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MAIL TRAIN WIPED OUT BY SNOW SLIDE

DECLARE THE DITCH A NUISANCE

City Attorney declares the City of Salem Company Has Forfeited Its Franchise.

CITY HAD NO JURISDICTION

The Provisions of the Franchise Required the Company to Maintain a Substantial Cover Over the Race, and to Erect and Maintain Bridges, Which It Has Never Done.

In an opinion submitted to the city council last evening with relation to a resolution introduced by that body declaring a certain ditch belonging to the City of Salem Company a nuisance and providing for its abatement, City Attorney Corby, not alone declares that the company has forfeited its franchise, but also questions the authority of the council in the first instance to grant the franchise. The opinion is lengthy and in part is as follows:

Violated Ordinances.
"On December 19, 1882 the Common Council of this City attempted to grant a franchise to the City of Salem Company, a corporation to construct a water race limited to 25 feet in width at the top, along the center portion of High Street, Division and Front Streets, and Section 2 of the Ordinances granting such franchise required the said Company to maintain a substantial cover over the race, and to erect and maintain bridges and to restore the street, after making such excavation, to a good condition for travel all of which is required to be done in a good and workmanlike manner."

"It is apparent from a casual inspection of the said race that the same was never constructed according to the provisions of the Ordinance, and never has been maintained or kept within the limits thereof, and the banks have caved and washed away till in some places the race occupies nearly the entire street, furthermore the banks made by reason of the excavation appear to have been left without any attempt to comply with that portion of the Ordinance requiring the street to be reduced to a good condition for travel."

"Furthermore the project as an industrial movement seems to have been entirely abandoned. Every provision of the original grant has been violated to such an extent that if the said Company ever had any right over the said street, they have forfeited the same by violating all the plain terms and conditions of the franchise."

Beyond Jurisdiction.
"As a matter of law, however, no municipal corporation has any power or authority to grant a franchise along over, or across its public streets which does not comport with the use of such streets, by the public for road purposes. No principle of law is better established than the general principle, that in admitting obstructions to public streets, a municipal corporation must confine itself to the reasonable use of such streets for general traffic, and has no power or authority to establish or permit in any of its public streets that which will have the result to prohibit traffic, and destroy such street as a public thoroughfare. In the present case under consideration the franchise attempted to be granted amounts practically to an appropriation of the street to this Company, and if such would be

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THREATENED WITH FEVER

Gondokoro, March 1.—The people here today are wondering whether T. R. is disease-proof as well as accident-proof.

Soon after the Roosevelt party started down the Nile river yesterday several cases of African fever broke out among those who had been in close touch with the former president.

Dr. Torsch, the French missionary, who dined with Roosevelt yesterday, died of the fever today.

The district commissioner who was also active in entertaining T. R., was stricken with the fever, and is in a serious condition.

Reports from Kampala district say that the scourge developed there in the most serious form a few days after the departure of the Roosevelt hunting party.

Reports from Roosevelt today state that he continues to be in perfect health.

RADICAL PULPIT UTTERANCES

Resented at Eugene by a Plain Citizen Who Resents Offensive Preaching.

[UNITED PRESS LEASED WIRE.] Eugene, Ore., Feb. 28.—(Special)—J. N. Cole, a resident of the suburb of Fairmont, this afternoon slapped the face of Rev. D. H. Trimble, pastor of the Humphrey Memorial Methodist Episcopal church, was promptly arrested, arraigned before Police Judge Bryson, and fined \$20. Many wordy clashes have occurred as the result of the evangelizing being done here by Rev. French E. Oliver in a series of meetings, but this is the first active violence reported.

The affair took place on Willamette street, the city's busiest thoroughfare, and the altercation attracted considerable attention before the resounding smack crystallized matters. Rev. Oliver has been making radical statements from his pulpit, among them that he "would rather see a saloon opened in Eugene, than a Unitarian Church," that students and faculty of the University of Oregon who are outside the pale of orthodoxy are "rotten as hell;" that the local school board is a "bunch of jackasses" for not allowing religious exercises in the schools.

It is said the discussion between Rev. Trimble and Mr. Cole arose because of one of the statements of the traveling evangelist. Rev. Trimble was not much hurt by his slapping, but he felt no little chagrin. Mr. Cole promptly paid the fine assessed against him and went his way.

The University paper had this on Oliver:

"The evangelist who is holding forth in the big barn down on Tent street continues, with little regard for the fitness of things, to make suggestive remarks about the character and intellect of the university faculty and students. His influence might be greater with them if he would quit talking about the 'vengeance' of a supposedly loving God and attempting to appear scientific by referring to the cetacea (a kind of whale) as a land animal, and the zodiac as a star. So far as we know of no university student has been converted."

FORTY FEET OF SNOW ON TRACK FOR THIRTY MILES

Great Fears Are Entertained for the Thirty Passengers Reported to Have Been on the Train.

Everett, Wash., March 1.—The train reported wiped out by a snowslide today in the mountains has been definitely fixed as the Spokane westbound train, which has been stalled near Wellington since February 24, by Great Northern officials this afternoon. Great fears are entertained that all of the 30 passengers may have been swept to the bottom of the canyon.

WIRES ARE ALL DOWN.

Relief Train Carrying Doctors and Nurses Has Been Sent to the Scene of Slide.

Everett, Wash., March 1.—"Mail train stalled in mountains wiped out by snowslide today."

This broken message from the mountain was received at the Great Northern office at 11 o'clock this morning, and resulted in the immediate dispatch of a relief train with every available doctor and nurse and a small army of laborers to the mountains.

The train referred to is undoubtedly the Spokane local, westbound, stalled near Wellington since February 24. There are 30 passengers aboard. All other trains have passed the blockade. There is 40 feet of snow on the tracks for a distance of 30 miles, which would prevent any other train from even attempting to cross the mountains.

Every wire between here and Wellington is down, broken by the snows and slides which has stopped traffic for a week.

The operator who sent the message did not even give his station, and efforts to get his message have been fruitless. What train it is, for sure, and whether the passengers were carried down into the canyon below under tons of snow and debris, or any of the details are unknown. The Great Northern is taking no chances and are sending a relief train headed by a snow plow in the hopes of running the blockade to the scene of the accident.

The gulley into which the train was swept is reported to be 500 feet deep. It is rumored that the death roll will be heavy.

Late this afternoon it was reported that two trains instead of one were destroyed by the snow slide, but owing to the demolition of wire service, this could not be verified.

ROSS GRANTED STAY OF EXECUTION FOR 60 DAYS

A stay of execution for a period of 60 days was granted this morning by the supreme court to J. Thorburn Ross, who was convicted of the embezzlement of \$288,426.87 of the state educational fund, and whose conviction was recently sustained by the supreme court. The stay was granted for the purpose of giving Ross' attorneys an opportunity to perfect their appeal to the supreme court of the United States.

Ross was sentenced to serve a term of five years in the state penitentiary. The attorneys for the defense will base their appeal on the ground that the Ross was prosecuted by information, instead of an indictment preferred by a grand jury, article 5 of the constitution of the United States was violated. This article provides, among other things, that "no person shall be held to answer for a capital or other infamous crime, unless on presentment or indictment of a grand jury."

COLFAX, WASH., SUFFERING FROM SERIOUS FLOODS

South Palouse River Overflows and a Portion of the Town Is Several Feet Under Water---Bridges Washed Out and Rail Transportation Demoralized.

Colfax, Wash., March 1.—Colfax today is suffering from serious floods which have already done thousands of dollars worth of damage, washed out bridges and demoralized rail transportation.

The entire lower part of the city from Upton street north and also the entire south part of the city from Thorn street south is under water. The South Palouse river and what is known as Spring Flat creek are both raging torrents and the water is still rising. Several streets are under water to the depth of seven feet in places. That part

of the city known as Russian town is entirely at the mercy of both the north and south branches of the Palouse and several families have been rescued with great difficulty. So far no serious accidents or deaths have been reported.

The residence district along Perkins avenue is entirely under water. Business is practically at a standstill and the people are turning out to fight the flood.

Word has just been received from Pullman that the water is rising there rapidly and flooding the entire business portion of the city.

TOTAL LIST OF DEAD 19

Wallace, Ida., March 1.—Reports brought here today from the scene of the snowslide at Mace and Burke are that all the people caught in the avalanche have been accounted for, with the exception of three Italians. James Rogers, who was a member of the rescue party which started from Burke to the relief of the imprisoned victims at Mace, is the last to be taken from the debris. He died of his injuries last night.

The total list of dead is placed at 19. Thirty persons are suffering from injuries and shock, and it is believed that many of these will die.

The bodies of the dead are being prepared for burial today, and funeral services will be held in the opera house here at 2:30 o'clock this afternoon. All banks and stores in Wallace are closed and other business is suspended for the day out of respect for the victims of the terrible catastrophe.

Wallace, Ida., March 1.—People are getting out of the undamaged portions of the towns of Mace and Burke and are taking shelter in Wallace, the railroads transporting them free. The citizens of Wallace are opening their homes to them.

The only death today was that of Mrs. George Cooper, an elderly woman, who was rescued at Mace after enduring terrible hardships.

Fifty homes are buried beneath 30 feet of snow, earth, trees, stumps and boulders, which are packed as solid as ice. Property worth \$200,000 has been damaged and 1,000 miners are idle.

MICHIGAN DRUG CLERK GOES TO JAIL

Dashing Young Widow Is Said to Be Mixed Up in the Deal.

Portland, March 1.—Grant C. Carder, a druggist in the employ of the Owl Drug Company, who only a few days ago arrived here from Michigan, was arrested early today and lodged in the county jail on the charge of obtaining money under false pretenses. Carder's arrest followed a sensational interview between himself and his wife in a local hotel, the subject of which concerned a dashing young widow, said to have been present in the room when the wife came upon the scene. Pending the opening of the new drug store, where Carder was to be employed, he is said to have taken a fling at high finance. On the strength of a letter written on the stationery of a legal firm of Kalamazoo, Mich., addressed to Carder, stating that an aunt in Grand Rapids had committed suicide and left him an estate valued at \$30,000, he is alleged to have obtained from W. G. Souther, a real estate dealer, \$100. Subsequently Souther became skeptical and wired the local firm. The reply expressed ignorance of Carder's existence, and his arrest followed.

Notarial Commissions.

The following notarial commissions were issued today by the secretary of state: D. W. Bayshaw, Jacksonville; A. E. Nichols, Ironside; Ross A. Soward, Nyssa; L. D. Drake, Pendleton; E. H. Thompson, Bridal Bell; and Ida A. Sherry, Portland.

KREBS BROS. AWARDED JUDGMENT

Supreme Court Hands Down Decision in the Livesley-Krebs Hop Case.

FOURTH TIME IN COURTS

The Case First Started in 1906 in Judge Burnett's Court, Where the Jury Rendered a Verdict in Favor of the Krebs, and the Verdict Was Sustained in the Supreme Court.

The supreme court today handed down an opinion in *Livesley vs. Krebs*, awarding judgment to Krebs for \$4,000, in a long-contested hop litigation that has been through the courts four times in different forms. The suit was first begun by Carson & Cannon in 1906 in Judge Burnett's court where the jury gave them a verdict. From this appeal was taken and the verdict was sustained in the supreme court. The defendants, The Livesley Company, were not satisfied and brought an equity suit before Judge Galloway, securing an injunction against collecting the judgment of \$4,000. The case was tried on injunction proceedings before Judge Galloway, who dissolved the injunction, and from this decision the Livesleys again appealed to the Supreme Court, which in its present opinion sustains Judge Galloway. This is one of four suits over hop contracts between the same parties, altogether involving jury verdicts of \$17,000 in favor of Krebs Bros. There is still one case pending before the supreme court for \$7,000.

Five Other Cases.

The supreme court also rendered a decision in five other cases. In the case of *Hattie E. Mansfield et al. against J. L. Hill et al.*, an appeal from the court of Judge Galloway, the judgment of the lower court was modified and a partition of the property is ordered. This action was brought for the purpose of cancelling a deed made by Claud Mansfield, her husband, during his life-time to J. L. Hill, for a third interest in a quarter section of land; also to set aside a will wherein a third interest to the land was devised by Mansfield to his mother, Addie Thompson. Mrs. Mansfield, prior to this time has been awarded a third interest in the land when she was divorced from Mansfield. The ground upon which she sought to set aside the instruments was that Mansfield was of an unsound mind at the time of their execution. In the case of *Tillamook City against the county court of Tillamook county*, an appeal from the court of Judge Galloway, the judgment of the lower court was reversed. This was an action brought to compel the county court to pay over certain road taxes to the city which had been collected within its corporate limits and the decision of the lower court was for the plaintiff. The case of *J. C. Twichel against A. J. Risley*, appellants, suit from Douglas county, and brought to recover money paid out for the benefit of the defendant was dismissed.

An affirmation of the judgment of the lower court was made in the case of *Charles H. Chick et al. against J. T. Bridges et al.* from Lane county. This was an action to enforce the specific performance of a contract for the conveyance of real property.

An affirmation of the judgment of

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