

RAILROAD TRAIN HELD UP

South Pacific Road Near Eugene, Oregon

Express Messenger Successfully Detained as Against Dynamite-Engineer More Pliable.

Portland, Or., Oct. 23.—The north-bound overland express train on the Southern Pacific was held up by two masked men 15 miles south of Eugene at 1 o'clock this morning.

The robbers opened the express car with dynamite, but secured no booty, having been driven off by the express messenger.

The only booty secured was one registered mail pouch. Two men boarded the train at Cottage Grove, and a short distance north, near Sagle, got out of the express car and made the engineer believe a short distance.

The messenger C. R. Charles, who was in the car, had made up his mind to stay there. The robbers ordered the messenger out of the car, but he determinedly refused to come.

The messenger said nothing. When the desperadoes compelled the engineer to throw into the car a stick of dynamite, with a lighted fuse, the messenger grabbed it and put out the fuse.

The next attempt to enter the train was made by the robbers, who were compelled to retreat through the door, the robber attempting to gain admittance by using a shotgun to advantage.

The robbers would attempt to follow the messenger into the car. Finally the robbers turned their attention to getting away with what they could from the mail car.

The passengers were not molested. Engineer Bert Lucas told an interesting story of the robbery. He said: "I first heard the command to show up hands to the fireman, and he did not at first comply I urged him to give in, at the same time showing up my own hands, as I saw the way in the hands of the robbers leveled at me."

The robbers were not molested. Engineer Bert Lucas told an interesting story of the robbery. He said: "I first heard the command to show up hands to the fireman, and he did not at first comply I urged him to give in, at the same time showing up my own hands, as I saw the way in the hands of the robbers leveled at me."

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DECISION WAS RENDERED

By Justice Dugas in Case Involving Large Sum

Being That of Canadian Bank of Commerce vs The Syndicate Lyonnaise Du Klondike.

Yesterday afternoon Mr. Justice Dugas rendered judgment in the case of the Canadian Bank of Commerce vs. the Syndicate Lyonnaise du Klondike and Joseph Barrette, the decision being given on a motion for summary judgment argued at great length Monday week ago.

The amount involved aggregating \$167,500. Of the sum \$75,000 was paid in cash and it is the deferred payment of \$92,500 that is now sued upon. In resisting the motion the defendant company filed a number of affidavits containing some rather

startling allegations as to misrepresentations said to have been made by Barrette to the company's agent in effecting the sale. By the decision of his lordship the defendant company is permitted to enter its defense upon certain conditions within a specified time or judgment will be entered against it.

The defendants are sued upon a promissory note, signed by the defendant company, (represented by its agent, Mr. Louis Paillard, under a power of attorney filed,) to the amount of \$92,500, payable to the order of the other defendant, Joseph Barrette, and endorsed, before maturity, in favor of the plaintiff, which note bears interest at the rate of six per cent per annum.

The defendant company having appeared, the plaintiff now moves to have the appearance struck out and judgment entered for the amount of the note with interest. This motion was heard at the special instance of the parties and being resisted, the affidavits of both parties, with the cross-examination of Mr. Paillard and Mr. Tarut, disclose the following facts:

"On the 19th day of January, 1901, the defendant Joseph Barrette mortgaged to Henry T. Wills, bank manager, certain mining properties to secure several advances in money previously made. On the 21st day of June, 1901, the same defendant, Joseph Barrette, having sold, according to the affidavits (though this bill of sale is not produced) to the defendant company, represented by its agent, under power of attorney, Mr. Louis Paillard, amongst other things, the same mining properties for the sum of \$167,500, on account of which \$75,000 was paid in cash, said defendant company on the same day by a separate deed, mortgaged the same properties to the said Joseph Barrette for the amount of \$92,500, alleged to be so much then paid by him to the mortgagee. This amount was to be paid on the first day of October, less \$150, should the mortgagee be unable to obtain a good title to an undivided one-half interest in creek placer mining claim No. 1 on Caribou creek, \$1,000 should the mortgagee be unable to obtain a renewal of the upper half, left limit, of No. 28 Eldorado creek, and \$35,000 should it be found that there is still an equity in one J. R. Currey and one E. Willett, to creek placer mining claim No. 9 above lower discovery on Dominion creek.

The note in question is alleged to have been given at the time of the passing of this last mortgage, on the 21st of June, though it is dated the 22nd of June. It contains the declaration that it is collateral to the

other hand, persists in believing that he was empowered to make the deal. At all events, the latest instructions were not to pay the \$35,000 unless good titles were produced to claim No. 9.

The defendant company went immediately into possession, not only of the claims sold, but also, of chattels included in the sale, and which consisted of wood, tools, hay, liquors, cigars, machinery, horses, vehicles, etc., which they value at \$10,000, and which have been used in part since they have, besides, taken from the claims sold to the amount of \$45,000, at an expense, they allege, of \$39,000, leaving them a profit of \$15,000.

"There is no doubt that misrepresentations, such as those alleged by the defendant company, also the defects in the titles to some of the claims, could be made the basis of a good defense. As to the note itself, bearing on its face the fact that it was given as collateral security, there might be questions of law which it would be unfair to prevent the defendant company from raising before the court, for, although there are strong authorities which declare that a note which bears on its face that it is given as collateral security, may be or is negotiable, and that according to Byles on Bills of Exchange, page 14, 'The principle is often followed in England as offering a more speedy remedy in cases of default of mortgages, bills of sale, etc., and that they may be valid and binding though the instruments which they accompany be not so.' Yet there are others which seem to hold to the contrary, and it remains to be seen what interpretation should be given to sub-section 3, of section 52 of our Bills of Exchange act, which declares that 'a note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell and dispose thereof.'

"The question might also be raised, as to how far the plaintiff, under the circumstances, had notice of the facts alleged against the defendant. Barrette should be proven. But, whilst I feel it my duty to permit the defendant company to enter into its defence, yet, I think I have to give to the plaintiff the protection which I believe they are entitled to under the circumstances, that is, to impose terms to the defence.

"A feature which adds very heavy weight to the reasons of the determination to which I come in imposing terms with a leave to defend, is that the defendant company (which is a foreign company, though duly registered at Ottawa and authorized to transact business in the Yukon territory) did, through its manager and agent, Mr. Paillard, at or about the

time that the note and mortgage became due, withdraw from its bank in Dawson the amount of \$50,000, which Mr. Paillard sent to France, in order—as he very openly admits—to avoid garnishment of the same. This is an action, which, in the minds of the company defendant and Mr. Paillard might be considered perfectly legitimate, but which raises a suspicion before a court of justice.

"Taking, therefore, into account what has just been said, that is, the fact that the defendant company is a foreign company; that it has made away with whatever funds tangible it has in the territory, with the avowed purpose of avoiding the execution of our laws; that it is in possession of all the mining property sold, as well as of the chattels, a good portion of which have been disposed of; that it has continued, until lately, working some of the claims sold, taking good therefrom to a large amount, thereby wasting and diminishing the value of the properties purchased; that it still remains in possession of the whole notwithstanding the fact that the authority of its representative here is questioned; that further waste may happen, and, lastly, that all the misrepresentations alleged, with but a very limited exception, are based

FIRES IN PACKING PLANT

Chicago, Oct. 23.—Fire attacked the packing house of the G. H. Hammond Packing Company at Hammond, Ind., tonight, and within an hour gained such headway that the destruction of the plant was feared.

The Hammond fire department and the private fire department of the packing company were unable to cope with the flames, and an emergency call was sent to Chicago and South Chicago fire engines. From the Chicago department were loaded upon a special train on the Port Wayne road and hurried to the burning district. Aid was also sent from South Chicago.

The fire began at the south end of the plant, in an old frame house used for the best-killing department. In an hour the car shops, oiling rooms, best killing department and blacksmith shops were destroyed. It then seemed that the fire had burned itself out, but in a few minutes the four-story brick building containing the cooling rooms, one of the company's largest buildings of the plant, was burning.

The fire was gotten under control at 11:30 o'clock, after four departments of the plant had been destroyed. Loss, \$500,000.

The packing company's plant covers fifteen acres. Eighteen hundred men are employed in the cooling department. The company has branches in South Omaha, St. Joseph, Mo., and Kansas City.

"Send a copy of Goetzman's Souvenir to outside friends, a complete pictorial history of Klondike. For sale at all news stands. Price \$2.50.

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mostly upon hearsay evidence, I believe that I am in duty bound to permit such defense only upon the defendant company within fifteen days paying into court the whole balance of the purchase money, less \$35,000 and \$150, which represents the values fixed by the parties for claim No. 3 and claim No. 1 on Caribou, this to abide the result of this case. Otherwise judgment will be entered in the meantime for the same amount with costs.

"Reserve is made in favor of the plaintiff to make a further application as to these two last named amounts and to adjudge thereunder should the plaintiff think fit, according to the future events of the case. It may be said that apparently no more objection is made about the Eldorado property. This is why I take no notice of the objection to pay the \$1,000 fixed as the value thereof. "I feel the more safe in coming to this conclusion by the fact that up to a few days before this action was taken, and at about the same time the money was due, the defendant company, by its agent, Mr. Paillard, declared itself ready to pay the sum due if the plaintiff and Mr. Barrette would consent to give them a quit-claim for the whole. I am, besides, very strongly supported in these views by many judgments under similar circumstances."

HOTEL FIRE

French Lick, Ind., Oct. 23.—Fire broke out in the bath department of the French Lick Springs hotel this morning and caused a panic among 200 guests. All escaped amidst great excitement. The fire was put under control by the hotel fire department and two hours after the fire broke out the guests were back in their rooms. Loss about \$12,000.

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WILLIS DISCLOSES

Wills discloses that since further advances were made to the said Joseph Barrette by the plaintiff, and that he is now indebted to them in the sum of \$67,314.92, for which they hold, as security, the mortgage in question as well as the said promissory note. The plaintiff being holder of that note must, therefore, in the event of recovering the full amount thereof from the defendant company, be held trustee for the other defendant, Joseph Barrette, as to the difference between the amount actually due them and the amount of the note.

"The defendant company in resisting the motion have produced the affidavits of Mr. Louis Paillard and Mr. Alfred Tarut, by which they disclose what will be the nature of their defense and which may be summed up as follows:

"1. That before making the sale and during the transactions which took place in the meantime, misrepresentations were made by the defendant, Joseph Barrette, inasmuch as he declared that he had taken \$16000 worth of gold from hillside claim No. 12, whilst he had only \$800.

"2. That he had worked out a certain place in creek claim No. 32 of only about 800 square feet of ground whilst he had actually covered 5000 square feet.

"3. That he represented, that the pay on the same claim was even from time to time, whilst there is only a small pay streak thereon.

"4. That he represented that claim No. 9 produced \$20,000 worth of gold, whilst the output was only \$11,000.

"5. That he represented that the output of creek claim No. 32 had been \$120,000, whilst it had been only \$50,000.

"6. That he represented that in a out adjoining claim No. 12 pay had been found, whilst colors of gold only had been found.

"7. That he falsely represented that claim No. 32 would yield at least \$400,000; that in one shaft on the right limit of said claim he falsely represented that he had coked and taken out in one hour and a half \$25.

"8. That he further represented that he owned all the tools upon claim No. 32, whilst all did not belong to him.

"9. It is further pretended that they objected to sign the note in question which was asked from them only after the indenture of mortgage had been signed by them to Barrette, and that it was only upon the representations, made by Mr. Clark, who they allege was acting for the plaintiff interested in the transaction as above mentioned) that the note was not to be negotiated nor acted upon.

"As the argument it was strongly

urged on behalf of the company defendant that this transaction was not authorized under the power of attorney held by Mr. Louis Paillard, though, referring to the same I find that, although Mr. Paillard is not authorized to borrow over one hundred thousand francs without the special authorization of the company, his powers otherwise are unlimited, whether acting jointly with Mr. de Silans, (one of the directors named therein) or separately.

"The mortgage, it is true, declares that it is given for money paid by Barrette to the defendant company, but, in fact, it is for a balance of the purchase money.

"The cross examination further discloses that the directors of the company did not approve of the transaction, and even allege that Mr. Paillard went beyond his powers. I can not say whether there is an entire repudiation of the same as it is contained in two letters received by Mr. Paillard, which, I regret to say, cannot be produced, they having been mislaid in the dealings between advocate and client.

"Secondary evidence was allowed, and from what I can infer there is a disapproval, though I cannot say whether or not it is an entire repudiation. Mr. Paillard, on

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