

MEDFORD MAIL TRIBUNE

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ENCOURAGEMENT BY THE WAY.

One who objects to having counters landed on his jaw should not box. He who is discouraged by defeats is unfit for contest. In the warfare between silurian and the lover of progress there is just now a strengthening of the lines of the mossbacks, a loss of heart on the part of some of the advocates of a greater Oregon. The loss of the Crater Lake road case was but a clash on the skirmish line. The man who cannot endure such defeats and yet work on is made of soft material. There can be but one outcome.

But some grow weary of the strife. To them are commended Justice King's opinion in dissenting from the recent decision of the supreme court in the Crater Lake road case.

Reading it, one finds new heart to renew the battle. Justice King first deals with the constitutional question that was raised:

The general rule to be deduced from all the authorities is that a constitution must not be interpreted on narrow or technical principles, but liberally and on broad general lines, in order that it may accomplish the objects intended by it to carry out the principles of government, and the legislative department of the state, unlike that of the national government, may enact any law not expressly or impliedly prohibited by its constitution; and in determining whether an act is in conflict, or inconsistent therewith, all reasonable doubts upon the question must be resolved in favor of the law thus assailed. I do not understand the majority opinion to question this rule of construction, but to hold, as it necessarily must, in order to reach the conclusion announced, that it is inapplicable to the case under consideration; that the act involved is, beyond a reasonable doubt, in conflict with section 23 of article 4, which inhibits the passage of "special or local laws for laying, opening and working on highways, and for the election or appointment of supervisors." I concede that, if it appears beyond rational doubt that the act in question is either local or special, it contravenes this section of our organic law, and must fall.

The only question then, with which we are confronted, is whether the act under consideration is local, special or general.

I am at a loss to understand how a law may be deemed special or local in character, which does not confer a particular benefit upon the inhabitants of the designated locality or district, to the exclusion of the public at large. A local or special act is, necessarily, such a law as is limited in its effect to certain persons, things or localities.

It will be observed that the act before us does not thrust upon either of the counties, through which the contemplated road may pass, the burden of any part of the expense, but leaves it optional with them; and this expense, consisting of but one-half of the entire cost, if contributed, will be borne by the entire county or counties through which the road passes; it will not directly fall upon the property of the owners in the immediate vicinity of, and along the intended route, avoiding thereby the mischief evidently designed to be remedied by the adoption of the section under consideration. The act, therefore, does not come within the class sought to be obviated by this section of our organic law.

Judicial knowledge is taken of the fact that, beginning at a point on Snake river, east of Ontario, where, through the aid of an appropriation from the state, a bridge (costing approximately \$30,000, of which the state has paid one-third and the locality where situated the balance) spans the river, connecting the states of Idaho and Oregon, a public road extends in a westerly course through Malheur, Harney, Lake and Klamath counties, passing through Klamath Falls; that this road, through the principal mountainous district, where construction is difficult, is extensively traveled, and was built, and is maintained in good traveling condition by the respective counties through which it passes. Also, that the city of Medford is connected with the Pacific ocean by well traveled county roads; that the contemplated route from Medford to Klamath Falls will pass through a very mountainous and heretofore untraversed section, and, when completed, will connect those eastern and western divisions of the state, so made by the Cascade range, with the other roads mentioned, thereby connecting the eastern boundary of our state with the Pacific ocean, as suggested in the title of the act. Again, along the greater part of the way between Medford and the point where the road reaches Klamath county, but little, if any, settlements appear. As stated by one witness, between Rogue River falls and Crater Lake, a distance of 40 miles, two farmers, residing within two miles of the falls, constitute the only residents along the route. It is thus evident that the general purpose of the road is not for the benefit of those in its immediate vicinity, but for the uniting of two important divisions of the state.

I can see no merit in the contention that, if this act is upheld, citizens from other and remote parts of the state, by the payment of taxes, must contribute towards the construction of this road, which they cannot, or will not use, etc. This position not only overlooks the fact that the highway, when open, would necessarily be subject to use by the people of the entire state, as well as by the nation and the world at large, but constitutes a part of the sophistry invoked against practically every public improvement in the past, local and national, requiring an appropriation of public funds. The citizen with large property interests and no children has said, and even in this enlightened age is sometimes heard to say: "Why should I be taxed to support the public school system, when I have no children to educate, while my neighbor, with less property, but many children, is the recipient of the benefits?" And those who do not care to send their sons and daughters to the state universities, normal schools, or other educational institutions, use a like argument against the maintenance of these institutions; the same contentions being often made with respect to appropriations for the eleemosynary institutions; all, in these objections, forgetting and overlooking the great public benefits accruing therefrom, in which all share as citizens of the commonwealth, whether conscious thereof or not. Again, the funds appropriated in support of all state institutions first inure to the advantage of the particular locality where situated, as do the funds disbursed for the world's great fairs; yet who, in this city, would urge that argument as grounds for holding acts appropriating money unconstitutional? All have grown to recognize the good inuring to the general public and to the state at large in such instances, regardless of the greater proportionate advantages to the immediate localities where the funds are disbursed. The same may be said of the hundreds of thousands of dollars appropriated from the public treasury for the locks at Oregon City, and for the construction of the portage railway between Celilo and The Dalles. Each of these particular localities is especially and enormously benefited by these appropriations, yet will anyone seriously contend that the general public, or the state as a whole, is not immensely benefited thereby; and that, taken as a whole, the benefits accruing to the state at large do not outweigh those of the particular localities where the improvements are made? The portage railway, like the roads involved in Allen vs. Hirsch, except on a more extensive and expensive scale, connects the two great divisions of our state, and is of immense commercial advantage to the general public; uniting in the northern part of our state, the great wheat fields and other resources of eastern Oregon, with transportation west of the Cascade range. The locks at Oregon City likewise, so far as applies to that part of west of the Cascade mountains, connect, in commerce, the northern part of the state with its southern counties. Now, the southern and northeastern sections of the state contribute, in

proportion to their wealth, to the fund, bringing into and continuing in existence these two great enterprises, yet must remain content with receiving only their proportion of the benefits accruing to the entire commonwealth, of which they form a remote part: This is accomplished under the same section of the constitution as here assailed. In the case of the locks at Oregon City this right was upheld by this court.

The constitution does not define a highway, and the term must, therefore, be applied in its usual and common law sense. The state, at the time of the adoption of the constitution, had, as highways, trails, roads and navigable streams, while railways were known in the "far east." It must be presumed that they had in view the highways used for travel then in vogue, including the improved methods of travel likely to develop. I deem the contention that the constitution had reference only to the class of highways then in use in the territory to be without merit.

Can we then consistently hold that under this section of our fundamental law, the state has the right to appropriate money for the purpose of connecting, on our northern boundary, two divisions of the state, requiring the taxpayers in remote sections to contribute to such appropriation, merely because the means of transportation is in cars upon this highway, and at the same time hold that the same range of mountains may not be pierced by another and less expensive class of highways—wagon roads—near its southern boundary, opening, thereby, the only practical means of communication available to the people of the two separated localities of such remote section? And shall it be held that the people along the Willamette river, through the generosity of the state appropriation for the locks at Oregon City, shall be commercially united north and south, and at the same time deny a like privilege to the citizens of the two divisions east and west of the Cascade range near our southern borders? I think not. Such inconsistency was certainly not intended by the conceded broad-minded, far-seeing and able men of which the convention was composed. It is not a question, as intimated, whether the southern part of the state has been, or is receiving its proportion of state appropriations, but whether one rule of construction shall be applied, when disbursements by the state shall be made for highways in the northern and northwestern part of the state, and a different rule prevail when disbursements are authorized for highways in the southern and southwestern districts. I deem the precedent established, by holding the act under consideration void, to be far-reaching and portentous in its resultant effects.

Following this Justice King disseses at some length the good roads movement, incidentally calling attention to the obsolete condition of the constitution.

The question of public highway improvements, throughout the country, is assuming greater proportions than was probably ever dreamed of by the framers of the constitution, affording another reason why our fundamental laws should be construed "on broad, general lines," rather than the converse of that rule. This was doubtless realized when, in 1870, \$200,000 was appropriated for use upon the locks at Oregon City, and when more than that sum was by the legislature applied in the construction of the railway at Celilo. This question is fast becoming of state-wide and national importance.

He then tells of the beauties of Crater Lake.

Along the line of this contemplated road and within the western boundary of Klamath county is what is known as the Crater Lake National Park. Of this park and its general nature and advantages we may take judicial knowledge; but in determining whether the benefits to accrue to the state at large are sufficient to make the highway one of public rather than local importance, we are not left to this resource alone. We have, together with plaintiff's admission in his pleadings, the uncontradicted testimony of witnesses, whose high standing and information on the subject is unquestioned.

The Crater Lake district is in the northwestern part of Klamath county, adjacent to Jackson county, within the government forest reserve, and, prior to 1865, was practically unknown; but in 1902 was, by the government, set aside as a national park, since which time it has been known as Crater Lake National Park. It contains, approximately, 160,000 acres, or 250 square miles of territory, the grandeur of which is unequalled, either on this continent or elsewhere, and, when properly opened by traversable highways, promises to rank, through its wondrous scenic beauty and unparalleled geological formation, as one of the most valuable resources of our state.

Summing up, Justice King says:

In view of the conceded facts, it would seem the public importance, as compared to the local benefits, could hardly admit of doubt. One of the great assets of any commonwealth is its scenery: its freaks of nature, whether in its rugged mountains or its valleys; its lakes, mammoth caves, hot springs, as in Arkansas, or geysers, such as appear in Yellowstone Park, etc. Upon assets of this character many of the railway lines throughout the various states in which they operate, such as those along the Columbia, the Denver & Rio Grande, and other so-called "scenic" railways, rely for much of their income; and the states in which the natural wonders may be situated, proportionately share in the benefits accruing therefrom.

Considering, then, the combined advantages to accrue to the state by uniting and bringing in touch with each other the two great divisions of the state, as shown, together with the opening to the people of the entire state, by a convenient road, what promises to be one among the great public parks and natural wonders of the continent, can it be legally held that the act in question is void? Holding unconstitutional this act violates, I think, both the letter and spirit of the constitution, and especially disregards the rule of construction invoked by this court in an unbroken line of decisions for half a century, to the effect that constitutions, in order that the object of the government may be accomplished, must be construed liberally and along broad, general lines; and that before an act shall, by the courts, be annulled and held for naught, the conflict must appear beyond a reasonable doubt. Does the showing made in this instance eliminate all reasonable doubt as to the validity of the act? I think not. In fact, I can see no room for a substantial doubt upon the subject, and must, therefore, record my dissent from the conclusion announced by the majority.

THE ONLY WAY.

The shades of night were falling fast
 (As has been mentioned in the past)
 When through an Alpine village blew
 A climber with a retinue,
 He did not bear through snow and
 ice
 A banner with a strange device,
 Nor did he roar "Excelsior!"
 (As has been mentioned heretofore).
 But tended strictly to his job,
 Which was to gain the mountain's
 nob.

Behind him on the weary jog
 There tolled a faithful blonde stenos;
 Likewise there puffed a not-ry pub,
 Provided by the Alpine club,
 Who saw the climber did not cheat
 And swore him every thousand feet.
 Roped to a yodelling Alpine guide,
 The trio scaled the mountainside.

A dawn the climber topped the crag
 And waved the Climbers' union flag.
 Dictated to the blonde stenos.
 The final entries in his log.
 Made affidavit, "Shelp me Bob!"
 That he had gained the mountain's
 nob.
 And Bill, the guide, to make things
 sure,
 Was witness to his signature.
 "That ought to hold the 'Show me'
 bunch."
 The climber murmured, "Now for
 lunch."

—Chicago Tribune.

Boys Form Robber Crew.

SAN FRANCISCO, Cal., Feb. 17. — Police today are seeking the leaders of "The Forty Thieves," an organization of boy bandits whose grocery store and fruit-stand depredations culminated last night in the hold-up of a Powell-street cable car and the robbery of its crew.

Two masked youths boarded the car at the Bay street terminus, held revolvers on the conductor and gripman and succeeded in escaping with \$44.75.

Complaints have been received by the police of the organized band of young toughs who have been committing minor crimes.

Der Kaiser Is Ill.

BERLIN, Feb. 17.—Emperor William is confined to his bed with an attack of influenza, according to an announcement from the palace today. The royal physicians state that his condition is not serious and that he will be out in a few days.

Meanwhile attendants on the knaiser are keeping from him any information concerning the socialistic disturbances throughout Germany that may tend to alarm him or aggravate the danger of his condition.

Magic eyeglass cleaners free at Dr. Goble's, 18 W. Main st. 286*

Buicks are necessities.

WHAT THE REV. J. B. LUCAS HAS TO SAY ABOUT FER-DON'S MEDICAL EXPERTS

Writes From Houston

HOUSTON, January 31.—Dear Doctors: Some time ago I called at your offices to see Fer-Don's Medical Experts. As you will remember, I drove up from the depot in a carriage and was suffering with acute rheumatism so bad that it was impossible for me to climb the stairs, and it was necessary for your gentlemanly colored man to assist me.

Prior to that time, when in my home town, I was compelled to deliver my sermons from a big arm chair, which was a token of appreciation and sympathy from my beloved congregation. One of your doctors made note of my case, and, after examination, said that in ten days my rheumatic pains would stop. I told him that I had such horrible pains that I was compelled to sleep in a chair at nights, and at times my limbs and joints were so sore and stiff that it was impossible to walk about. During the past five years I had tried different treatments and various remedies, all to no avail, but having heard of so many wonderful cures being effected by your physicians, decided to try their treatment. After only ten days under their care I can now not only walk, but can climb the steps at the church and at my home with the greatest ease. I have been so benefited that I can now sleep in a bed in perfect peace; my rheumatism and pains have all left me. I am well and hearty and weigh 220 pounds, and I write to tell you the good news. I am so well pleased

with the treatment of Fer-Don's Medical Experts and they have done me so much good that you can refer anybody to me that is suffering like I was.

Everybody knows me here in Houston, as I am pastor of the Methodist Episcopal chapel. My address is 1213 Harvard street, Houston Heights. Deafness, rheumatism, paralysis, joint disease, female trouble, kidney, liver, stomach and blood troubles have been cured in many Los Angeles, San Francisco, Sacramento, Bakerville, Porterville, Visalia, Hanford, Redding and Stockton people. Tumors, cancers, gall stones and other abnormal growths have been removed from Medford people without the use of a knife. For the European expert is a bloodless surgeon. He performs no operations in cases of cancer, tumors, gallstones or appendicitis, but cures by his wonderful preparations alone, doing away with the knife, with blood and with pain.

His offices are at the Moore Hotel, Medford, where he can be seen daily. To prevent a loss of time through curiosity seekers, he makes a charge of \$1 for examination. He also answers all letters of inquiry and his daily mail holds dozens of letters from sick and suffering people living outside of Medford.

He has cured many persons living at a distance.

Office hours, 10 to 12, 2 to 4 and 7 to 8, p. m. Sunday from 10 to 12 noon.

WICKERSHAM MAY INVESTIGATE MERGER

Request for Attorney-General to Act Is Expected—Properties All Acquired by J. P. Morgan.

NEW YORK, Feb. 17.—It is expected here today that a request that Attorney-General Wickersham start proceedings against the American Telephone & Telegraph company on the grounds of conspiracy in the restraint of trade, will be made following the suit brought by the stockholders of the United States & Cuyahoga Telephone companies in Ohio.

In the Ohio suit, minority stockholders charged that the control of these properties was being acquired by J. P. Morgan for the American company.

The taking of depositions was concluded here today, the attorneys for the stockholders declaring they have secured enough testimony to make their case.

It is known that the attorneys-general of Ohio and Missouri have been watching the suit closely, and it is predicted that proceedings may be started in those states if the stockholders win their case.

Magic eyeglass cleaners free at Dr. Goble's, 18 W. Main st. 286*

MAY ENDEAVOR TO REMOVE PHELPS

San Franciscans Foresee Sensational Conflict in Naval Affairs Which Will Reach Washington.

The hint that an effort may be made to remove Rear-Admiral Thos. Phelps as commandant of the Mare Island navy-yard is believed here today to foreshadow sensational conflict in naval affairs, which will reach to the highest seats in Washington.

Following the removal of Commander C. A. Carr from his position as head of the engineering department of the yard, it has been suggested that Secretary Meyer, displeased at the support given by Phelps to the Newbery plan of the administration of naval affairs, may endeavor to put in an entire new regime at the island yard.

The friends of Admiral Phelps today pointed out the fact that he is "a native son of California" and stands in high favor with the entire California delegates in congress. It is said Phelps is particularly friendly with Senator Perkins, the head of the committee of naval affairs and one of Phelps' supporters, intimated that perhaps the admiral, though he is subject to the regular discipline of the department, may have more pow-

B & C

Cash Store

GROCERIES, PRODUCE DISHES
 Hams, country, cure, lb 17c
 Shoulder, country cure, 13c
 Lard, home made, 10-pound
 pails, each \$1.60
 Lard, home made, 5-pound
 pails, each .80c
 Lard, home made, 3-pound
 pails, each .55c

Medford's Best Grocery Store.

Seeds, all kinds in bulk—blue grass, white clover, lawn grass. Buy your seeds here and you are sure of getting fresh seeds.

APPLES—

Baldwins, second grade, per box \$1.00
 Baldwins, fair grade, per box \$1.25
 Spitzenberg, extra choice, a box \$2.50
 Ben Davis, extra choice, per box \$2.00

Pineapples, bananas, tomatoes, celery, lettuce, sprouts, spinach, onions, parsnips, beets, turnips, parsley, salsify, grape fruit.

ORANGES—

Small size, dozen .15c
 Medium size, dozen .30c
 Large size, dozen .40c
 Large extra choice, doz. 50c
 Southern oranges and sweet.

The Store that serves you best by telephone 2351.

B & C

Cash Store

223 W. Main Street.

Wanted

Second Hand Oak Barrels

J. A. Perry

er than some officials at Washington may suppose.

Buicks deliver the goods.

Graniteware at Goodfriend's.

No Auction Here

It is not necessary to hold auctions to dispose of first-class stock, but we can sell you an Elgin or Waltham Watch

7-jewel, 20-year gold filled case..... \$10.00
 17-jewel, with 20-year case..... \$14.50
 15-jewel, with 20-year case..... \$12.00
 Solid gold cases..... \$25.00

in either movement.

Special bargains in Diamonds, Cut Glass, Gold and Silverware. IN ADDITION TO THIS, REMEMBER we are permanently located in Medford. The money we make is kept here to help rebuild the town. Beside we keep your watch in good repair free of charge and if at any time your watch or jewelry does not prove to be as represented we are here to hold the manufacturer to their guarantee and see that you receive satisfaction.

AGAIN

Reliable movements are sold the world over at stated prices, and you gain no advantage in buying one for a cut price, as they are not sold by reliable dealers for less than the established price, and what is more, if you stand by your local dealers they will stand by you. In this way you keep your money at home and thereby receive a double benefit.

Van DeCar & Jasmann

MANUFACTURING JEWELERS, PHIPPS BUILDING

MEDFORD, OREGON