

### ARRANGE TO GET A TRACK TESTING CAR

In order to carry into execution the provisions of a law passed by the last legislature authorizing the railroad commission to make inspections of railroad track scales, and at the same time to avoid incurring too heavy an expense on the state, the commission has entered into an agreement with the commission of the state of Washington to purchase jointly a track testing car.

The law was passed upon the recommendation of the commission as many complaints had come to it relative to the inaccuracies of the scales in use by the railroad companies, but it was powerless to act beyond calling the companies attention to the fact. Under the new law, however, the commission is vested with full power to act and with the testing car it will be enabled to make absolutely correct tests.

### ANOTHER BIG STRIKE IN JOSEPHINE

Grants Pass, Or., June 29.—Four mining men of Josephine county have just uncovered a wide ledge of oxidized ore bearing heavy gold values. The find was made three days ago near the western line of Josephine county, and lies one mile north of the recent sensational find on the Higgins Golden Dream property.

Two of the owners of the present discovery, C. M. Gage and G. S. Ross, were the men who uncovered the large body of rich ore and free gold on the Higgins mine. The owners of this latest discovery today sent a pack train in from Kerby to the property carrying supplies, and will enter at once upon development. This is the fourth bonanza gold strike in 60 days in this county, and is attracting mining men from as far away as Alaska.

### POLICE DEPARTMENT TO HAVE DESK MAN

Beginning the first of July the city police department will be provided with a desk sergeant and C. V. Nelson, now a guard at the state penitentiary, has been selected to occupy the place.

When Chief of Police Hamilton was inaugurated he asked for a desk sergeant but the council denied the request. Recently it was found necessary to put an extra patrolman in the district lying near the Southern Pacific depot, and the council granted the chief's request for an extra man. The chief heretofore has been compelled to use one of his regular patrolmen as desk sergeant but will now use one of them in the Southern Pacific district, and put Nelson on the desk.

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### OREGON SUPREME COURT DECISIONS

Full Text Published by Courtesy of F. A. Turner, Reporter of the Supreme Court.

#### Smith Meat Co. v. Oregon R. R. & Smith Meat Co. v. O. R. & N. Co., Multnomah County.

Frank L. Smith Meat Company, a corporation, appellant, v. The Oregon Railroad & Navigation Company, a corporation, respondent. Appeal from the circuit court for Multnomah county. The Hon. C. U. Gantenben, judge. Argued and submitted June 7, 1911. Cole & Cole for appellant. A. C. Spencer (and W. A. Robbins on brief) for respondent. McBride, J. Affirmed.

Plaintiff corporation is engaged in the butchering business in Portland, Oregon. The complaint alleges, in substance that about March 14, 1908, plaintiff caused to be shipped to it, live stock, intended for slaughter at Portland, that owing to the negligent operation of defendant's train the same arrived at Huron, Oregon, several hours later than it should have done, and that a washout occurred at the latter point preventing the train from proceeding further; that

if the train had not been so negligently operated it would have arrived at Huron and passed the place where the washout occurred without delay or detention on the route between North Powder and Portland; that the train and cars containing the cattle were returned by defendant to La Grande about 10 o'clock a. m. on March 15, 1908, when, without notice to or consent of plaintiff or the person in charge of the stock, they were unloaded into a yard entirely without shelter and covered with mud several inches deep, and kept there for three days without sufficient food and without any shelter or resting place; that the yard was an unfit and unsuitable place in which to keep the cattle, as defendant well knew, and that defendant neglected and refused to provide any place other than the yard in which to keep them and refused to allow plaintiff or the person in charge to provide any other place for them; that because of the alleged wrongful acts of defendant the cattle became greatly reduced in weight and depreciated in market value, to

plaintiff received the stock in Portland and slaughtered them within a very short time, making no claim for damages until July 10, 1908. The evidence tends to show a shrinkage in the weight of the animals, amounting in all to about 5500 pounds. The contract of shipment was signed "Davis Brothers" by C. E. Davis, and by defendant's agent at North Powder. C. E. Davis accompanied the shipment to Portland.

At the conclusion of plaintiff's testimony the defendant moved for a judgment of nonsuit which was granted and plaintiff appeals.

McBride, J. The judgment of the circuit court is correct. The evidence shows, without contradiction, that Davis Brothers were plaintiff's agents in buying and shipping the cattle, and their contract was, therefore, its contract and binding upon it; York Company v. Central Railroad, 3 Wall. 107.

The stipulation that a claim of injury shall be presented within 10 days and before the stock shipped shall have a reasonable stipulation on its face. "Transportation companies can only do business through employees, and the location of these, as well as the time of their employment, is subject to change. It is only fair that, in cases of this character, the corporation should be reasonably notified that a claim for damages would be insisted upon, in order that a careful inspection of the animals and timely inquiry into the conditions attending their transportation, may be investigated and the actual facts ascertained.

This is not a stipulation exempting the carrier from liability for negligence but one giving it an opportunity to ascertain whether its servants have been, in fact, negligent. Such stipulations have been frequently upheld by the courts: Atlantic Coast Line R. Co. v. Bryan, 109 Va. 523; Austin-Stehenson Co. v. Southern Ry. Co., 151 N. C. 137; Anderson v. Lake Shore & M. S. Co., 26 Ind. App. 196; Smith v. Railway, 112 Mo. 610; Wichita & W. R. Co. v. Koch, 47 Kan. 753; Wood v. Southern Ry. Co., 118 N. C. 1056; Southern Ry. Co. v. Adams, 115 Ga. 705.

In the case at bar Frank L. Smith, president of the plaintiff corporation, was personally present when the cattle were removed from the car and had ample opportunity to give the required notice and give no sufficient reason for not doing so. For this reason the court below was justified in granting the nonsuit. This view renders it unnecessary to pass upon the remaining questions so ably presented by counsel.

The judgment is affirmed.

plaintiff's damage in the sum of \$322.12; and that plaintiff was obliged to pay \$30.20 for extra feed for the cattle.

Defendant answered, admitting that the cattle were shipped to plaintiff on the date named, denying that plaintiff was the shipper, but alleging that the shipment received by them for plaintiff was the same shipment mentioned in the complaint. It denied all plaintiff's allegations of negligence, and admitted that the cattle were returned to La Grande about 9 o'clock a. m. of March 15. For a further and separate answer defendant alleged that on March 14, 1908, a co-partnership firm, doing business as Davis Brothers, of which C. E. Davis was one of the members, entered into contract in writing with defendant for the transportation of two car loads of cattle from North Powder to Portland by defendant, the exact number of which was unknown to defendant, was the same one mentioned in the complaint; that, in consideration of a rate of transportation granted by the defendant to the shipper, governing such shipment, the shipper and this defendant entered into a stipulation with respect to the conditions under which the shipment should be and was transported by this defendant. One provision of this contract is as follows:

"Unless claims for loss, damage or detention are presented within 10 days from the date of the unloading of said stock at destination, and before said stock has been mingled with other stock, such claims shall be deemed to be waived, and the carriers and each thereof shall be discharged from liability. Any carrier liable on account of loss or damage to any of said stock, shall have the benefit of any insurance that may have been effected thereupon. The rules, regulations and conditions prescribed by the carriers for the transportation of live stock, as evidenced by their published tariffs, classifications and circulars in force and effect, are binding upon the shipper. The signing of this contract by the shipper or his agent shall be conclusive and condition thereof by said shipper."

Defendant alleged that the shipment was transported by it without delay and with due care, but that on the evening of March 14th, an extraordinary and furious shower arose which continued all of the next day washing out a portion of defendant's track near Huron, and that, upon encountering the washout, it returned to La Grande with the train and that the stock were promptly unloaded into defendant's stock yard, with the consent of the shipper's agent; that the yard was entirely suitable for receiving and holding the stock under all conditions that could be reasonably anticipated by defendant; and that as soon as the injury to the road could be repaired defendant transported the cattle to Portland where they were unloaded and accepted by plaintiff, without any complaint or objection, on March 15, 1908; and that no claim was made by plaintiff for damage to the stock until July 10, 1908.

The evidence does not show any unnecessary delay by defendant in transporting the shipment but indicates that the delay was caused solely by the unusual storm and the consequent washing out of its roadway. There is some evidence tending to show that C. E. Davis, who was in charge of the stock for plaintiff and who accompanied the shipment, left the cars when they returned to La Grande and was away when the stock were being unloaded; that the corral was muddy and unsheltered and that some of the slats on the feed racks were broken or absent, causing waste of food, and that when he ascertained this he demanded that the stock be taken back to North Powder where they could be better cared for, but that defendant's agent did not comply with this demand.

Round trip tickets will be sold to all points on the Oregon Electric railway, minimum fare 35 cents and to all points on The North Bank Road (Goble, Ore., and points east) where the one way fare is \$6.00 or less, for one and one-third fare. Dates of sale July 1 to 4 inclusive, return limit, July 5th. 6-23-9t

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