

The Hood River Courier

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NOTICE TO SAVINGS DEPOSITORS

Semi-Annual Interest at 4% Amounting to \$5,600.00

has been credited to the accounts of savings depositors September 1. Please present or mail your savings bank book for proper entry of your share of these earnings.

We are at your service if you desire to purchase municipal bonds or other safe and profitable investments.

USE ALL OF OUR SERVICE

THE FIRST NATIONAL BANK

FALL SUITS ARE HERE

Quality, cool fabrics and unusually fine tailoring—that's what makes a suit hold up.

Prices are about one third less than Fall, 1920. And we are showing unusual values at

\$35.00

J. G. VOGT

DRAIN TILE- SEWER TILE CHIMNEY BLOCKS BUILDING BLOCKS

Everything in Cement Products

Manufactured right in Hood River by Willis Bradley in new plant on Cascade Ave. between 4th and 5th.

Sold by

Emry Lumber & Fuel Co.

Successors to

BRIDAL VEIL LUMBERING CO.

Phone 2181

Fourth and Cascade

MOTOR PARTS SERVICE

How often have you needed a small part for your car? Say a Valve, Wrist Pin, Motor or Wheel Bearing, Axle, Transmission or Differential Gears and been unable to get them?

An order to me by noon insures a delivery by night of practically any part you may desire.

Get the habit of demanding *Satisfactory Service*. Everything for the Motor Car at

Shay's SERVICE Shop

AT THE

FASHION STABLES

Shop 1201

Res. 2772

Rubber Stamps

AT THE
GLACIER OFFICE

The New "Eveready" Spotlight

with the 300 foot range

The Light that says, "There it is!"

"EVEREADY" BATTERIES

Fit and Improve All Flashlights—we have a complete stock.

KRESSE DRUG CO.

The *Rexall* Store

Come in and hear the August Victor Records



MONEY AND BANKING

We have borrowed the following from a bank Ad which appeared in a recent journal for the National Park Bank of New York:

"The moral law of money is that it should be applied to productive ends, and this is also the economic law.

"It should multiply and contribute to the growth of essential industries and enterprises.

"The facilities and resources of this bank have been engaged for many years in directing money in channels leading to the greatest good for the commercial life of the community we serve."

BUTLER BANKING COMPANY

Member Federal Reserve System

John C. Duckwall

Wm. S. Duckwall

DUCKWALL BROS.

Wish to announce that they will be cash buyers of the principal varieties of apples and pears this season and load from all points in the Valley.

We furnish growers' supplies and materials.

Apple and Pear Boxes
Spray Materials
Paper

We will have a small supply of the specially prepared oil paper to prevent scald on the late keeping varieties and recommend a limited use of it this season.

DUCKWALL BROS.

Phone 229 Odell

Fine for the Picnic

You have drunk our buttermilk at home. Had you ever considered how refreshing a draught of it would be on the hike or the camping trip. It would make an excellent beverage for the motor trip.

Just fill your thermos bottle with this delicious and wholesome drink the next time you start on an outing.

HOOD RIVER CREAMERY

DECISION IN WATER CASE

IRRIGATIONISTS ARE VICTORIOUS

Judge Wilson Files Memorandum of Decision, Affirming Findings of State Water Board

For property value involved the adjudication of the rights of the entire watershed of the Hood river, in which Judge Wilson has just rendered a decision, probably sets a record for irrigation cases in Oregon. The chief contests in the case lay between irrigation concerns and the power interests of the valley and touched almost directly the valley's entire assessed valuation of \$9,000,000. Judge Wilson, in filing his memorandum of decision with County Clerk Shoemaker stated that the formal decree would follow at once. Judge Wilson's decision awards a sweeping victory for the orchardists' irrigation concerns, and it is expected that a formal appeal to the Supreme Court will at once be announced.

In prefacing his decision, Judge Wilson says: "The testimony before the court is voluminous. The legal questions presented are complicated and intricate. The law, ultimately to be declared, as applied to the existing situations, will determine legal principals of very great importance. It fairly can be said that no water litigation has ever been presented to the courts of Oregon involving graver questions, or more valuable interests than those now being considered. The effect of their ultimate determination will be far-reaching. Irrigation attorneys in all parts of the Northwest have been watching the case, which has been before the courts for the last eight years.

The litigation first became an issue eight years ago when the East Fork Irrigation District was sued by the Oregon Lumber Co., the latter seeking to secure an injunction to prevent the district from making full use of claims of water on the East Fork of Hood river. The defendant won its contentions in the circuit court in a decision of the late Judge W. L. Bradshaw. On reaching the supreme court, however, it was remanded to the lower tribunal, and the State Water Board was instructed to make a thorough investigation of all conflicting claims on the entire watershed and report its findings in such a manner as to obtain a complete adjudication. For three years engineers and observers were engaged in the valley, surveying all irrigable areas of land and observing the flow of the streams. The findings of the board were presented to the court last year, following formal hearings by the body, members of which took testimony of witnesses in cases of conflicting claims.

But four main objections were raised to the findings of the Water Board. The first of these objections raised a contest between the Oregon Lumber Company and the East Fork Irrigation District. The other contests were: Between the Pacific Power & Light Co. and the East Fork Irrigation District, that between the Glacier Irrigation Company and the lumber company, and involving as well the claim of the power company, which in the fourth contest involved the Mount Hood Water Co. on one part, and adverse thereto claims of the East Fork Irrigation District, Pacific Power & Light Co., Oregon Lumber Co., and Glacier Irrigation Co. Lumber company objections were taken, but all of them were more or less involved in the decision of the main issues.

The contest between the East Fork Irrigation District and the Oregon Lumber Co., according to Judge Wilson, involved the most valuable property interests and presented the most serious and contravened legal questions. The irrigation predecessor filed on the East Fork of Hood river in 1886 for 7,000 inches of water. The lumber company claimed that the water concern elected to file for its claims under the Legislative Act of 1891. The lumber company maintained that the ditch company was strictly bound by all provisions of this law, but that it failed to proceed with sufficient diligence, under these provisions, to hold the water rights claimed. The claim is that the ditch company completed its ditch in 1901, and that in 1905 the lumber concern constructed a dam further down the stream and thus gave notice that it would use the waters of the stream for development of power. At that time, the lumber company declared, a system that would carry only 1100 inches of water. The East Fork Irrigation District, however, claimed that the ditch company made no effort to protect its rights under the act of 1891, merely because of convenience of the formal proceedings provided. It was maintained that the company never existed for the purpose of sale of water for profit but that the original owners were organized as agents for the land owners of the entire East Side district. In disposing of the case the court says:

"After proper consideration this court believes that the contention of the Irrigation District is one that should be sustained. The history of the attempts to appropriate water from the East Fork of Hood river show that long before November, 1895, efforts were made by early settlers to obtain this water. These earlier efforts were futile, due to the immensity of the undertaking and the lack of sufficient material resources in a pioneer community. Finally these earlier attempts culminated in the formation of the East Fork Irrigation Co., which made the filing involved in this case. It was apparent that the aim of all the settlers was to obtain this water for beneficial use to irrigate the well defined area of land known as the East Side."

Judge Wilson affirms the findings of the Water Board in allowing the irrigation concern its full claim, although at a time in the history of the ditch, apparently, it was owned privately by C. E. Bone, pioneer in orchard development. Judge Wilson says: "The deduction seems proper that the character was not changed by the sale and transfer to Bone. The irrigation system was in desperate situation at this juncture. It could go no further for lack of means. Failure was

imminent. Mr. Bone was willing to take it over and make a further attempt to get the water. But it appears that the question of expected or possible profits was not in the minds of those concerned. No profits were made, nor have any dividends ever been paid on any stock.

He therefore decided that the ditch concern does not come under the Legislative Act of 1891, but that the doctrine established by the case of the Nevada Ditch Co. versus Bennett applies. The principles of that case, according to the decision, are as follows: "First, that an appropriation must be made by one for the use of another.

"Two, that it may be made for use upon lands which he does not then own, or which he does not contemplate owning, and which he never does own."

"Third, that the original intention is valid and will support an appropriation afterwards completed, if it contemplates that the water filed upon for use upon certain lands then, definitely had in mind, and it be reasonably anticipated that when the diversion is ultimately completed and the water is ready for application to that land, or other land or uses which have been substituted for the originally considered and intended land, such land will be then, or within reasonable diligence thereafter ready to receive it."

"As to the diligence contemplated by the case of the Nevada Ditch Co., says Judge Wilson, "there is no question in the court's mind but that such diligence was used by the irrigating company, when all the exigencies of an undeveloped country are considered."

In the second contest the Pacific Power & Light Co. claims to have secured full title, through previous owners, the grants having been made by the United States government prior to the Desert Land Act, applying the principle of appropriation, to two tracts of riparian land. They claim the right to the full flow of the stream through their lands. The power concern declares in its contention that its requirements at certain seasons of the year will demand the entire flow of the river. The East Fork Irrigation Co., however, contends that the quantity of water that a riparian owner is entitled to is measured by the amount which was being actually applied to a beneficial use at the time appropriations are made by others or to such use as is reasonably immediate contemplation.

"If the claim of the power company be sustained," says the court, "it will take all the water in the stream and the canals of the irrigating companies will go dry. This court is unwilling to contribute to such results; neither does it believe such to be the law as applied to the situation in hand; nor does it think that the appellate court would so declare."

"In semi-arid regions the uses for which water is desired, and its consequent value, have so enormously increased in recent years, that the courts have been compelled, in order to be consonant with principles of justice, equity and right dealing, to modify earlier decisions and readjust them to vastly changed conditions. Courts have no power to legislate but situations arise which require the examination of equitable and liberal rules so far as it can possibly be done. Such a situation is presented in the instant contest."

The power company's maximum quantity of water at its Truckers Bridge plant is limited to 640 second feet, while it is awarded only 140 feet at the Powerdale plant on the Lower river.

In the third contest the Glacier Irrigation Co. maintains that the Oregon Lumber Co. was a trespasser on the East Fork of Hood river, in constructing a dam and appropriating water for use in driving an electrical generator providing energy for a sawmill at Deschutes. The lumber company, because of failure to post notice of its appropriation. The Water Board in its order of determination allowed the Oregon Lumber Co. 322 second feet of water and set the rights of the lumber company prior to those of the Upper Valley irrigating concern, and Judge Wilson confirms this finding.

The claim was made by the irrigating concern that the lumber company was making wasteful use of the water. On this point Judge Wilson says: "This case has been under investigation by the State Water Board for several years. The board has had the assistance of the state engineer and other technically experienced men; it has caused extended detailed investigations to be made of the duty of water, and the amount necessarily allowed for waste. As a result of these extended investigations, made by technically trained experts, it has established the amount of water for the lumber concern. For this court to set aside that finding and to substitute other figures would be to place the court's own judgment, not trained in engineering problems, over and above the judgment of men who have made a life study of intricate problems of this kind. It is the duty of the court to decide the law but should be slow to enter the realms where minds technically trained along complex and intricate mechanical problems govern. For such reason the findings of the Water Board on this phase of the question will not be disturbed."

In the final contest the decision of Judge Wilson is at variance, at the only point in the adjudication, with the State Water Board. The latter body set the acreage of the Mount Hood Water Co., the system of which covers land around Mt. Hood postoffice, at 1,331 acres. Judge Wilson declared the rights of power and irrigating concerns claiming adversely were prior and reduced the irrigable area to 433 acres, to protect, as he stated land already covered by water systems.

Geo. R. Wilbur, secretary and attorney for the East Fork Irrigation District who has been identified with the litigation since its origin declares that he is well pleased with the circuit court decision.

Ernest C. Smith, who represented various clients in the litigation, says that at the present juncture he does not desire to make any statement.

SCHOOL FAIR SEPTEMBER 24

PARKDALE STUDENTS WORK HARD

Gibson Says Indications Point to Exhibits of Great Merit—Teachers Aid Club Workers

Indications, according to County Superintendent Gibson, who throughout the year has been keeping tab on work of students in all school districts, point to the award of many honors to the boys and girls of the Parkdale district at the annual industrial school fair, which will be held at the high school Saturday, September 24. The Parkdale pupils, Mr. Gibson says, have engaged in the most varied club work of any school children of the valley. A garden and potato club, under leadership of W. O. Benthin, pastor of the Parkdale United church, are ready with exceedingly meritorious exhibits. The boys are endeavoring to secure seed certification of their potatoes before the fair is held.

Mrs. R. J. Melrose has charge of a girls' club engaged in sewing. A canning club is also doing good work. Last year the students of Cascade Locks captured more premiums at the school fair than any other school. While the project work of students of the Highway town this year is meritorious, it is declared that it is less extensive than last season. Manual training exhibits will be made.

The Frankton district is showing up well with sewing and poultry club. Mr. Gibson says the city school children, while they will display meritorious exhibits from class room work, do not participate to the extent they should in club work. He declares that the city children should engage in gardening.

The Barrett schools have a sewing club of about 30 members and an enthusiastic canning club. Odell has sewing, baking, cooking and gardening clubs.

The Mt. Hood district has a sewing club that is expected to shine at the fair. The Pine Grove district is engaged in some wonderful work in sewing and cooking. Mrs. F. B. Laraway has been in charge of the work. Mr. Gibson says the district has a club that is a wonder. Seventeen are members of the drawing club.

Oak Grove, with Mrs. Dorcas Harkat in charge, has a canning team that has been meeting semi-monthly. A poultry club will make a fine exhibit. John Annala, young rancher of the district, has been aiding the prospective exhibitors.

Mr. Gibson says that various individuals from all parts of the county will participate in the fair.

All exhibits must be left until the close of the fair.

The two boys and two girls securing the highest scores in club projects will be given free trips to the state fair. The winners of these trips will not be given other prizes on their exhibits.

The canning teams winning in the local contest will be given a free trip to the state fair to enter a similar contest for state-wide honors. The winners of this local canning contest will be given no other prizes on their winning exhibits.

The one or two room school having the best booth in this fair will be given a school prize of \$5. The three, four or five room school having the best booth will be given a school prize of \$10.

ODELL MARKET ROAD PAVING IS OPENED

The newly completed stretch of concrete paving laid in the Odell district by the United Construction Co. was opened to traffic Tuesday. The new paving, laid at the end of about a quarter-mile link placed last year, is approximately a half-mile long. An approximate three-quarters of a mile of concrete paving laid in the Pine Grove district the past summer by the Portland contractors was opened three weeks ago. Both sections of concrete surfacing were placed on county highways leading beside fruit shipping warehouses in two of the valley's heaviest producing sections.

The county court has already paid the Portland contractors \$37,838.84 on the past summer's road work, conducted under the Market Road Bill. Ten percent of the funds due were withheld until all formalities of acceptance were completed on the part of the county. The cost of engineering and incidental expenses on the two links of market road reached \$868.71. Carroll M. Harburt has had charge of the road work for the county.

WASHINGTON APPLE PRODUCTION HUGE

Nearly half the total apple crop of the United States this season will come from the orchards of Oregon and Washington, according to crop estimates from all the states of the union, a bulletin on which has just been sent out by H. E. Lounsbury, general freight agent of the O-W, R. & N. company.

The crop for Oregon, Washington, Idaho, Montana and California makes a lion's share of the total, and in Washington alone, which heads the list of states in estimated crop, more than one-third of the total for the United States is expected.

The crop for 1921 is estimated to be much lower than in 1920, owing to failures throughout the eastern states, and because of this condition the coming season promises to be an exceptionally prosperous one for apple growers in the Northwest.

In 1920 the total for the country was 26,350,000 boxes, and for this season it is estimated at 14,922,000 boxes. The 1921 estimate for Washington is 5,463,000 boxes, California 1,112,000, Oregon 953,000, Idaho 715,000 and Montana 117,000 boxes. New York ranks second in the list with 2,928,000 boxes, California and Oregon being third and fourth.

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