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THURSDAY, - - - JUNE 24, 1897

A HAIR-SPLITTER.

Judge Shattuck has passed upon the matter of the mandamus proceedings against the treasurer of Multnomah county, and intimated that a peremptory writ should issue; but on the representations of Judge Whalen, attorney for the county treasurer, that there was not money enough on hand to pay warrants, allowed time for an amended answer to be filed. In this condition the case now stands.

Reviewing the case, the court said that the petitioner represents there are large sums of money in the county treasury applicable to ordinary debts and expenses. The treasurer admits this condition of things, excepting the fact that these sums of money are there; he denies the application of the rule which petitioner evokes with regard to the distribution of money, and he denies the writ of mandamus and claims the proper remedy here is an ordinary action of law by state authorities against the county treasurer or the county of Multnomah, or the application of another remedy allowed by the statute, which is if the treasurer does not pay over state money, he is subject to penalty and forfeiture, and if he continue in error on this subject he may be expelled from office.

"This case has been very extensively discussed by counsel," remarked Judge Shattuck. "The arguments have been profuse and labored, but they fail to satisfy me that the position taken by the respondent is correct. The whole matter, it seems to me, turns upon the instruction of section 2813 of the statute, and that section provides in these words: 'On or before the first Monday in February in each year the several county treasurers of this state shall pay over to the state treasurer in gold and silver coin the amount of the state tax charged to their respective counties, which tax shall be paid out of the first of such moneys collected and paid to the county treasurer.' It is claimed that this statute means that the first money that comes into the county treasury shall be applied to the demands of the state or state debts its apportion to the county, and no contradictory authority has been cited for a statute like this."

There is nothing in the statute, the court said, that goes outside of the ordinary parlance, ordinary speech of the people, and it is to be ordinarily accepted exactly according to its terms, and the provision and application of its principle made accordingly.

"If you leave out two words from this section, you have exactly the position which the defendant Hoyt, treasurer, claims is controlling him. Leaving out the words 'of such' and there is in the statute, as is claimed by the respondent here. Should these words be left out? Why should they be left out of the statute? It looks as if there was a design on the part of the legislature to have this statute construed as the petitioners claim it should be. The effect of leaving out these two words would justify the other construction alleged here, that all money due the state ought to be paid out of the first money before any other demand is satisfied. It seems to me the construction of the statute is that the money's paid into the respective funds, not into the general fund of the county."

Judge Shattuck says the statute

means what it says, and says what it means; but that what it says and what it means is that officers and courts need not obey its plain commands. The words "of such" are what Judge Shattuck hangs his decision on; but where he makes the distinction and difference between the sentence with those words in or out is a profound mystery. The truth seems to be that the county needs the money, and the judge wants the county to have the use of it. That, and that only, is the law and the gospel of the case.

The city council of Forest Grove recently passed an ordinance taxing all business pursuits. We note that the council showed rare discernment in classifying the subjects. What more appropriate classification for instance, could have been made than "hardware men, dentists, butchers and doctors," all of whom must pay \$10 per year? What neater arrangement than that of barbers and printers, both of which trades have to scrape for a living, and pay \$6 for the privilege? And what more natural association than lawyers and town cows, each of which must pay \$4 per year for the privilege of running at large. The Forest Grove council understands its business, as well as other peoples.'

It is stated that Jonathan Bourne has gone East to live, and will never return. There could be but one more cheerful piece of news, and that would be that he had gone East to die. In Australia, many years ago, a play was written entitled "A Ticket of Leave Man," and the prologue was written by a convict, who, commenting on the population of Australia, wrote those famous lines: "strange patriots we, for be it understood we left our country for our country's good."



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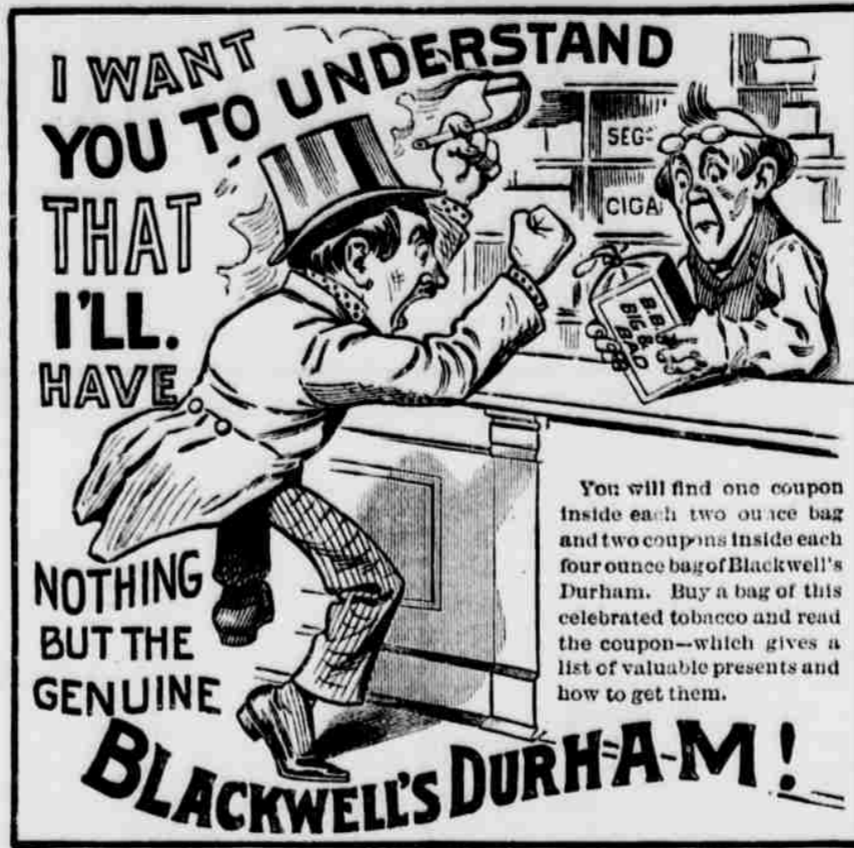
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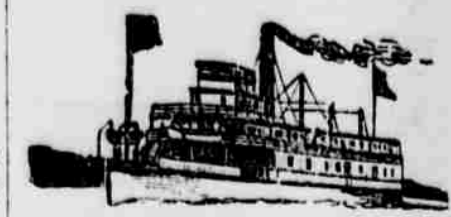
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