

A. E. R. Stearns

Rec 527

For the Oregon Spectator.
The License Law.

Mr. Editor—I send you my thoughts respecting the present License law of this Territory. I have long been looking for and anxiously waiting to see some article bringing this law in comparison with the principles of common justice between the importer and distiller and also between the citizens and community at large. One man speaks of Oregon as it was and is—he seems fearful to venture upon the future or to call in question acts and proceedings that have opened the fountains of woe and misery that are to follow, and legalized these sources of evils of which he speaks. My object at present is, to do with a law I find in the twenty-sixth number of the Spectator. It comes to us granting certain privileges to a particular set of men. For, Mr. Editor, you know that none but men who have lost all sense of moral obligation, and who care not what misery and woe they cause to others, will at the present day engage in making and selling that to his neighbor that he knows will do him no good, but evil, and only evil. This law requires you and me as citizens or officers of our courts to guard those privileges and rights which it confers upon this particular set of men. It imposes a fine of not more than one hundred and fifty dollars, nor less than twenty-five dollars, upon any person who shall violate the act or law, and thereby invade the rights of such as may have received a license according to the provisions of this act, subjecting the violators of the act in regard to Indians to a fine of not more than 300 nor less than 5 dollars. This act seems to have come from our representatives in great haste. It (if I may use the expression) gives liberty with a vengeance. The disposition to remove all restraint from the use of Alcohol among us, seems to have been so great in the minds of the framers and supporters of the act, that they forgot to afford the least protection to the distiller, and allow the free introduction or importation of all kinds of liquors, without the least duty or regulation to govern any importer whatsoever. If there is any clause on the act placing the importer and distiller upon equal terms, I do not so understand it. Here then is a manifest injury to the person who is disposed to invest his capital in a distillery; for he must pay to the Territory the sum of three hundred dollars for the privilege of producing, what another pays nothing for importing. The second and third class of home or domestic dealers in distilled spirituous liquors or wine are placed under the same unequal liabilities. For I cannot find the first word or intimation to prohibit or restrict the importer in filling the country with all kinds of intoxicating liquors, and disposing of them where, and to whom, he pleases, provided he does not establish a distillery, a wholesale or retail grocery—or dram shop. A vessel is not in legal jurisdiction termed a distillery, grocery, or dram shop; hence this law cannot touch them or any person importing in, and disposing of, from any vessel, any quantity of liquor he pleases.

In the 6th section of the act, is the only intimation which can, by any construction whatever, be applied to importers. That section will allow any amount of cargo of liquors to be disposed of to any one man at any one time, provided he pays a fine of (the highest amount,) fifty dollars, less than the second class of dealers; and if he is a clever fellow, can go, by paying twenty-five dollars. The seventh section is, if possible, still more unjust. If we admit the principle, that this law attempts to secure to the citizen, to wit:—the right to do with his property as he pleases, provided he pays the sums specified in the second and third sections of this act. Besides, by paying the fine, (which in the shape of a license to sell to Indians is a small one) of three hundred dollars; or, as in the case of the importer, he may pay only five dollars, and sell as much as he pleases. The section does not specify that this fine is for each and every offence, as in the case of the violation of the act touching the rights of those who are not Indians. A receipt from the (I was going to say) Treasurer of Oregon, but I find no person is specified to whom this fine must be paid; therefore, a receipt from any officer or person named in the eighth section, will secure the person against a repetition of the fine as specified in the seventh—provided the officer or individual pays the sum he receives into the treasury of the county, as per ninth section.

Oregon Spectator.

"Westward the Star of Empire takes its way."

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I repeat, Mr. Editor, there is evidently a want of proper consideration on the part of those who brought forward and sustained this law. The excitement which it occasioned and the disposition manifested in its provisions indicate that something was wrong in the proper securing of the professed object of the licence law. Equal and impartial justice is not dealt out to the rum sellers and dealers in distilled spirituous liquors.—The act is too vague and inexplicit to enable the officers of our courts or our grand juries to bring to bear its provisions upon any class of men—especially an act of this kind touching the subject of alcoholic liquors.—It is the extreme of the act passed by a previous legislature with the difference that that act guarded closely the rights of the entire people; this is reckless of the best interest of the people, it throws open the door to vice immorality and crime, while the other closed it entirely.

I ask does this law come within the spirit of the articles of compact by which we are governed as a people? Do the people of Oregon in order to secure "mutual protection, peace, and prosperity, and to regulate the introduction"—(am I right, does our constitution say anything about the introduction of ardent spirits, and of the powers of our legislature to regulate or place any restrictions upon it?) It does; it says, "to regulate the introduction, manufacture or sale of ardent spirits."

I repeat, do the people in order to secure the greatest blessings to ourselves as a people or nation require that any "person or persons" should be licenced to make and sell any quantity of liquors for the sum of three, two, or one hundred dollars? Do the mutual protection, peace, and prosperity of your county require so much regulation in the shape of licensing distilleries and groceries in it? Is there a law in the statute book the tenacity of which is to violate the principles of our compact—to injure our community—to ruin our fellow citizens, by inducing them to squander their property, to injure their families, commit crime and destroy themselves. That law should be canvassed and you in discharging the high and responsible duties devolving upon you as editor of a free press, can do no less than give a public expression of such views upon it, as may be presented to you.

The passage of a law upon this same subject by a previous legislature restricted the sale or importation of liquor to the practicing physician, and allowed him to dispose of only a certain quantity for medical purposes. It imposed no licence upon the physician, and did not allow any person irrespective of character or standing to manufacture and sell as much as he pleased. It did not fill the Territorial Treasury with the price of the tears of the wife, the beggard children, and the woe and horror of the drunkard.—It did not call upon the peaceable and quiet citizen to protect the disturber of the peace and happiness of families and the neighborhood. It held out no inducement or encouragement to gambling, vice, and crime. True it was imperfect and it was violated, and so is the present law violated, and it will be, because it is not based upon correct principles. But because a law is liable to be and is violated, is no reason why it should not be enforced so long as it is a law.

You will pardon me Mr. Editor, if I call your attention to the sixth section of the articles of the compact by which we are governed. It says, after going on defining the power of the House of Representatives respecting laying out the Territory into Districts, apportioning the Representatives, raising revenue, opening roads, chartering companies, intercourse of the people with the Indian tribes, &c. &c. It says, to pass laws to regulate the introduction, manufacture or sale of ardent spirits—it then goes on and enumerates the currency—inferior

tribunals not provided for by these articles of compact, and then says—"and generally to pass such laws to promote"—does it say distilleries, groceries, drunkenness, vice, crime, poverty, wretchedness, woe, misery, and ruin of the people? Or does it say it shall have power to pass laws to promote and protect the general interest of whiskey makers and vendors alone, at the risk of overwhelming the country with vice and crime and destroying all law. We would naturally suppose from the manner some men talk about the legislatures not having power to pass a law to prevent the evils arising from the free use of liquors among us, that they must be bound to pass some such law as the one we have before us, and that this law must be a constitutional law—certainly no one is at liberty to doubt this at this time, as we have had the decision of the supreme judge on the other, and the governor, and judge, and every body pronounced that, an unconstitutional law.

But let us see what our constitution says the House of Representatives shall have power to do. It says, "and generally to pass such laws to promote the general welfare," (not of the distiller and vendors alone,) but "of the people of Oregon, not contrary to the spirit"—of what? the lovers of intoxicating drinks, we should suppose this must be the case from the decisions that have been made upon this subject, but it says, "the spirit of this instrument." What then is the spirit of this instrument? It says in its preamble, (which in most other cases at least expresses the intent and object of the instrument that follows after it,) that "we tie;" (does it say friends of rum and distilleries? No, it says "people of Oregon Territory for purposes of"—is it securing and protecting the distiller, vender and importer of rum and ruin among us, in their distribution of poison, or that that is sure to bring poverty, woe and want to all who become the recipients of their productions, or is it "for purposes of mutual" drunkenness and vice, and sustaining and supporting all laws that shall be passed to protect these pests and nuisances among us, or is it "mutual protection" from the influence of this scourge of individuals and nations.

The preamble says further, "and to secure" what? these that deserve not the name of men, in their efforts to ruin our brightest, best, and noblest prospects for this and the world to come, and in their business to distribute quarrels, discord, blows and death, to the peaceable and heretofore respectable, and prosperous individual and family? No, this was never the intent nor is it the spirit of that instrument, and he that says it is, bolies his own sober senses. But let us proceed to find out something more of the spirit of this instrument, from its preamble. It says in so many words that its object is "to secure peace and prosperity among ourselves." It goes on and says still further, "For the purpose of fixing the principles of civil and"—does it say immoral and drunken liberty, or does it say the liberty for "any individual" or vagabond, who can get a hundred or more dollars to get a license, to cause as much evil, vice, crime and misery as he can? Or does it say "religious liberty," as the basis upon which this license law is founded, and we are now called upon to enforce it and see to it, that none of these wretches who have obtained a license are injured by some one else selling or giving without a license. It says, "as the basis of all laws and constitutions of government that may hereafter be adopted."

Let us look a little further and see what the third section of the first article says—does it say distilleries, groceries and ardent spirits being necessary to good government and the happiness of mankind, drunkenness and the means of poverty shall for ever be encouraged—or does it say that "religion, modesty and knowledge being necessary to good government and the happiness of man-

kind, schools and the means of education shall forever be encouraged.

Now let us look at this license law, in view of its influence upon many of those in this Territory who have committed no crime except it be of being led from want of a proper knowledge of the effect and influence of liquor upon them, to habits of intemperance and drunkenness. Many of them have actually come to this country to avoid the influence of the distillery and grogery, and know from sad experience that they cannot withstand the temptation. They know and feel that when liquor or ardent spirits and vice which this law licences the sale of, come within their reach, they are the slaves to it, not voluntarily, but involuntarily. Here again we have another violation of the spirit of the compact sanctioned by this law.

Mr. Editor—from the remarks and review I have made of these laws, you will not ask me to express any further opinion upon them. It has been my object and aim in these remarks, first to find out what is my duty; you see the freedom with which I have expressed it. I here affirm to you Mr. Editor, that with my knowledge of the discussions, and participation in drafting and presenting the articles of compact to the people of Oregon, that I cannot as presiding judge of a county court, consistent with my views and knowledge of our articles of compact, and of this law, comply with its requisitions and give a license to "any person or persons," or vagabond, who will presume to tender to me the Treasurer's receipt, as per 1st section of this liquor or license law. Had such been the case our courts would doubtless have been obliged to enforce the 1st section of the law creating county courts against the writer, and in that case this law could have been tested upon a different principle than the former one was. I believe it to be a violation of the letter and spirit of our compact or constitution; I also believe that the legislature had no constitutional right to make a law granting a license to retail liquor to any person, except for medical and mechanical purposes. The only law on the subject they could in accordance with the spirit of that instrument make, would be one to limit it to the smallest possible quantity of "introduction, manufacture, and sale of ardent spirits among us; this they could do. It has nothing to do with the constitution of the United States; our articles of compact do not know the United States nor its constitution, until its jurisdiction is extended over us. The present license law is a violation of the treaty between the United States, Great Britain and Russia, which does not allow the Manufacture of liquors in an Indian country. It is also a violation of all the laws of the United States, in force in any Indian country. How it is that Judge Burnett could or should have decided against in regard to the other law, I am at a loss to know; unless he decided from the title of the law and not from the spirit and letter of the law and the articles of compact. Public sentiment cannot make a law unconstitutional, unless the constitution is altered to make it so.

I have already consumed more time than I intended to, and still I do not know but it is my duty to call the attention of the public to the subject of liquors as a nuisance, leaving all liquor laws out of the question. Common justice and humanity dictates that whatever is evil and injurious to a community, and tends to promote vice, crime, immorality, disease, and death, should be removed. If this is not the legitimate work and effect of liquor, tell me what caused the death of Paddy Rowlin, and the wound of Robinson, and if distilleries and dram shops are not a public nuisance tell me what is? I might anticipate the reply of some that would be popular in taking up what they may imagine is the popular side of this question, at this time. But Mr. Editor, I have opened the subject and should a reply be made, be so kind as to tell the person that they may expect an answer in due time—and allow me to subscribe myself,

Yours, &c.

W. H. G.

For the Oregon Spectator.

Mr. Editor—The Modeste bade us adieu on Monday the 3rd inst. much regretted by one and all here, and we wish them a safe and speedy passage to their native shores; and permit me to add during their long residence in Oregon they have by their urbanity and hospitality made and leave behind