

THEILER CASE REMANDED.

Supreme Court Reverses Decision of The Circuit Court.

John Theiler, appellant vs. Tillamook County, a case appealed from Tillamook County, which was a suit for damages, was reversed and remanded by the supreme court.

Theiler sued the county for \$1,000 damages to his land on account of a culvert and Judge Webster Holmes dismissed the case on the grounds that the complaint did not state facts sufficient to constitute a cause of action.

The Supreme Court's decision is interesting in other respects:

"The action of the trial court was evidently based upon Section 338 L. O. L. which, so far as important to a consideration of the question here involved, reads: 'An action may be maintained against and of the organized counties of this state upon a contract made by such county in its corporate character, and within the scope of its authority, and not otherwise.' Mr. Chief Justice Thayer in Grant County v. Lake County, 17 Or. 453, 460, in referring to a change in the statute whereby the words, 'and not otherwise' were added and thus became part of the language quoted, and also alluding another clause of the statute said: 'In any event, the said amendment must be construed in connection with said section 2239 (now incorporated as section 2861 L. O. L.) of the Miscellaneous Laws, which subjects a county to a suit on account of any matters arising out of its corporate obligations, whether created by contract or otherwise.' Section 2861 L. O. L. authorizes each county in the state, 'to make all necessary contracts and to do all other necessary acts in relation to the property and concerns of the county.' In the transactions of county business, the county court is empowered to establish county roads within the county, to do other necessary acts in relation thereto, and to provide for the erection and repairing within the county of public bridges upon any highway. L. O. L. 937, subdivisions 3 and 4. The authority thus conferred is amplified by section 5278 L. O. L.

"It will be seen that dominion over all public roads and bridges is vested by these provisions of the statute in the county court, in the exercise of which power, it is alleged in the complaint, the plaintiff's real property was damaged. The organic law contains guaranty as follows: 'Every man shall have remedy by due course of law for injury done him in his person, property, or reputation. Const. Or. Art. I, Sec. 10.

"In Eastman vs. Clackamas County, 32 Fed. 24, 32, Judge Deady in alluding to section 358 of our statute, when construed in connection with the clause of the constitution referred to, and in commenting upon such organic provision, observes, 'Whatever injury the law, as it then stood, took cognizance of and furnished a remedy for, every man shall continue to have a remedy for by due course of law. When this constitution was formed and adapted, it was and has been the law of the land, from comparatively an early day, that a person should have an action for damages against a county for an injury caused by its act or omission. If this then known and accustomed remedy can be taken away in the face of its constitutional provision, what other may not? Can the legislature, in some spasm of novel opinion, take away every man's remedy for slander, assault and battery, or the recovery of a debt? And if it cannot do so in such cases, why can it in this?'

"In Templeton v. Linn County, 22 Ore. 313, Section 358 of L. O. L. was again considered and it was held that the enactment was a valid exercise of the legislative power exempting the county from an action for damages resulting from an injury caused by failure to repair a public bridge. The vigorous dissenting opinion in that case of Mr. Justice Lord detracts much from the binding force of the conclusion reached by a majority of the court.

"In Mattson v. Astoria, 39 Or. 577, it was ruled that a charter provision of the City of Astoria exempting that municipality and its councilmen from liability for a defective condition of any street or alley was void, and that it was beyond the power of the legislative assembly to take from a person injured by a faulty street all remedy. That case is interesting for the reason that the opinion was written by Chief Justice Bean who concurred in the decision reached by Templeton v. Linn County, supra.

"In Batdorff v. Oregon City, 53 Or. 402, it was determined that the charter of Oregon City, exempting that municipality from liability on account of the faulty condition of any street, but not exonerating any officer of the city when an accident on the highway was caused by his wilful neglect or gross misconduct, practically denied a remedy to a person injured by a de-

fective sidewalk, and that such charter provision contravened Section 10 of Article I of the constitution of this state.

"Though a purely municipal corporation does not ordinarily sustain to a person injured by its negligence the exact relation of a quasi public corporation, it is believed that the analogy is sufficient to render a county liable in damages for a trespass upon private property when such invasion practically amounts to a taking of any part of the premises without condemnation.

"We conclude that the complaint states facts sufficient to constitute a cause of action and that an error was committed in directing a verdict for the defendant. The judgment is therefore reversed and the cause remanded for a new trial."

Attorney S. S. Johnson represents Theiler.

EMBEZZLER IS PUNISHED

Ex-Postmaster at Garibaldi sentenced to 13 months.

Charles F. Alexander, postmaster at Garibaldi for two years, pleaded guilty Tuesday before Judge Bean in Federal Court to a charge of embezzlement from the Government and was sentenced to serve at once a sentence of 13 months at the Federal Penitentiary at McNeill's Island. He is held at the county jail in Portland and will be taken North by an attaché of United States Marshal Montag's office within the next few days.

Alexander was indicted by the last Federal Grand Jury and was arrested on his return to Tillamook from San Francisco two weeks ago and taken to Portland for trial. It is said he went to San Francisco to raise money to make up the shortage. Friends came to his rescue and reimbursed the government to the amount of his peculations, about \$1500.

Because the losses were made up, a plea for leniency by J. J. Jeffrey, of Portland, and John H. Webb, of San Francisco, attorneys for Alexander, was successful. It was stated to the court, however, by United States District Attorney Reames that the ex-postmaster was also short in his accounts with the express company and the railroad, whose agent he was.

Alexander, who has been a timber-cruiser and in recent years followed fishing, said he could not tell where the money went and attributed the shortage to lax methods of bookkeeping. He admitted, however, that he was \$500 short in his accounts in January, 1914. Marked carelessness seems to have marked his accounting, for his books had not been balanced for eight months, it was said.

One method whereby the Government was defrauded was in collection of "C. O. D." parcel post packages, Alexander failing to remit the money to the postal department. When he went out of office a few months ago, the defalcation was discovered by his successor.

Tillamook Citizens Move Away.

Mr. and Mrs. Andrew Christensen, who recently sold their farm, located four miles south of town, to Mr. Paul Ebinger and son, John, have moved to Forest Grove, where they intend to make their home for some time.

Twenty-five years ago Mr. Christensen bought a one hundred and sixty acre homestead from Frank Harris. When he first bought it, the now productive farm was covered with timber, logs, stumps and brush. By hard labor and an optimistic spirit, Mr. Christensen changed this wilderness into a productive and profitable dairy farm.

Mr. and Mrs. Christensen had four children, Sidney, who passed away several years ago; Anna, who is married and living in Michigan; George, now studying mechanics in Portland; and Florence a delicate child now about eleven years of age. Sometime ago Mrs. Christensen took the little seven year old daughter, of her dead chum, to raise, and little Edith Quick will ever have reason to thank her kind benefactors for her pleasant home and other surroundings of life.

State has ordered 600 bushels seed to establish flax industry at State prison.

Portland—J. H. Henry will erect \$30,000 residence on Cornell road.

The Dalles—Knights Pythias to erect four story concrete lodge building.

O. W. R. & N. will spend \$700,000 on tracts and viaducts at Portland.

Crown Point, 22 miles from Portland on Columbia highway to have \$10,000 Chalet inn.

May 3 to 8 will be locks opening week for Celio and Oregon City canals.

A new law is offered by the Prohibition party and the Labor Federation, for election of representatives at large and not by district.

COURT REJECTS BIDS.

For Clearing Rights of Way on Sandlake, Bayocean and Garibaldi-Wheeler Roads.

The County Court, composed of County Judge, A. M. Hare and Commissioners McKimms and Owens was in session last week.

Attorney H. T. Botts was appointed deputy assistant prosecuting attorney for the present term of the circuit court, District Attorney T. H. Goynes asking for assistance on account of so many cases.

All the bids for the clearing of the rights of way on the Garibaldi-Wheeler, Sandlake and Bayocean roads were rejected.

Road Dist. No. 1

Table listing bids for Road Dist. No. 1, including names like F. Barnes, G. W. Wilks, F. B. Pike, L. H. Kenney, H. W. Klein, Wm. Chisholm, O. A. White, G. T. Dougherty, Wm. Banghman, Jack Howland, D. Cummings, Chas. Gates, H. W. Klein, Wm. Chisholm, O. A. White, G. T. Dougherty, Wm. Banghman, Dell Cummings, E. A. Worthington, Wm. Barker, Rosco Barker, John Wall, Albert Miller, E. Braunersthren, A. E. Rittenhouse, R. E. Myers, Harry Maynard, Aug. Sandberg, L. S. Keene, F. P. Hobson, Otto Shearer, Chas. Morgan, Mark Hobson, Manual Krumlauf, John Paquet, Hiram Perry, Hiram Crane, Martin Ripley, Henry Knighton, A. J. Fleming, Fred Paquet, Geo. Benson, John Langley, Frank Crane, C. V. Stoker, Geo. W. Phelps, Tillamook Bay Con. Co., Tohl & Anderson, Wheeler Lbr. Co., Wheeler Lbr. Co.

Road Dist. No. 2

Table listing bids for Road Dist. No. 2, including names like Alvin Blum, John Proctor, Fred Blum, B. E. Turner, Alfred Reynolds, John Blum, Peter Walker, Earl White, C. E. Walker, Will Turner, H. Schlappie, Coats Lbr. Co., C. M. Vidito, W. B. Alderman, Long & Co., Fred Burton, J. H. Hicks, Chas. F. Pankron, Myrtle O. Mills, A. McNair Co., Ed. Stasek, Tillamook Feed Co., H. B. Johnson, Russ Johnson, Willard Johnson, A. Darby, T. W. Lyster, Guy Vaughn, Robt. Neilson, C. S. Wells, Ike Wells, E. Benschmidt, A. B. Freeburg, N. J. Dye, Q. Pangborn, Frank Dye, Henry Nelson, Frank Dye, Dan Billings, Tom Kempster, W. Wilkins, O. Tveitmo, W. Baker, J. E. Eddy, Sid Travis, J. D. Matney, Ed Leifranco, P. L. Silvey, E. Bales, A. N. Erskine, Preston Williams, C. D. Grout, H. C. Witt, M. Furguson, O. C. Wood, Frank Pomronky, A. Beebeshier, E. S. Wheeler, J. S. Graham.

Road Dist. No. 3

Table listing bids for Road Dist. No. 3, including Long & Co., Lee Lyster, Fred Lyster, Tom Kellow, Loyde Kellow, U. S. Edwards, Glen White, Will Hudson, J. M. Baker.

Circuit Court

Table listing bids for Circuit Court, including Albert Schlappi, Daisy Schlappi, Mrs. Gervais, Wm. Brill, Geo. Phelps, D. A. Sisk, Jas. Campbell, Clarence Edner, Hegan Brkic, S. L. Woodward, Chas. L. Clark, Judson J. Spencer, W. H. Effenberger, Bradbury Batzner, A. L. Stiniger, W. S. Hare, E. R. Ayer, G. H. Poland, Fred Kabkee, Jos Durrer, W. E. Noyes, Erick Glad, H. Crenshaw.

Miscellaneous

Table listing miscellaneous bids, including City Transfer, Glass & Prudhomme, J. C. Holden, Homer Mason, A. J. Jimmerman, Jonas Olson, Burroughs Add. Mch. Co., Pacific Tel. & Tel. Co., C. B. Measor, Tillamook Headlight, King & Smith, Alex Anderson, T. C. Percy, B. D. Lamar, W. L. Campbell, E. T. Haltom, Jones-Knudson, T. E. Epplert, Chas. Wilks, Coast Power Co., Mutual Tele, Glass & Prudhomme, Tillamook Water Co., Frank L. Owens, Pacific Tel and Tel Co., Tillamook Herald, printing, Earl Ford, Barthold Barge Co.

County Poor

Table listing County Poor bids, including Mrs. A. E. McKune, W. D. Gladwell, Tillamook Meat Co., Nelson & Co., J. J. Spencer, Tohl & Anderson, Tillamook Feed Co., Rosenberg Bros., Tracy Elliott, E. L. Robertson, Tillamook Feed Co., Mrs. S. A. Clark.

Justice Court

Table listing Justice Court bids, including Arthur Darling, E. W. Stanley, E. W. Stanley, Wm. Powell, J. W. Thompson, Herman Rensner, E. W. Stanley.

Surveyor's Office

Table listing Surveyor's Office bids, including Mrs. John Boyer, Mrs. M. A. Meador, Ross Shreve, C. A. Dunn, Jas Baker, W. Anderson, W. Baxter, F. McKnight, C. S. Yach, L. A. Yach, F. Durschmidt, Wm. Durischmidt, Geo. Baxter, Ross Shreve.

Salaries

Table listing Salaries, including Frank L. Owens, J. C. Holden, Kathleen Mills, Vida A. Millis, J. E. Reedy, Homer Mason, H. Crenshaw, W. L. Campbell, W. S. Buel, Ellen B. Minich, Mary L. White, B. L. Beals, O. G. Swensen, A. M. Hare, B. L. Beals, Jr., Elmer Webb, J. C. Bewley, T. E. Epplert, C. A. Johnson, H. B. Millis.

THE EPISCOPAL CHURCH.

Services next Sunday at the Chapel in the Masonic Building, Holy Eucharist 11:00 A. M., and Evensong at 7:30 P. M. Everybody welcome. Sunday School at 10 A. M. Rev. F. O. Jones, Vicar.

Milker Wants Job.

Good Swiss milker would like to get a job on a ranch, either alone or with wife. I can milk any string of cows. John L. Linder, care of Henry Zurich, Mutual phone.

H. Melchior Meets With Accident.

Hubert Melchior had the misfortune to get a piece of steel in his eye while working in the machine shop this morning, and Dr. Boals advised him to go to a specialist in Portland and have it removed.

High School Notes.

The topics for discussion at the recent-Teachers' Business Meeting Monday evening were "Credit for the Work" and "Dancing." Credit for some work was discussed quite extensively, and the vote showed almost unanimous favor of giving credit for school work done at home.

Representative W. C. Hawley has sent the High School a complete collection of publications from the animal industry Bureau. These publications are being used by the class in dairy. Another set of publications from the Public Health Department is being used by the Social Biology class. The publications are only a part of the publications Mr. Hawley has sent to school this year, and the school feels very grateful to him for his courtes in providing them. The publications are all being catalogued and made ready for the library.

Last Friday morning Prof. Griffin, of the Oregon Agriculture College, and our County Agriculturist R. Jones gave the high school and the grades above the second grade interesting talks on "Industry." The third, fourth and fifth grades as one group have organized an industrial club, with John Snyder as president. The other group, sixth, seventh and eighth grades will organize soon.

The Tillamook Lime Product Co. has very kindly furnished the school gardens with the ton of lime. The garden work is progressing very well. Frank Ebbs, who was burned considerably about the face and hands while woting in the chemistry laboratory last Monday, is improving rapidly, and is expected back to school next week.

The basket ball game with McMinnville, Friday, March 12, has been called off. A game with Bay City has now been scheduled for that evening. This will probably be the last game of the season, for the boys are directing their attention to sea ball.

"The Professor's Escape," a very amusing affair indeed is the play which the Seniors have decided to give. A committee is now working on the cast of characters, and the play will be presented in the near future.

Garibaldi.

Mrs. Geo. Phelps is very critically ill. Her daughter, Mrs. Hays, of Arlington, Wash., who was called home, arrived Tuesday.

Mr. McMillan returned home on Wednesday, after a two week session as a jurorman in the circuit court.

Mrs. Boyd, of Chewelah, Wash., mother of Fred Miller who was drowned last week, arrived Friday. Miller's body has not been recovered.

Rev. Mr. Swanders, State Supt. of the Christian Church, held services in Shearer's Hall Friday evening.

Miss Dona McMillan was a week end guest at the Jacoby home, Bay City.

Capt. M. Smith has overhauled and put in first class condition, his boat, the cruiser Arab. It is now ready for deep sea fishing and for charter.

Chas. McMillan and Ivan Ivanovich were Bay City visitors Sunday.

A party of young people walked to Manhattan and back on Sunday afternoon.

Mrs. Boyd and Mrs. Fred Miller left for their home at Chewelah, Wash., Wednesday morning.

EAT VIERECK'S BREAD, TILLAMOOK BAKERY, At All Grocers.

A 15 Watt Mazda Lamp, On your front porch can be lit every night until midnight and register not over fifty cents per month on the meter.

COAST POWER COMPANY, Jennie Strong and Mrs. R. L. B... conducting sawmill at Peoria. Sutherland-Coles Valley electric railroad being promoted.

State architects office and salary of \$4500 abolished and official put on fees. Contracts for expending \$6000 on Teal irrigation tracts in Umatilla County have been let to Porter Bros.

Ship building plants on the coast are rushed with orders for new vessels. Fox sawmill at Noti has resumed operations.

Central Point has organized \$200,000 meat packing company. Thirty-six lawyers want new office of public defender created at Portland and other cities are to follow suit.

Portland flouring mills will erect \$20,000 warehouse. Frank Schmitt planing mill will erect large new plant at Portland.

Water board dropped two and cut salary of a third. Lakeport has a gravity water system from Clear Lake.

Governor Withycombe is keeping up the retrenchment work. Officials dropped and salaries cut are daily occurrences. Eastern Oregon expects big grain and fruit crop.

Ashland has substantial improvement under way. Nibley-Minnaugh sawmill, Wallows running with full crew. Coquille—river channel to be dredged to uniform depth of 10 feet.

Astoria orders three districts or streets hardsurfaced. Eugene conducting survey of home industries. Bridge to be built over north fork of Siuslaw between Acme and Florence.

Salem—Three Justices of Supreme Court will build new homes.

HARNESS advertisement with image of a harness and text: with the problem of buying Harness you will find it distinctly advantageous to come and do your select here. You will get the best qualities, the most thorough and conscientious workmanship and be charged the most reasonable price. We can supply single or double Sets or any single article that you may be in need of. W. A. Williams & Co.

DR. WENDT, Eye Specialist, Fits Glasses at Reasonable Prices. Guaranteed.

Administrator's Notice. Notice is hereby given, that the undersigned, P. R. Jackson, by order of the County Court of Tillamook County, Oregon, was on the 12th day of February, 1915, duly appointed administrator of the estate of J. A. Roberts, deceased.

Notice is hereby given to all teachers that applicants writing for teacher's certificates at the next teacher's examination, which will begin June 30, 1915, will be required to write in Physiology for a one year state certificate.

No applicant will be required to write on Physical Geography for any certificate. W. S. Buel Supt.