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TUESDAY, OCTOBER 31

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NOISE! Novel

NOISE! Entrancing

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NOISE! A

NOISE! Joy and

NOISE! A Tonic

NOISE! Try

NOISE! A

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OPINION IS GIVEN IN FULL

JUDGE KNOWLES RULES COUNTY CAN REIMBURSE LOSSES.

Lengthy Arguments Conclude With Decision Adverse to Miller.

Points of law and questions set out for argument in the arguments growing out of the temporary injunction granted George Miller of Cove restraining the county court from reimbursing Sheriff Childers and Treasurer Frawley for losses sustained in the failure of a local bank a few years ago are set out in detail in the decision of Circuit Judge Knowles filed last evening holding that the legislative act ordering the reimbursement is not unconstitutional. The decision in toto follows:

In the circuit court of the state of Oregon, for the county of Union.
George Miller, plaintiff, vs. J. C. Henry, et al, and J. H. Frawley, defendants.

The above cause is before the court upon a demurrer to the complaint. The suit is brought by the plaintiff as a taxpayer of Union county to enjoin and restrain the county court from drawing a warrant in favor of Frawley to reimburse him from losses sustained by him by reason of money deposited in the Farmers and Traders National bank belonging to the county being lost by reason of the failure of said bank. The complaint sets forth that during the session of 1911 the legislative assembly of this state passed an act authorizing and directing the county court to reimburse the defendant Frawley and also the defendant Childers in the other suit but that said act of the legislative assembly is void. As the suits to restrain the county court from reimbursing Treasurer Frawley and Sheriff Childers present substantially the same legal proposition they will be considered together. It was for a long time a disputed question whether the courts had the power to declare an act of the legislature or an act of congress unconstitutional. This great conflict between congress and the courts was finally settled by the supreme court of the United States in the case of Marbury vs. Madison, 1 Cranch 137, in which Chief Justice Marshall delivering the opinion of the court held that the courts had the right to declare an act of the legislature and even an act of congress unconstitutional in certain restricted cases.

The next question that naturally arises is, "When are the courts justified in exercising the great prerogative that they possess of declaring an act of the legislature unconstitutional?" In the case of State vs. McLellan, 37 N. E. 799, the supreme court of Indiana, in its opinion, says: "The sole contention here is that the act is in conflict with the provisions of the constitution of the state. It was said by this court in McCamas vs. Krug, supra," such questions are always regarded by the courts as of serious importance. The judiciary look to the acts of the legislature with great respect and reconcile and sustain them, if possible. The general assembly is the immediate exponent of the popular will expressly delegated to cloth that will with the forms of law. The presumption that such a body has sanctioned enactments in violation of the constitution is not to be lightly indulged. That the act is imperfect or impolitic is not enough. These defects subsequent legislation can remove by amendment or repeal. To bring its validity with in the control of the courts, it must be clearly subversive of the constitution. And in Mameson vs. Oil Co., 128 Ind., at page 568, 569, 28 N. E. 76, it was said "We have no right to presume that the legislative assembly usurped power, or disregarded the organic law. No precedent will justify such a presumption nor any reason sustain it. A party who asserts that the legislature has usurped power or has violated the constitution must affirmatively and clearly establish his position. . . . And in Robinson vs. Schenck, 102 Ind., at page 319, 1 N. E. 698, the court said: "It devolves upon a party who assails a statute on the ground that it violates the constitution to show a clear violation and to point the provisions violated. Failing in this, its attack is unavailing." Cooley in his excellent work upon Constitutional Limitations (7th ed., page 254), says: "It has been said by an eminent jurist that when courts are called upon to pronounce the invalidity of an act of legislation, passed with all the forms and ceremonies requisite to give it the force of law, they will approach the question with great caution, examine it in every possible aspect and ponder upon it as long as deliberation and patient attention can throw and new light upon the subject and never declare a statute void, unless the nullity and invalidity of the act are placed, in their judgment, beyond a reasonable doubt. A reasonable doubt must be solved in favor of

the legislative action and the act sustained. Mr. Justice Washington said: "It is but a decent respect due to the wisdom, the integrity and the patriotism of the legislative body by which any law is passed, to presume in favor of its validity until its violation of the constitution is proved beyond all reasonable doubt."

In the case of State ex rel. vs. Lord, 28 Ore., 381, Justice Wolverton delivering the opinion of the court, says at page 385:

"No greater evil could exist, under our form of government, than the usurpation by the judiciary of powers not entrusted to it. It should therefore refuse, under all circumstances, to assume jurisdiction in any case which affects the powers, duties or prerogatives of the other department of government, unless its right to do so is so clear as to admit of no reasonable doubt."

Also in the case of Sears vs. Steele, 167 Pac. page 3, Justice King in his dissenting opinion says:

"It is a well known historical fact that by the leading statesmen, lawyers and jurists of the country, it was long deemed extremely doubtful whether it was within the province of the courts to pass upon the constitutionality of legislative enactments or whether that was a legislative function only, but after years of heated contests in both departments upon the subject, the point was finally and I think wisely held to be judicial. However, as a safeguard from judicial encroachment upon the legislative department, it became the universal and settled rule that no act shall be declared void by the courts or come within the inhibition of any organic law of the land, unless its conflict therewith is so clearly pointed out as to be free from rational doubt. See Cline vs. Greenwood, 10 Ore. 230, Simon vs. Northrup, 27 Ore. 487. The general rule to be deduced from all these authorities is that a constitution must not be interpreted on narrow technical principles, but liberally and on broad general lines, in order that it may accomplish the objects intended by it to carry out the principles of government and the legislative department of the state, unlike that of the national government may enact any law not expressly or impliedly prohibited by its constitution and in determining whether an act is in conflict or inconsistent therewith all reasonable doubts upon the question must be resolved in favor of the law that is assailed. For recent decisions by this court see Kadderly vs. Portland, 44 Ore., 118. Straw vs. Harris, 103 Pac. 777 and authorities there-in collated on the subject."

It follows from the above authorities that unless the plaintiff has established to the satisfaction of the court beyond a reasonable doubt that the act in question is unconstitutional, it is the imperative duty of this court to hold the same valid. It must be remembered that in considering the constitutionality of this act that the legislative body of a state unlike that of congress may enact any law not expressly or impliedly prohibited. In other words before congress can enact a law, its right to do so must be expressly or impliedly conferred by the federal constitution upon the other hand the legislature of a state can enact any law unless it is expressly or impliedly prohibited from enacting the law. In the case of State vs. Cochran, 55 Ore. 170, Justice McBride, writing the opinion of the court upon a petition for a rehearing says, "In this connection it must also be kept in mind that the constitution of a state unlike that of our national organic law is one of limitation and not a grant of power and that an act adopted by the legislative department of the state not prohibited by its fundamental laws must be held valid; and this inhibition must expressly or impliedly be made to appear beyond a reasonable doubt." In the case of Pearson vs. state, 35 Am. Rep. 91, it was held by the supreme court of Arkansas that where a treasurer of a county had become liable on his official bond to various school district therein on the ground that their moneys were taken by burglars without his fault, it was competent for the legislature to release him from such liability. In its opinion the supreme court of Arkansas, says: "It was indicated in Dartmouth college vs. Woodward, 4 Wheat. 518, that the right of the legislature, as regards the property of municipal corporations was broader than existed in the case of private corporations and from that time to the present this has been a conceded principle. But it was said by the different judges in the separate opinions in that case that the power of the legislature over the property of corporations purely public was not absolute or unlimited; and while there are some later cases to be found that seem to question this view, it is generally approved and it is now established that though such property is subject to a very broad legislative regulation its confiscation or diversion violates the provisions relied upon. Board of Park Com. vs. common council, 25 Mich., 240, 15 Am. Rep. 202. The power of regulation seems to have no limit within the scope of municipal uses and is restrained only when it attempts a total diversion. It affords a wide almost limitless field for legislative action. The legislature may do with the property whatever the municipality is bound to do either at law or in equity or whatever upon recognized moral principles ought to be done; and it has been held that it may

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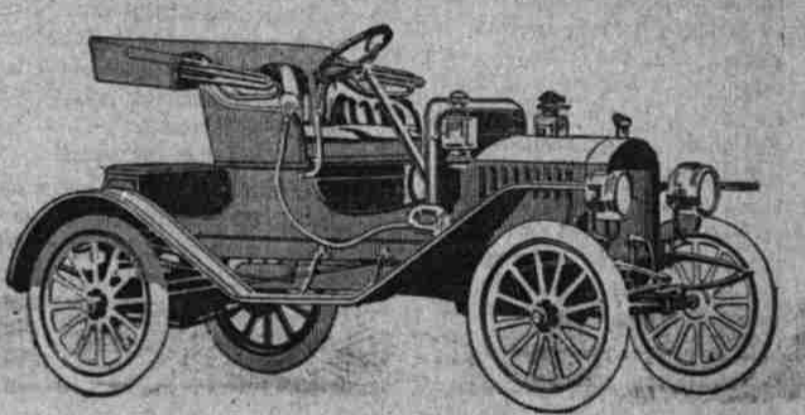
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archives 1842-1849. Write Geo. A. Bateson & Co., inc. Portland, Oregon.

Treasurer's Call for County Seal, Bounty and Road Warrants.

Notice is hereby given that the undersigned treasurer of Union county, Oregon, has funds on hand with which to pay all county and seal bounty warrants which were endorsed prior to Oct. 5th, 1911 and all road warrants which were endorsed prior to Oct. 19th, 1911.

Interest ceases on the above warrants on October 24, 1911.

JOHN FRAWLEY,
Treasurer of Union county, Oregon.

Notice to Contractors.

Notice is hereby given that sealed bids will be received by the council of the city of La Grande until 5 o'clock p. m. Wednesday, October 25th, 1911, for the construction of approximately 3,900 square yards of macadam roadway on North Fir street in the city of La Grande, Oregon. All bids must be accompanied by a certified check for 5 per cent of the amount bid.

By order of the city council, October 18th, 1911.

C. M. HUMPHREYS,
Recorder of the City of La Grande, Oregon.
10-20-11

\$100 Reward, \$100

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