

TRAIN ARRIVALS

No. 1—7.45 p. m.
No. 4—6.15 p. m.
No. 7—10.55 p. m.
No. 8—7.25 p. m.
No. 9—11.45 p. m.

Library of Congress

and in no larger quantities than...
of the lands which could be...
no more than one hundred...
acres should be sold to...
lease; but for more than...
five years, and should all be...
terminated by the admission of New Mexico...

DEMURRER NOT SUSTAINED IN LAND CASES

Judge Abbott in Written Opinion States That Contentions of Defendants Are Not Well Founded.

TERRITORY HELD TO BE MERELY TRUSTEE

Important Suits Involving Title of Tracts of Timber Land Purchased From Territory by American Lumber Co. and C. M. Carr.

Judge Ira A. Abbott today made public his opinion in the demurrer of the defendants to the petition in the cases of the United States versus the American Lumber Co. and Clark M. Carr, involving the sale of territorial timber lands.

The demurrer is overruled and the case will proceed. The defendants demurred to the petition on the grounds that the territory was a sovereign power and could not be sued by the federal government except in the U. S. supreme court or under a special act of congress.

The government officials are of the opinion that the territory was merely trustee of the lands and had not the power to dispose of them in the manner in which it is alleged the lands were sold.

The demurred to the petition brought out an intricate problem which the attorneys on both sides had a number of very interesting and rather heated arguments when in court on the demurrer.

The writer of the opinion of Judge Abbott, which shows how he views the points at issue, is as follows:

Territory of New Mexico, Second Judicial District, in the District Court for the Trial of Causes Arising under the Constitution and Laws of the United States.

The United States vs. The Territory of New Mexico and The American Lumber Company; No. 2. The United States vs. The Territory of New Mexico and The American Lumber Company; No. 3. The United States vs. The Territory of New Mexico and Clark M. Carr; No. 4.

Some of the questions raised in these cases are of such importance that I think it advisable to state my reasons for overruling the demurrers to the amended complaint.

The essential elements of the complaints are that land, which was granted to the territory of New Mexico by act of congress of June 21, 1850, has been sold contrary to the terms of that act by the territory, through its officers appointed for the purpose; that by collusion between those officers and the purchasers who made the deals, it was sold at a grossly inadequate price, and in quantities much in excess of that fixed for a single purchaser by the terms of that act; and that the territory has received the money so obtained. The defendants take the ground that the United States by said act and the locations or designations made as therein provided, definitely and completely parted with the land which is the subject of these suits, and now has no interest in it on which it can maintain this action.

That the United States, the grantor of the trust property, is a proper party to call in question the acts of the trustee, would seem to be settled for this court by United States vs. Des Moines & Co., 142 U. S., 510, 538.

But the defendants contend further that even if so much be granted this court has not jurisdiction because the territory of New Mexico cannot be sued in a court of the United States, without its consent, to answer to a suit of the United States, is a proposition which if the researches of the able counsel in the cause are to be considered exhaustive, the subject, has in addition to its intrinsic importance the interest of complete novelty.

The question could not arise directly under the constitution, because the word "territory" there used obviously meant the lands of the United States, United States vs. Gratiot, 14 Pet. 537. And when by the basic act of the government, defendants assert that New Mexico is a "sovereign" political body, whether it is so or not is a question of words rather than things, except in the case of a treaty, which the court is to draw from the alleged fact of its sovereignty, that it is in pari materia with the states, and so can be treated as a state for the purposes of the United States. The word sovereignty has, however, come to be one of elastic meaning. In strictness it means ultimate authority, supreme and uncontrollable, giving a complete right to govern. In that sense, however, there is no sovereign authority in the United States. The states have, but "qualified" sovereignty, which is limited by the federal government, 17 Cal. 199. And the federal government is from time to time made sensible of the constitutional limitations which restrict its power over its citizens. But the original states were sovereign prior to the constitution and remain so except as they gave up to the general government certain specified attributes of sovereignty, some of the usual attributes of sovereignty. The partial sovereignty which they retained they cannot be deprived of by legislative action.

The states since admitted to the union are on precisely the same footing as the original ones. Between the states and the territories there is a fundamental difference. The rights of the former are grounded on the constitution; the latter, as governments, have no constitutional rights whatever, although its citizens doubtless have personal rights under the constitution of which congress could not deprive them. They are legislative bodies, and their legislative power is limited by the constitution, U. S. S. 1, 43, 44. They are the creations of the federal government, on which even their existence depends. Their rights are limited by the acts creating them and may be nullified at will by their creator. Their relation to the general government is much the same as that which counties bear to their respective states." Clinton vs. Englebrecht, 13 Wall. 434. Their political rights, as the court said, in Murphy vs. Ramsey, 11 U. S., 44, 45, "are franchises which they hold as privileges of the congress of the United States." Such sovereignty as they may have can bear but a slight analogy to that of a state. It is true that in Kawanauboa vs. Polyblank, 205 U. S., 349 (1906), the court held that Hawaii could not be sued against the United States in a court created by a law of the United States for the trial of such causes. U. S. Rev. Stat., Sec. 1919. Organic Act, U. S. S. vs. Texas, 143 U. S., 621, 641. The inquiry, then, is whether congress has by fair construction of its acts made New Mexico answerable to the courts of the United States in an express language so provided is conceded by counsel. Recurring again to the nature of the territorial government as "qualified" rather than constitutional, we shall find that it falls under the head of municipal, or as they are sometimes called, political corporations which are in general the institutions created by the sovereign.

That is very far from holding that a territory cannot be made a defendant against its objection in a suit by the United States in a court created by a law of the United States for the trial of such causes. U. S. Rev. Stat., Sec. 1919. Organic Act, U. S. S. vs. Texas, 143 U. S., 621, 641. The inquiry, then, is whether congress has by fair construction of its acts made New Mexico answerable to the courts of the United States in an express language so provided is conceded by counsel. Recurring again to the nature of the territorial government as "qualified" rather than constitutional, we shall find that it falls under the head of municipal, or as they are sometimes called, political corporations which are in general the institutions created by the sovereign.

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(Continued on Page Four.)

ALBUQUERQUE CITIZEN

"WE GET THE NEWS FIRST"

ALBUQUERQUE, NEW MEXICO, FRIDAY EVENING, SEPTEMBER 20 1907.



CONGRESSMAN NICHOLAS LONGWORTH. MRS. NICHOLAS LONGWORTH.

THE LONGWORTHS HAVE OIL TRUST HAS EARNED \$900,000,000 IN 25 YEARS

Nick and Princess Alice Were Travelling Very Much Incognito. Rockefeller's Stock Worth \$109,000,000 With Others in Proportion.

CONGRESSMAN SAYS NO THIRD TERM FOR TEDDY

Important Papers Held by Prosecution

New York, Sept. 20.—The accountants for the government are still engaged on the records of the liquidated trustees and the ledger obtained from the Standard Oil company and while the examination has not been fully completed, it is said today that the books show that since 1882 to the present time the oil combine has earned between eight hundred and nine hundred million dollars.

Some of the Standard Oil company books wanted by the government counsel engaged in these proceedings toward the dissolution of the corporation, have not yet been produced, but several important books have been forthcoming. The agreement of 1882, signed by most of the men now in the front ranks of the Standard Oil company ownership and management, was put in evidence by Frank B. Kellogg, the government special counsel, and its authenticity was admitted by the company's lawyers.

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HINDU RIOTS REFERRED TO DEPARTMENT OF STATE

Gov. Mead. of Washington. Says Orientals Are Being Protected.

Olympia, Wash., Sept. 20.—The disorders at Bellingham several days ago, which resulted in the intimidation of the Hindus and caused their departure from that city, have been brought to the attention of the state department at Washington through a note from the British ambassador.

SAN BARNARDINO IS SLIGHTLY SHAKEN

An earthquake shock that brought the residents of this city into the streets in alarm and caused a general stampede in the arrangement of many households was experienced here last evening. The direction of the shock was southeast to northwest. In the mountains the shock caused great loss to property as if whipped by a tempest. No serious damage is reported.

CHINA PREPARING FOR PARLIAMENT

Peking, China, Sept. 20.—An imperial edict was issued today authorizing resolutions for the establishment of a foundation for a parliament.

WEATHER FORECAST

Denver, Col., September 20—Showers tonight. Saturday fair.

NUMBER 221

FORTY ARE KILLED IN MEXICAN CENTRAL COLLISION

Freight Crew, Alleged to be to Blame, Left Scene of Accident Immediately.

ALL DEAD EXCEPT ONE ARE NATIVES

Injured List Is Large—Passenger Train Was Crowded With People Returning From National Festas at Their Capital.

El Paso, Texas, Sept. 20.—Forty persons were killed and thirty-four injured in a collision yesterday evening at Encarnacion de Dies, fifty kilometers south of Aguas Calientes, between the southbound El Paso express and a northbound freight on the Mexican Central railroad. All the killed and injured except Engineer McFarland were Mexicans who were in the day coaches, which were filled with people returning home from the national fiestas. The trains met on a curve. The freight crew, who are charged with disregarding orders, have disappeared and are said to be trying to escape from the country.

Tramway to Blame. This wreck was the worst in the history of Mexico, and the government has already begun a stringent investigation into its cause. It is said that the freight crew believed that there was sufficient time for the freight train to make its siding nine miles away and toward which the passenger train was speeding from the south. The freight pulled out and when only a few miles were traveled, the passenger train was seen tearing down toward the freight. Unable to avert the wreck, the engine leaped and fled immediately, while the conductor and brakemen also disappeared.

Scenes around the wreck were awful. The two heavy engines met at almost full speed, neither engineer having seen the other. It took more than three hours to get the wrecked train to the siding and to attempt to stop. The passenger engine being the lighter, was thrown into the air, falling on top of the freight locomotive, which tore on, pushed by its heavy train, through the mail and baggage cars into the day coach. The mail and baggage cars and day coaches were reduced to kindling and dead bodies were thrown in every direction.

Hundreds Were Unconscious. The shock and fright caused hundreds of the passengers to faint and when the injured were brought to care for those who were dead and dying, it appeared that there must not be less than a hundred dead, but the list now shows forty dead and thirty-four badly injured, while nearly every passenger was more or less hurt. Engineer McFarland stuck to his engine and was found inside the cab dead. He is thirty years old.

Bodily Mutilated. The dead were badly mutilated, and it is hardly possible that more than a few of the bodies will ever be identified. So great was the shock of the collision that a number of passengers had their heads and bodies mashed between the wreckage and several had their limbs pinched off. Of the injured, it is probable that half will die.

Relief Trains Sent. Relief trains were dispatched from Aguas Calientes and other points, with surgeons, railroad officials and appliances for caring for the dead and injured, most of whom were taken to Aguas Calientes.

DOCK WORKERS HAVE RETURNED TO WORK

Galveston, Texas, Sept. 20.—The strike of the Southern Pacific dockworkers ended last night. One steamship company had 250 negroes at work and was loading more daily. At the solicitation of a citizen's committee, the strikers, seeing that they would be replaced by colored laborers, returned to work at the old wage schedule.

MAJOR MAHOOL IS ELECTED PRESIDENT

Norfolk, Va., Sept. 20.—Major J. Barry Mahool, of Baltimore, Md., was unanimously elected president of the league of American municipalities today. Former President Dunne, of Chicago, was presented with a handsome loving cup on behalf of the convention.

VATICAN CLOSELY GUARDED BY TROOPS

Rome, Italy, Sept. 20.—This being the 37th anniversary of the occupation of Rome by the Italian troops and the fall of the temporal power of the papacy, all the armed guards in the vatican were detailed to watch the entrance to the apostolic palace or patrol the garden and courtyard. Considerable anxiety is being felt regarding the possibility of hostile demonstrations in view of the recent displays of anti-Catholic feeling, the government in order to prevent outrages, has caused the vatican to be guarded night and day by troops.

PREACHER IS DRAGGED ACCUSED OF TORTURING AN AGED WOMAN TO DEATH

Colorado People Whipped Minister Who Was Openly Brazen. Parhamites Tried to Drive Evil Spirits of Illness From Her Body.

SHE DIED UNDER THEIR HEROIC TREATMENT

Chicago, Ill., Sept. 20.—Five persons, members of the sect of Parhamites, are under arrest in Zion City accused of torturing to death Mrs. Letitia Greenhaugh, aged sixty-four, a cripple for the past twenty years, in showing their belief in the religion they profess. Those arrested are a son and a daughter of the deceased and three others. The Parhamites believe that sickness is an evidence of the possession of the body by evil spirits and the accused determined to exorcise the evil spirit from Mrs. Greenhaugh. They worked over her for hours, twisting her limbs and neck. She died under this treatment after enduring great agony.

Protest Their Innocence. The son and daughter of the dead woman protest their innocence of any intention to harm her and insist that they did their best to alleviate her pain by driving out the spirits which infested her body but which were too firmly imbedded for their efforts. They refused to secure medical or surgical attendance for her and when neighbors insisted that a physician be called in, they ordered them from the house. The police for some time have been watching for an opportunity to put an end to this practice among the Parhamites, which they believe has been the cause of a number of deaths among the enthusiasts.

For More Than a Year. It is charged that Rev. Harsha and Miss Schumacher have been living together for more than a year at Miss Schumacher's ranch near here. Rev. Harsha has a ranch just across the river, where his aged wife and two children, a boy and a girl in their teens, live. The minister's wife, while knowing of the relations between her husband and Miss Schumacher, has apparently not made any serious objections. To friends who have spoken to her about her husband's actions she has merely replied: "Wife is Quiescent."

Wife is Quiescent. "Miss Schumacher and my husband think a great deal of each other, but I do not believe the bad stories I have heard about them. They are associated in business together and have interests in common. She is rather nervous, and it is not right for a young girl to live alone, so I do not object to Mr. Schumacher staying on her ranch. I do not believe there is anything wrong between them."

ROOSEVELT ASKED TO END TELEGRAPH STRIKE

Union Officials Held Conference With President at Oyster Bay. Oyster Bay, L. I., Sept. 20.—Whether the striking telegraph operators have appealed to President Roosevelt to arbitrate the question involved in the strike could not be ascertained at the president's office today. Secretary Loeb declined to either affirm or deny the report that Perry Thomas, deputy vice president of the Commercial Telegraphers' union, and Daniel I. Russell had visited the president at Sagamore Hill Wednesday, remaining with him for two hours.

CHINA PREPARING FOR PARLIAMENT

Peking, China, Sept. 20.—An imperial edict was issued today authorizing resolutions for the establishment of a foundation for a parliament.