

The Evening Herald

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LONE STAR'S DANDER ROUSED BY SLANDER

(BY LONE STAR)

A letter to this office came
From a bird who's ashamed to
sign his name:
"Twas supposed to be an attempt at
wit.
Tho' if that's his best, he'd better
quit.

His scrawl was in the form of a
"Pome"

And to judge from his prattle he's
not all at home:

But many there are in this same sad
state

So we'll lend him our sympathy
'stead of our hate.

We have found in our writings both
here and there.

A few who have driven us near to
despair:

Bereft of brains—bereft of wit:
And in this bunch this bird seems
to fit.

He says our jokes are all "the bunk"
In fact our column's a "bunch of
junk."

But it's funny when all is said and
done

How widely it's read by everyone.

And many and great are the compli-
ments paid.

By old and young—by frisky and
staid:

And once in awhile you'll find a bird.
Like this one is—a stray from the
herd.

So let him babble, and let him rave.
And envy the brains that to others
God gave:

And as for the rest, why we'll have
our fun.

For as long as we write it the col-
umn'll run.

In his closing spasm he asks for a
style.

That once in a year will raise a
smile:

But our "stuff" just suits most folks
so it wouldn't do.

To change it to suit the "defec-
tive few.

And so in closing we're going to
state

That we sympathize with the poor
bird's fate:

'Tis strange how the gods will pass
some by

In the giving of brains, tho' I know
not why.

So my friend, when you come to our
column each night.

Why just pass it up—if you don't
think it's right:

For hundreds of others blessed with
good sense.

Will continue to read it, and still
pay five cents.

OPINION OF JUDGE HAMILTON IN SUIT

(Continued from page 1)

county commissioner acting with him
issued to plaintiffs three warrants of
said county in part payment on said
contract amounting in all to \$41,548.
The county court elect, upon assum-
ing the duties of office, immediately
notified plaintiffs of the repudiation
by Klamath county of said contract
so entered into between plaintiffs and
their predecessors in office. It ap-
pears that at that time plaintiffs had
not commenced the construction of
said building on lot 35. There was
some material placed by plaintiff on
the ground, and some purchases of
material made by plaintiff which
were so purchased for the construc-
tion of said building.

It appears from the evidence that
by suits of injunction instituted by
the direction or assent of plaintiffs,
Klamath county, through its repre-
sentatives, has been continuously en-
joined from in any wise interfering
with plaintiffs in the prosecution of
their work in the erection of said
building until its completion.

It is admitted that Klamath coun-
ty at the time of plaintiffs' contract
was indebted in an amount exceeding
the sum of \$150,000.

It also appears that the present
court commenced an action at law to
recover from them the sum of \$41,-
548, which it was alleged had been
wrongfully received by plaintiffs.

Plaintiffs commenced the present

CONTENDERS FOR AMERICA'S CUP



The challenger, Sir Thomas Lipton's Shamrock III, with which the
British baronet is essaying a fourth trial for the classic trophy. The
challenger won the first race of the series Thursday.



The Resolute got off to a good start Thursday and looked like a sure
winner, but snapped her halyards and was forced to withdraw.

suit to enjoin the said action at law,
and ask this court to give a judg-
ment against Klamath county for the
sum of \$92,675, which it is alleged
is a charge against said special court-
house fund.

It is claimed by plaintiffs that this
is the amount due on their contract
for having completed the courthouse
on said lot 35.

I take it as a proposition of law
too familiar to require quotation of
authorities, that even as against one
who is without knowledge of defects
going to the jurisdiction of a public
corporation to contract, that he is
charged with knowledge of the limi-
tations and restraints upon the power
of the corporate body to act.

In this connection it is one of the
requirements of the law that before
any tax shall be levied an estimate
shall have first been made of the
amount of money proposed to be
raised by taxation for the ensuing
year, and such estimate published
and opportunity for a full and com-
plete discussion thereof "allowed in
the manner hereinafter provided for.
The estimate herein required shall
be fully itemized showing under sep-
arate heads the amount required for
each department of government
and also for the construction, oper-
ation and maintenance of each pub-
lic utility, and shall contain a full
and complete disclosure of the con-
templated expenditures from the
money or moneys proposed to be
raised by taxation showing the
amount of each public expense."

Session Laws of Oregon, 1913, Chap.
234.

This statute, known as the bud-
get law, has received interpretation
by the Supreme Court of Oregon. In
State ex rel vs. Johnson, 86 Or. p.
107, it is held that a tax levied in

invalid where there is a failure to
comply the budget law; and to the
same effect is Oregon-Wash. R.
& N. Co. vs. Johnson, 87 Or. p. 243.
It is doubtless true that if a consid-
erable amount of money is to be
raised for construction of a highway
or structure in order to conform to
the spirit of the law and to fully in-
form the taxpayer, it should be men-
tioned.

It is clear in the instant cause that
at a date as far back as 1909 Klam-
ath county selected a site, the lot 10
in Hot Springs Addition, upon which
to build a courthouse and establish
a special fund for that purpose.
The location of this site then met
with opposition, and finally in a con-
tested suit found its way into the
Supreme Court of Oregon. In Mur-
dock vs. Klamath county, 62 Or. p.
485, in a decision rendered August
6th, 1912, in an opinion written by
Justice Bean, the location as then
made by the County Court of Klamath
County was sustained. Again the
right of the County Court to create
by taxation a special fund for the
erection of said courthouse, though
the general fund for the county was
in debt in excess of the constitu-
tional limit, was presented to the Su-
preme Court in the case of Oben-
chain vs. Daggett, supra, and in an
opinion by Chief Justice McBride
filed December 30th, 1913, the right
of the County Court to create said
special fund for the purpose of
building a new courthouse was up-
held. In construing the several sec-
tions of the statutes of Oregon, such
power was found vested in the Coun-
ty Court. Particular reference was
made in the Court's opinion to Sec-
tion 3475 L. O. L., which read as
follows: "When any moneys shall
have been collected or received by

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any officer for any distinct and spec-
ified object, no portion of them shall
be paid or applied to any other ob-
ject or purpose without due author-
ity, but shall be kept a separate fund
for such specified object." Of this
section, Chief Justice McBride says:
"It was evidently passed with the in-
tention that a County Court could
not under the pretext of providing a
fund for a specific purpose, such as
improvement of county roads, erec-
tion of a courthouse or jail, accumu-
late an amount of money in the
treasury and thereafter break faith
with the taxpayers by applying it to
some other purpose."

The budget law referred to has
made it yet more necessary that a
contemplated public improvement
shall be submitted to the taxpayers.
The record fully shows that the spe-
cial fund so created for the new
courthouse was to have been ex-
pended on the site referred to in Mur-
dock vs. Klamath county, supra, and
there has been expended in its con-
struction \$140,000.

There is in the evidence no pre-
tense of any other fund being cre-
ated. Nor is there a suggestion that
the matter of the abandonment of
the Hot Springs site was ever at any
time brought to the attention of the
taxpayers of Klamath county.

It appears from the evidence that

moneys of Klamath county have from
year to year since 1909 been collected
and received by the officers of said
county for a distinct and specified
purpose, to-wit, to construct a court-
house upon the site adopted in 1912;
that a large portion of said fund has
been so expended.

The contract entered into with
plaintiffs whereby said moneys so
remaining would be diverted to an al-
together different purpose, I find to
have been without authority of law.

It appears from the evidence that
at an early date after it became
known that the county judge and
commissioner of Klamath county had
entered into the contract with plain-
tiffs, the citizens of the county initi-
ated a recall election, and on the
22nd day of April, 1918, new officers
of Klamath county were elected. And
after the new officers were elected,
they immediately gave plaintiffs no-
tice that Klamath county would not
comply with the said contract. Nev-
ertheless, plaintiffs proceeded with
the work, and the officers of Klamath
county were by injunction proceed-
ings prevented from in any way inter-
fering with plaintiffs in the perform-
ance of the contract. Plaintiffs insist
that although the defendants con-
stantly refused to comply with the
contract and did not want the court-
house which they were building, yet

that they had the legal right to carry
out the agreement according to its
terms, and ask a court of equity to
direct specific performance. The
briefs filed have been exhaustive and
the subject has been ably presented
by counsel. I am, however, unable
to agree with this view. In Richards
vs. Manitowic and N. Traction Co.,
140 Wis. P. 85; 121 N. W. P. 738,
the law is stated as follows: "Only
two days had elapsed from the time
of giving and acceptance of the order,
and a large and substantial part, per-
haps the principal part of the con-
tract was then not performed and the
contract executory. There is no
doubt that the refusal of the defend-
ant to perform its part unless plain-
tiff would consent to a modification
was a total breach of the contract.
But notwithstanding the breach, the
plaintiff had no right to proceed and
perform the contract which was ex-
ecutory at the time of breach and re-
cover the full value of the completed
job. His remedy was to recover dam-
ages for the breach and proceed no
further with performance of the con-
tract on his part. The theory, obvi-
ously, of the appellant is that plain-
tiff after the contract was made had
a right to proceed and complete it,
notwithstanding the order of defend-
ant to proceed no further. This is

(Continued on Page 8)

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