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WEDNESDAY, JANUARY 4, 1905. SALT LAKE CITY, UTAH.

FIFTY-FOURTH YEAR.

CAPTURED CITADEL OF PORT ARTHUR.

Over the Russian Stronghold Now Floats the Flag of the Rising Sun.

THE LATE ENEMIES FRATERNIZE

Entre Garrison and Non-Combatants Will March Out of the City Tomorrow.

OFFICERS TO BE TAKEN TO DALNY

Thence They Can Go Where They Choose—Prisoners of War Will Be Sent to Japan.

Headquarters of the Japanese Third Army at Port Arthur, Jan. 3, via Chefoo, Jan. 4, 8 p. m. (censored).—The flag of the rising sun floats tonight over the captured citadel of Port Arthur.

When the news of the surrender of the fortress reached the soldiers yesterday, leaping from mouth to mouth, the Japanese drew close to their late enemies and fraternized freely with them.

With nightfall came great bonfires, rising in the Japanese camp like a blazing halo, while great choruses of "Banzai!" echoed through the hills.

The entire garrison, and all the non-combatants will march out of the city tomorrow to the village of Yahuthweil, near the shores of Pigeon bay, from which place the Russian officers will be transported to Dalny and thence to wherever they may desire.

It was well known to the Japanese that the destruction of the fortress guard, the main defenses of the western half of the eastern fortified ridge made the investment of the city upon the east only a matter of a short time, despite the strongest efforts of the defenders, and also ensured the segregation of the fortress further east upon the ridge.

ADVANCE OF BESIEGERS.—The steady advance of the besiegers upon the west flank, since the capture of Two Hundred and Three-Meter hill, up the valley from the shores of Pigeon bay to the outskirts of the town enabled them, with the capture of the north Talyankow fort, to close in upon the city from the west and to segregate the Citadel hill forts so that they could be dealt with in detail.

It was evident, therefore, that despite the most determined opposition the investing army could in a week or 10 days closely invest and dominate Port Arthur city, the center of the whole system of defense, so that the powerful forts both east and west would be isolated.

This fact, however, did not warrant the assumption that the resisting power of the position was at an end.

Though the Japanese hoped for the surrender of the fortress, they expected that another month would be necessary to reduce it because of the evident intention of the garrison to fight to the bitter end.

GARRISON'S ARDOR DAMPENED.

It has been evident since the capture of 300-Meter hill that the ardor of the fleet and the awful manner in which the fortress guarding the western half of the eastern fortified ridge had been captured by means of the explosion of dynamite mines, that the fighting ardor of the garrison was dampened and that the hopelessness of the Russian position had robbed them of their dogged determination to resist to the very inch.

The advance of the besiegers, the hopelessness of the opposition to the rapid advance of the Japanese on the west flank since the fleet was destroyed.

EFFECT OF EXPLOSIONS.

The tremendous effect of the explosion which wrecked Sungshu mountain fort, the last of the forts guarding the main defenses of the eastern fortified ridge, in which half of the defenders were killed and the remainder entombed or made prisoners, completed the disorganization of the defense.

The subsequent spirited assault by the Japanese upon principal lines of the fortifications, and the higher hills of the fortified ridge immediately after the capture of Sungshu mountain fort was met with feeble opposition, and the night of Jan. 1 saw the besiegers in possession of the upper line of the fortified ridge from the Sungshu mountain to the western extremity. Had the garrison fought as it had previously done, this would have at least taken days to accomplish and would have cost many lives.

INTIMATION OF SURRENDER.

The first definite intimation of the Russian intention to surrender came at 4 o'clock in the afternoon of Jan. 1, when the Russian envoys approached the Japanese lines south of the village of Shushiyung. They were met by a Japanese staff officer, to whom they delivered the letter from Gen. Stoenesel to Gen. Nogi, asking to have a time for parley arranged.

In this letter, as already known, Gen. Stoenesel admitted the hopelessness of further continuing the struggle and that he was prepared to surrender in order to save the lives of the remnant of the brave garrison which had fought so long and so well. Keenly anxious that terms could be arranged, he asked for a conference to settle these terms.

Major-General Michi, with a large escort, left the Japanese headquarters at 11 o'clock Monday morning and rode to the appointed place. Shortly before 1 o'clock the Russian commissioners arrived, accompanied by a cavalry escort.

The conference took place with few preliminaries.

PRISONERS OF WAR.

The prisoners of war will march out of the city Jan. 5, (Thursday) to the village and be detained at the Russian barracks until they can be transported to Dalny and from there to Japan.

The conference between the Russian and Japanese commissioners at which terms of surrender were arranged took place at the village of Shushiyung at 1 o'clock yesterday (Monday) afternoon and lasted until 5 o'clock at night.

RUSSIAN COMMISSIONERS.

The Russian commissioners were Chief of Staff Reiss, Surgeon-General.

(Continued on page 2.)

GREAT ORCHESTRA LEADER IS DEAD.

Pneumonia Claims Most Noted Musician of His Line in The Country.

DEATH CAME EARLY TODAY.

Something of His Splendid Career and The Profound Sorrow That Will Follow His Demise.

Chicago, Jan. 4.—Theodore Thomas, the noted orchestra leader, died of pneumonia at his residence here early today. He was 70 years of age.

Theodore Thomas, who was the son of an expert violinist, was born at Esens, Hanover, Germany, Oct. 11, 1835. In 1845 his parents brought him to the United States, settling in New York city. Even at this early age the boy had created an impression as a violinist. A concert trip through the southern cities in 1851 proved such a success that when Mr. Thomas returned to New York, he became one of the first violinists in concert and operatic performances during the engagements in America of Jenny Lind, Sonfag, Grist and other great opera singers. The real



THEODORE THOMAS.

beginning in Mr. Thomas' musical career was through a series of chamber concerts at New York during the years intervening between 1855 and 1872. In 1864 Mr. Thomas' first symphony concert was given at New York, and these were continued until he left that city in 1878 to take charge of the college of music at Cincinnati. He remained in Ohio for two years, then returning directly to New York. He was elected conductor of the New York Philharmonic society in 1879, and this position he held until he left New York in 1891. In 1893 Mr. Thomas and orchestra made a tour from New York to San Francisco, appearing at all of the principal cities en route. Upon his return to New York Mr. Thomas conceived the idea of a permanent orchestra in that city, but after seven years of endeavor, he came to the conclusion that Chicago would be a better place for his future work. He came here in 1891 and formed the Chicago orchestra association. On Dec. 15, last year, Mr. Thomas, the permanent home of the Chicago orchestra, built at a cost of more than \$300,000, was formally dedicated. It is a monument that bears witness to the untiring efforts of the dead musician.

AT AMBITION'S HEIGHT.

Death came to the world-famous director almost at the hour of achieving his ambition of years—the establishment of the Chicago orchestra in a magnificent permanent home. Mr. Thomas lived to lead his orchestra in but four concerts in the great new hall, built by popular subscription. His last appearance was at the concert on Saturday, the day before Christmas. He was a week ago Saturday that Mr. Thomas first felt the ailment which culminated in his death. Apparently the trouble was only a slight touch of the grip. Last Thursday, however, pneumonia developed. On Monday the physicians felt hopeful of a recovery, but last night there suddenly occurred a change for the worse.

Burial services probably will be held next Friday in St. James Episcopal church. No definite arrangements for the funeral have yet been made.

BEEF TRUST CASE IN U. S. SUPREME COURT.

Washington, Jan. 4.—The brief of the government in the case of Swift & Co. vs. the United States known as the beef trust case prepared by Attorney General Moody was presented to the supreme court of the United States today.

The brief is devoted principally to an argument to show that the packers are engaged in a conspiracy to monopolize interstate commerce in fresh meats.

Francis Dissolves the Diet.

Budapest, Hungary, Jan. 4.—The King-Emperor Francis Joseph formally dissolved the diet today in a speech from the throne, dealing with the parliamentary situation.

LEWISTON SUGAR FACTORY THIS YEAR

Mr. Eccles is Now in the East Arranging for the Contract Work.

THE CAPITAL IS CALLED FOR

Plant Will Probably Be Built on the Cub River on the West Side of Lewiston.

The advance in the price of the stock of the Lewiston Sugar company, which has been steadily noted of late in these columns, is explained by circulars received in Salt Lake in the last few days.

These circulars are signed by Henry H. Rolapp, secretary and treasurer of the company, and notify all stockholders that the board of directors have issued a call for the remaining unpaid subscription to the capital stock of the company. Up to this time only 13 per cent of the capital has been paid in. The other 87 per cent will be payable as follows: 7 per cent on Jan. 20, and 10 per cent per month, beginning March 10, up to and including Oct. 15, when the full capital will have been paid. The entire amount of the capital thus to be

raised is \$500,000. The company is capitalized for a million, which will leave half a million stock in the treasury.

The reason for the call is that the board of directors decided last week to build a sugar factory at Lewiston, and to have it in operation this fall. Mr. Eccles is now in the east closing the contracts for the plant, which will be one capable of handling 400 tons of beets per day, with a building large enough to admit of increasing the capacity to 600 tons later.

The site for the factory, while not fully decided on, will probably be on the east side of Lewiston precinct, on the Cub river about one mile from the Cache valley branch of the Oregon Short Line. Should it be decided that this site is not feasible, a change will be made to the west side of Lewiston precinct on the Bear river. The company has options on land in both places.

As the public is aware, the Lewiston Sugar company was originally organized by Mr. C. W. Nibley and his associates, but Mr. Eccles and others interested in the Amalgamated Sugar company, later acquired a controlling interest. The stock is closely held and is distributed approximately as follows: Mr. Eccles and associates 35 per cent, Mr. Nibley and associates 25 per cent, and the eastern sugar interests 40 per cent.

TAYLER'S NOMINATION.

President Did Not Send in His Name To the Senate Today.

(Special to the "News.") Washington, D. C., Jan. 4.—The president did not send the name of former Congressman Tayler to the Senate as judge of the northern district of Ohio today as was expected. He, however, expressed himself this morning as intending to make Mr. Tayler a judge and the nomination will reach the senate later in the week.

PRESENTATION TO WARDE.

Well Known Actor Surprised at the Elks Club Last Night.

Over 200 Elks attended last night's social session, in the local club house of the order, an occasion made especially prominent by the presentation to Frederick Warde, the guest of the evening, by the lodge of an extra large Elks' head and honor. M. E. Mulvey made the presentation speech, and Mr. Warde responded. The latter was completely taken by surprise, and was delighted with the thoughtful and appropriate present. He will have the head shipped to the fine new mansion he is building in the east.

Members of the order say the evening was one of the most delightful ever held in the club house. There was a program, including excellent singing by Messrs. W. R. Sibley, Willard Squires, Fred Graham, and Dan Sullivan, and addresses by P. C. Richmond and P. P. Christensen, and by Harry Barton, a member of the Warde company.

SEVERE STORM IN NEW YORK CITY.

Traffic Impeded, Trolley Lines Tie Up and the Streets Practically Impassable.

PEOPLE REFUSED TO FACE STORM

Remained in Cars All Night in Preference to Trying to Reach Home—Police to the Rescue.

New York, Jan. 4.—New York City and all the surrounding country today was in the grasp of the most severe storm of the winter. Traffic of all kinds was hampered; trolley lines were tied up and the streets, swept by a gale, driving before it fine snow that cut like sand and piled in great drifts, were practically impassable. Railroad trains from all points were delayed from a few minutes to three hours and the elevated lines were operated with the greatest difficulty without regard to schedule. At sea the conditions must have been severe, but so far no disaster has been reported.

All over the city early today trolley cars were found blocked in the streets, great drifts piled against them, preventing them from moving an inch. In many of the cars were snowbound passengers who had remained in the cars all night rather than face the blizzard in an attempt to walk to their homes.

Because of the severity of the storm policemen were sent out during the early morning hours to rescue persons who had fallen in the snow. The doors of every station house were thrown open to the homeless and unfortunate. The city lodging house was crowded by men, women and children, and not an applicant was turned away from Bellevue hospital.

COMMENTS OF RUSSIAN PAPERS

Are Unanimous in Their Praise Of the Heroic Work of the Port Arthur Garrison.

SEVERAL LESSONS ARE TAUGHT

Unpreparedness of Fortress Shows What Russia Must Do—No Thought of Quitting.

St. Petersburg, Jan. 4.—The press here contains absolutely no additional news of the war but the papers with one accord praise the heroic work of the Port Arthur garrison and say its record furnishes an object lesson to both Russia and Japan.

After bestowing a tribute to the defenders, the Novoe Vremya says: "The unpreparedness of the fortress which now stands confessed before the world, reads a lesson on what Russia must do and how she must change her methods to achieve victory. It also shows Japan what she has undertaken, when such enormous losses are entailed in capturing even a small, empty-handed garrison driven to the last ditch. Russia has had 11 months of hard but valuable experience in the art of war under the new conditions imposed by modern technical requirements. It has been costly training, but it will be valuable."

In an even more strongly worded article, the Russ says: "Had the Japanese been able to cut off the last train which reached Port Arthur the blockade would have found the fortress even worse prepared. Well may those few remaining heroes say: 'We have done our duty but you, Oh, people of St. Petersburg and of Russia, have you done all you could and should have done?'"

The Russ concludes: "Russia cannot afford to quit during a losing fight. The time has now come for every one to put a shoulder to the wheel and redeem our prestige in the far east."

The paper bluntly attributes to the effect of muzzling regime under the late Minister of the Interior von Plehve the fact that the nation was not fully warned beforehand of the real conditions to be faced at the opening of the war and says the press now more fully able to point out the needs and urge the nation to activity.

One of the most serious features of Port Arthur's fall, according to the Novosti, is the effect upon the already questionable neutrality of the Chinese. Loss of prestige in the eyes of the orientals, says the paper, is much more serious than the strategical value of the fortress.

JAPS CAPTURED TWENTY-FIVE THOUSAND PRISONERS

Tokio, Jan. 4.—The Japanese captured 25,000 prisoners at Port Arthur. The total number of inhabitants is 35,000, of whom 20,000 are sick.

THE DEFENDER'S BOILERS BLOW UP

Out of a Crew of Thirty-Eight Only Nine Escaped Without Serious Injury.

BOAT SOON MASS OF FLAMES.

Work of Rescue Immediately Begun And Several Bodies Already Recovered.

Huntington, W. Va., Jan. 4.—At 11 o'clock last night the people of this city were startled by a terrible explosion, followed almost immediately by a lurid glare, which lighted up the heavens for miles around. Investigation showed that the boilers of the towboat Defender had exploded just opposite the city and the boat and a number of barges in two were in flames.

The work of rescuing the killed and injured began and it was soon found that the loss of life had been great. Of the 38 men on the boat only nine escaped serious injury. Several dead bodies have been recovered.

Five others are so badly burned and scalded that their lives cannot be saved. Six more of the crew cannot be accounted for, and it is believed that their lifeless bodies now lie at the bottom of the Ohio.

DEAD AND MISSING.

A partial list of the dead and missing follows:

Perry Spencer, mate, Point Pleasant, W. Va.

Horace Wetzel, watchman, Pittsburgh.

James Cease, lamp trimmer, Pittsburgh.

Thomas Duffy, Scott Hamilton, James Brennan, Pittsburgh, supposed to have been burned to death.

William Wetzel, George Kidd, Dave Atkins, deckhands, Pittsburgh.

THE INJURED.

John Wilson, cook, Middleport, O.

Robert Holland, rognabour, Pittsburgh.

Ira Ellis, second engineer, Pittsburgh.

John Francis, Pittsburgh.

Rich Conley, second cook, Pittsburgh.

Richard Conley, Pittsburgh.

The Defender was towed by the Pittsburgh Towboat company and was one of the largest towboats on the river. She had been one of the best boats out of Pittsburgh on the recent rise and towed a heavy line of coal barges to the Cincinnati market. She was returning to Pittsburgh in company with the big towboat Victor of the same company and the statement is made that the two big steamers were racing at the time the explosion occurred. The Victor was about a mile ahead of the Defender at the time and her crew knew nothing of the awful disaster that had befallen her.

The burning of the Defender was viewed by thousands of people, many of whom stood shivering on the shores gowned only in night robes. The work of rescue of the victims was difficult owing to the darkness, and it seemed that only a few vessels could be secured to go to the scene. Capt. Woodward of the Defender, was picked up 50 yards from the steamer by some small boys, who rowed in a yawl from the Ohio shore, and they were taken to that side of the river. He is not seriously injured. One victim was found half a mile below the scene, clutching a portion of the wreckage, being so chilled that he could not speak.

The boat almost immediately after the explosion sank to the bottom, not more than 40 yards from the West Virginia shore. The barges in tow were cut loose and they floated down the stream adrift. They were finally landed and the flames extinguished by the fire department.

The dead bodies of Thomas Duffy, Pittsburgh, a fireman on the steamer, was one of the first taken from the wreck.

The body of a fireman known as James was the next recovered. He lives at Corryopolis, Pa.

Those rescued from the steamer are so seriously injured that they can give no names or information regarding the catastrophe.

It is believed that many bodies have been blown into the river and may never be recovered.

Among those injured was a woman known as Mrs. Mary.

At this hour it is impossible to give any accurate list of the dead or wounded.

The Defender was returning from Cincinnati with a tow of empty Capt. James Woodward was in the pilot house at the time of the accident and with the exception of fireman, engineer and the watchman, the remainder of the crew were asleep. The explosion of the starboard boilers blew out the entire side of the boat and awakened the sleeping members of the crew. The survivors grabbed what clothing they could find and plunged into the icy waters of the Ohio river in an effort to escape. The night was bitter cold, the thermometer hovering about zero, and the explosion occurred at a point some distance from any town, those who escaped were nearly frozen before they could be given shelter.

The boat caught fire immediately following the explosion and drifted down the river about 200 yards where she sank in shallow water.

Capt. Woodward says that the origin of the explosion is a complete mystery. The boilers were so far as known in excellent condition. A number of men are working on the wreck today to recover the bodies of the dead. So far 36 bodies have been recovered.

Robert Shelton's Will.

The will of Robert Shelton, deceased, who died in this city on Dec. 2, 1904, was filed for probate today in the district court, together with the petition of John H. Horlick, who asks to be appointed executor of the estate. Geo. M. Ripley and Thomas L. Mitchell are named in the will as executors, but the former is dead and the latter has removed from the state, hence the petitioner asks to be appointed. The estate consists of real and personal property of the total value of \$4,000. The petition will be heard by Judge Armstrong.

ADAMS' REQUEST IS TURNED DOWN

Colorado Supreme Court Orders That Investigation Take Scope Asked by Republicans.

EXPENSE ORDER IS MODIFIED.

Ballot Boxes, Poll Books, Registration Slips and All Matters Pertaining to Election to Be Gone Into.

Denver, Jan. 4.—The supreme court this morning directed that an inquiry be made into the conduct of the last election in this city, and ordered that it assume the scope asked by the Republicans. This means that the investigation shall not only take place in the ballot boxes, but the poll books, registration slips and all other matters pertaining to the election. The application of Alva Adams for a modification of the order, limiting it to the ballot boxes only was denied. The order was, however, modified in the matter of expense. It was directed that Mr. Adams pay one-half of the expense attendant upon the examination of the boxes and one-half the salary of the referee to be appointed by the supreme court in this connection. The Republicans were directed to pay the expenses incident to the examination of the boxes, and all the cost of the investigation of all other matters pertaining to the election. This puts upon Mr. Adams no greater financial burden than that which his attorneys yesterday announced he would be willing to assume, and allows the Republicans to pay for the greater part of the investigation, which Attorney J. H. Hersey yesterday announced they were willing to do.

When the court opened, none of Mr. Adams' attorneys were in court, and Chief Justice Gilbert directed the clerk to telephone to the office of C. S. Thomas, leading counsel for Mr. Adams, and ask if he desired to be present in court when the announcement concerning the order was made.

Mr. Adams' attorneys returned with the information that all of Mr. Adams' counsel had left the city. Chief Justice Gilbert thereupon announced his decision.

"It has been claimed by Mr. Adams' attorneys," he said, "that this investigation will take up matters which his application for an investigation did not intend to be taken up. There is no foundation for this claim. When counsel presented the application for an investigation there was nothing said by them limiting its scope. When the order was issued by the court last Friday, to the effect that all the election machinery should be investigated, Mr. Adams, one of Mr. Adams' attorneys, was present, and he then offered no objection. An objection of the petition submitted in behalf of Mr. Adams discloses no mention of a desire to limit the investigation. There is absolutely no foundation for the claim that the order goes beyond the scope of Mr. Adams' original request for an investigation."

The court will, however, modify the order insofar as the matter of expense is concerned. Mr. Adams has said that if the investigation includes the entire election he will be forced to withdraw his petition. The counsel on the opposing side has expressed a willingness to pay for the entire matter rather than allow it to be limited to the boxes. If they had not made this offer we might permit Mr. Adams to withdraw his petition. There is, however, no need for him to pay more than his counsel has declared him willing and able to pay and we direct that one-half of the expense incident to the examination of the boxes and one-half of all expense incurred in the investigation beyond the examination of the boxes, is to be borne equally between the opposing parties, and that Mr. Adams be relieved of all expense incurred in the investigation beyond the examination of the boxes. Is this reasonable to the court for the people?"

Mr. Hersey said that it was acceptable to him and the court directed that an order for a full and complete inquiry be issued, the manner of holding the election to be held by the clerk.

DEMOCRATS DECIDE TO SWEAR ADAMS IN

Denver, Jan. 4.—The Democrats have decided that on Jan. 10, the date prescribed by the statutes, they will have Alva Adams sworn in as governor of the state. The oath will be administered by Justice Steele of the supreme court. The hour and place of the ceremony have not been definitely set.

The fifteenth general assembly was called to order at noon today, and the work of organization commenced at once.

Gov. Haggart presided over the senate, and the permanent organization of the house was effected by the choice of William H. Dickson as chairman.

It was somewhat doubtful if the legislature would be able to do more than permanently organize today, but it is the program to unseat six Democratic senators as soon as the senate is in working order. This when done, will make the senate 25 Republicans and Democrats. There are four contests in the house, in every one of which the Republicans are contestants. If these are decided favorably to the Republicans the make-up of the house will be Republicans 51, Democrats 14. The present strength on joint ballot is Democrats 33, Republicans 66. If all contests are decided favorably to the Republicans it will be Democrats 23, Republicans 76. There is one vacancy in the senate. It is possible, but not probable, that the legislature by the end of the day may canvass the votes for the state officers. If it is not done today it will be taken up the first thing tomorrow.

Harry C. Riddle, the Republican member of the city election commission, this morning handed to the secretary of state a statement to the effect that he had certified to the result of the vote in Denver only because he had been ordered to do so by the supreme court. He did not contradict the facts as set forth in the return of the commission, but declared that, in his opinion, the court would not have ordered him to certify the returns if he had possessed equal knowledge with Mr. Riddle of the exact situation.

FIGHT OF FARMERS AND THE SMELTERS

Former Want the Latter Closed Until Smoke Trouble Has Been Abated.

WILL APPEAL TO THE COURTS.

Big Suits Are in Course of Preparation And the Fight Will Soon Be on in Earnest.

JORDAN FARM TAKES FIRST STEP.

Outlook is for One of the Hardest Fought Campaigns of Litigation in History of the State.

Affairs in the long drawn out smelter smoke controversy are rapidly reaching a focus. The smelters are almost ready to begin their active experiments under the direction of experts to determine what it is possible for science to do in the case. This morning in the U. S. federal court the hearing of the first of a series of five suits against the Utah Consolidated Mining company for damages was begun. Tomorrow afternoon the county commissioners will hear the case of the farmers who have applied to them to take action against the smelters on the ground that they are a public nuisance. Already the legislative lobbyists are at work in the interests of one or the other of the contending parties; for a bitter fight is under preparation for the coming legislative session, unless it is forestalled by the announcement that relief has been secured from the expert investigators.

The leading action of the associated farmers has been to prepare a suit for an injunction against the smelter, asking that they be enjoined from emitting until such time as they are able to start up with their smoke under control. The preparing of this injunction is now in hand, and it is expected that the suit will be filed within a week, unless some agreement is reached, which will render such radical action unnecessary.

JORDAN FARM SUIT.

Outside of this suit, perhaps the biggest legal action yet contemplated, is the suit for damages by Beese Brothers, who lease and have been operating the property known as the Church of Jordan farm, on Twelfth south street. The property has been practically abandoned as a grazing and stock raising farm this year, after the loss of 40 head of horses in the pastures.

The suit, which has been prepared by the law firm of King, Burton & King, and Russell, calls for \$24,845 damages. This total is made up of landed items taken from the books and at prevailing market prices, which makes it unlikely that the sum can be cut or considered exorbitant.

The case contains two causes of action, one on account of the loss of orchards, grass lands and hay crops, and the other on account of the loss of horses pastured in the enclosures.

AGAINST FOUR COMPANIES.

The complaint is filed against the American Smelting & Refining company, the Utah Consolidated Mining company, the United States Smelting & Refining company, and the Bingham Consolidated Mining & Milling company.

It alleges that prior to 1903 each of the defendants built and was operating individually smelters located at and near Murray, and handling about 1,000 tons of ore per day. This ore gave off into the atmosphere of the city a mass composed of zinc, lead, sulphur, arsenic, antimony, and other deleterious minerals, which settling down on the property known as the Jordan Stock Farm, caused by the plaintiff's damage and will damage this property to the extent of the sum demanded.

The period of damage merely covers the length of time for which the Beese Brothers have a lease on the land. It commences in 1903 and ends May 1, 1905. Damages are asked for the seasons of 1903, 1904, 1905 and 1906.

It is alleged that the property consists of 950 acres of land, and that prior to 1903 the lands were of great value as hay raising, orchard, grazing and meadow lands, and that knowing them to be of value the plaintiffs had leased them for the purpose of conducting a stock farm.

THE DAMAGE DONE.

The plaintiffs further allege that 540 acres were in pastures, five acres in an orchard, and 30 acres in hay. The pasture land was a lease on the land. It was worth as a grazing property \$2,000 a year. The five acres of orchard land brought in each year 250 from fruit sales, and this pasture lands, \$1,000.

An amount of the damage wrought during 1903 the yield of the orchard was destroyed, the grass poisoned, and the hay crop rendered unsafe to use for food, the total damage resulting being \$8,500.

A similar amount is wanted for damages resulting in 1904, 1905 and 1906, of practically the same extent and nature, making a total sum of \$24,845.

The second cause of action is for the death of horses. In this cause the plaintiffs allege that in 1904 they were grazing cattle and horses in the pastures lands and that nine horses died and two were fatally injured by eating poisoned grass, caused by the smelter smoke. The valuation of the animals killed and injured is placed at \$1,295.

OTHER SUITS.

A suit in which H. B. Clark is plaintiff and all the smelting companies are the defendants