon proper motion, transferred to the general fund, and a standing vote of thanks given to Mr. Sigbee for his courtesies extended to the association in this regard.

According to plans adopted, the association will arrange to entertain each of the grades of the school in a manner agreed upon between the teachers and the parents. This is in recognition of the part the different grades have had in the entertainment features of the association during the year.

Nominations for officers for the coming year were made as follows: president, Mrs. Ethel John and Mrs. E. B. Huston; vice president, Mrs. Gus Boyer and Miss Palmer; secretary, Mrs. S. E. Nelson and Mrs. Lloyd Hutchinson; treasurer, Mrs. W. E. Pruyn, and Mrs. Frank S. Parker. The election will take place at the next regular meeting of the association in May.

Commercial Club to Meet.
There will be a special meeting of the Commercial Club of the county chambers on Friday evening, at which time there should be as full an attendance of the membership as possible. Some matters of importance are to be presented.

O-W. HIGHWAY GAP TO BE COMPLETED

By Action Taken at the Meeting of Highway Commissioners in Portland Last Week Gaps Will Be Closed and Surfacing Proceeded.

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BROTHERHOOD TALKS OF BETTERING FARM HOMES

There was an attendance of some sixty members and visitors at the Brotherhood luncheon at Patrick hotel on Monday evening, at which time the usual good meal was enjoyed, after which there was a discussion of the question of more attractive homes for Morrow county. The speakers were F. H. Brown, L. A. Hunt, C. A. Minor and Fred Taub. Mr. Brown, who has had some considerable experience in teaching rural life in this county, occupied his time with a number of suggestions for improving and making more attractive the home and community life of the rural districts. Mr. Minor followed with other good suggestions, gathered from his ripe experience and he strongly advocated the taking in of the wife in full partnership on the farm; give her a chance to have some of the things about the premises that a woman likes, and help her in getting these. Mr. Hunt enlarged upon what Mr. Minor had to say and spoke earnestly for such improvements on the farm as look to the making of the same a permanent home; just now there is too much of the spirit of merely existing there until such a time as the farmer and his good wife can make enough to establish a home in the town and thence this condition can be remedied by building modern homes and having the modern conveniences on the farm that are enjoyed by the city dweller. Mr. Hunt desired to see permanent agriculture established and believes that these are some of the necessary things to bring it about. Mr. Taub, being rather timid as a public speaker, endorsed the sentiments expressed, but did not attempt further suggestions.

Following these speakers, and presenting a subject that is worthy of the heartiest support of both the rural and urban communities of the county, and that fitted in with the suggestions already made, F. A. McMenamin made a short address on the Umatilla necessity, showing how its completion would be of vast benefit and supply much that will be needed to perfect this community development. It can be remembered along this line ways well removed. W. H. Barratt gave a short account of his work with the highway commission up to date, and this was followed by an address of one-half hour by Dr. Van Waters, who was a guest of the Brotherhood for the evening.

Musical numbers on the program were rendered by the boys quartet of the high school, with their instructor, Miss Dofee at the piano, and several Scotch songs by Alex Gibbs, with Mrs. Gibbs as accompanist. These musical numbers were a genuine treat and greatly enjoyed.

The May meeting will close the Brotherhood gathering for the year, and at this time the election of new officers will take place. This meeting will be one for social and lady friends of the members also, and will no doubt be the best that has yet been held.