

REVERSED ITS DECISIONS

SUPREME COURT HOLDS NEW OPINION IN ASSESSMENT CASE.

Circuit Court Judges Thought They Were Following Superior Tribunal, but Were Mistaken.

The Supreme Court is said to have reversed its former decision when it decided Monday that the Oregon Real Estate Company against the City of Portland that "the curative act contained in the Portland charter for 1888 does not authorize the collection of the assessment made under the charter of 1898, where the owners of a majority of the property affected remonstrated against the improvement and the Council disregarded the remonstrance."

This is the opinion expressed by Judge George, who states that the decision of the State Circuit Court "removes the case from the jurisdiction of the Council and the City of Portland, and the Supreme Court in the Nottage case, followed the decision of the Supreme Court in the Nottage and Thomas cases."

The Oregon Real Estate Company filed a remonstrance against the rebuilding of a bridge in 1897 across a gulch on the East side, the cost of which improvement was several thousand dollars, and the Council did the work notwithstanding the remonstrance. The Supreme Court, in passing upon the case, said:

"A refusal of the Common Council to consider a remonstrance is not in any sense a defect in the mode by which it may acquire jurisdiction, but is rather a denial of the right to be treated as if of the remedy accorded him for defeating the assessment."

In the Nottage case, also construing the curative act, the Supreme Court said: "In the absence of a constitutional restriction a Legislature may validate taxation or assessment proceedings which have been carried on in violation of the law, but in a way that might have been originally adopted, and may also retroactively declare immaterial statutory requirements to be inoperative as to those cases in which they were dispensed with in the first instance."

"It is within the power of the Legislature to cure proceedings for a street improvement that were carried on in violation of the law, but in a way that might have been originally adopted, and may also retroactively declare immaterial statutory requirements to be inoperative as to those cases in which they were dispensed with in the first instance."

In the Nottage case the petition for the improvement did not have the requisite number of signers, and in the Oregon Real Estate Company case the remonstrance was ignored by the Council.

Judge George does not see why the language of the Supreme Court just quoted does not fit one case just as much as the other.

The Supreme Court in the Nottage case, in further passing upon the curative act, held as follows:

"A section of the city charter which provides that if any assessment for street improvements thereafter made or hereafter made in such city shall be in violation of the law, the city shall have power to bring actions against the owners of the land charged with the improvement to recover the amount of the assessment, and to enforce the payment of the same, is unconstitutional and void as a usurpation of judicial authority, but is a validating act, though it does not validate the words ratify, confirm or validate."

The language is here used, "if any street assessment is declared invalid for any reason whatever, the city can sue to recover."

Judge George and his colleagues, in deciding the Oregon Real Estate Company case, concluded that "any reason whatever" would include the ignoring of remonstrances, but the Supreme Court has held to the contrary.

In the State Circuit Court it was decided that the curative act of Portland, which was cured by the curative act, but the Supreme Court says, "No."

The Supreme Court, in the case of Thomas against the City of Portland, likewise involving a construction of the curative act, said: "A decree declaring void an assessment for a public improvement is not a public improvement, and the municipality to collect the cost of the work from the property benefited."

"Section 156 of the Portland charter of 1888 provides that, if on the completion of any street improvement, the cost thereof is declared by a Common Council to be a charge on the adjacent property, any assessments levied to defray the cost thereof is adjusted to be levied on the property benefited, and the cost of the improvement might be charged, to recover the cost of the improvement, but not intended to, and does not in and of itself cure or confirm defective assessments, but was intended to afford a new remedy for the recovery of the assessments that have been judicially declared void, and only such are effected."

The State Circuit Court Judges, in deciding the Oregon Real Estate Company case, also followed this decision as well as the Nottage decision, thinking it fitted the bill, but the Supreme Court, it seems, did not intend it to be so.

The lower court was a joint session decision. The recent ruling of the Supreme Court will affect quite a number of street cases in which the city is interested, but it cannot be told yet just how many.

CHINESE TESTIMONY BARRED.

Admission of Celestials into United States Made Difficult.

Native-born Chinese, so-called, who are refused admittance into the country by Collector of Customs Paterson, and who are landed as frequently by the Federal Court in future as in the past. Judge Bellinger made an announcement to this effect yesterday.

Su See, a young man about 29 years old, who came from Hong Kong on the O. R. & N. Co.'s steamship Indramasra, must go back to the land of flowers, tea and boxes. A petition for his admission on a writ of habeas corpus was denied.

Su See testified that he was born in Portland and lived here until he was 5 years of age, when he returned to China, and remained there until the time he took passage on the Indramasra. He said his father desired him to come here and secure an education, and Paterson refused to admit him. The young man remembered that he was born in the third story of a building on Second street, and that there was a Chinese testimonial in his name.

Chinese testimonial was offered, one witness stating that Su See's father told him concerning the birth of his son here shortly after it happened.

Paul Doady and John Marshall testified that they knew En Moon, Su See's father, who formerly lived here, but could not identify his son. In his opinion he resembled the testifier in the County Court yesterday. It is a unique document differing altogether from the usual form of affidavits by lawyers. It was written by the testifier in the German language, and the original is accompanied by a translation into English by Aloyse Harold. The instrument reads as follows:

"Hearst, April 29, 1933.—My old and feeble body admonishing me today to bring everything in order in regard to the property which I will leave, I will do it with the help of God. I give my home and the money which I have yet to dispose of to my youngest

daughter, Lada, born Hefty, now wife of Eugene Willis, to dispose of and distribute it among herself and her brothers and sisters to the best of her knowledge and conscience, and to a child to be named to sell the home, I authorize her to give a valid and lawful deed. I appoint her to act in my stead and I have confidence that she will administer the property as I wish it. The above will has been written by myself, being of sound mind. I empower my daughter Lada to pay her traveling expenses out of my estate. "Margaretta Munsmeyer. "Rev. J. C. John, preacher, witness.

Trying to Save Armstrong.

Pleas Armstrong, sentenced to be hanged on Monday at Baker City for the murder of Minnie Ensminger, may obtain a new lease of life. His attorney, George J. Bentley, was in Portland yesterday, en route to Salem to present the case to the Supreme Court. Mr. Bentley has a copy of the letter, written by Miss Ensminger to Armstrong on the day before she was killed, in which Armstrong never received. Had it been delivered Armstrong would doubtless not have shot his sweetheart. The attorney will do his best to get the Bureau to grant a writ of habeas corpus, and says he will be able to show that there was an understanding between the two that if they could not marry in this life they would go together to the next world, and that Armstrong had no idea what he was doing when he fired the fatal shot.

R. H. Miller Divorced.

R. H. Miller writes from San Francisco to say that he was granted a divorce from Gertrude M. Miller on April 22 on grounds of cruelty. Mrs. Miller's maiden name was Bolton, and she was married to Miller October 13, 1900. Mr. Miller says: "The troubles of the newly-married couple were many. The mother quarreled with every member of her relatives, father-in-law, brother, and lastly son-in-law, who is now free of such people."

Articles of Incorporation.

Incorporation articles of the Glass & Prudhomme Company were filed in the County Clerk's office yesterday by Graham Glass, William E. Prudhomme and G. A. Taylor, capital stock \$50,000. The objects announced are to acquire general engineering, lithographing, bookbinding and stationery business.

NEVER BEFORE TAXED.

Assessments on Special New York Franchises Must Be Paid.

ALBANY, N. Y., April 28.—The Court of Appeals in a decision today unanimously sustained the special franchise tax law, reversing the decision of the appellate division of the Supreme Court, handed down at the January term, and sustaining the decision of Judge Earl. The decision sustains the provision for the assessment of the special franchises by the State Board of Tax Commissioners.

There were seven cases, all involving the question of the validity of assessments upon the special franchises of the respondent corporations made by the State Board of Tax Commissioners under the act of April 1, 1928, which general tax law, so as to include as taxable real property the rights of street railroads, gas, pipe lines, telegraph, telephone and similar public service companies in law, reversing the decision of the appellate division of the Supreme Court, handed down at the January term, and sustaining the decision of Judge Earl. The decision sustains the provision for the assessment of the special franchises by the State Board of Tax Commissioners.

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DEATH OF MRS. LOUISA L. CLARK.

Well-Known Pioneer Woman Stricken With Paralysis.

Mrs. Louisa L. Clark, a well-known pioneer woman, died yesterday evening at her home in Greaham, after remaining ill at the Methodist Hospital for two days. Saturday she sustained another stroke of paralysis, from which she did not recover. For several years she had been in failing health, and for about six months was confined to her home. Mrs. Clark was 72 years old last December.

She and her husband, L. H. Clark, who died some time ago, were the pioneer undertakers in the city. They had an establishment on East Oak street, between Union and Grand avenues. They first moved to Mount Tabor after disposing of their business on the old Mount Pleasant Home, where Mr. Clark died. Since then Mrs. Clark has made her home at Greaham, but visited Portland frequently. She was a member of Multnomah Grange, Patrons of Husbandry, at Pleasant Home, and also a member of Rebekah Degree Lodge of Greaham. The funeral will be held in the Methodist Church of Greaham tomorrow morning at 10 o'clock, and will probably be under the auspices of the Rebekah Degree Lodge. Multnomah cemetery, between East and West streets, will be the place of interment. Mrs. Clark left no relatives. Mrs. Ruby Chalker was raised by her from childhood.

WAGON IS WRECKED.

Instantly Wrecked Horse From Plunging Into Ravine Elevated Road.

A milk delivery wagon from the R. H. Schump of Columbia Slough, was completely wrecked in a runaway accident yesterday morning at 5 o'clock. The driver, who was a spirit team, managed to get away from the driver on East Burnside, some distance out, although he turned to the lines as long as he could. A wheel of the wagon was wrenched off at East Eleventh street and the horses came to Union avenue, where they turned south.

On Union avenue, between East Stark and East Oak streets, there is a curbing gap, 40 feet wide, extending from curb to curb, the roadway at this point being not less than 20 feet high. The horses reared and the wagon with great speed in nearly the center of the street. It seemed impossible for them to prevent plunging through this opening, but as they neared the chasm the driver saw what was ahead and instinctively swerved to the sidewalk on the east side of the street. They continued their flight along the sidewalk for a few blocks, when the horses got away from the wagon at the corner of East Washington street. The wagon was badly wrecked, but the horses were not hurt.

WILL GET WATER.

East Twenty-Eighth District Will Be Provided With Large Main.

For the information of the residents of the East Twenty-eighth-street district, between East Stark and East Hoyt streets, who are concerned over the water supply, it may be said that the proposed 24-inch water main will be extended through that part of the city as early as the next week. Already work is in progress on the Albin branch of this system, and it is announced that the water will return in its original form or work its way into the general system. No contracted disorders are not a product of infection, the inflammation remaining, and there is not the slightest danger that the disease will return in its original form or work its way into the general system. No contracted disorders are not a product of infection, the inflammation remaining, and there is not the slightest danger that the disease will return in its original form or work its way into the general system.

TELEGRAPHIC FRAUDS.

Joseph Legard has bought the Jewel Property, located at upper end of Manhattan Island, for \$38,000.

Traffic on the Cincinnati Southern Railroad, near Greenwood, Ky., Monday night, was blocked by a freight wreck. Three blocks practically the entire business portion of Melbourne, Ia., was destroyed by fire yesterday. The loss is \$42,000.

The Supreme Court has been asked for a writ of habeas corpus for Albert P. French, witness in the Fair will case, to answer questions.

While wrestling with a friend at his home in Fremont, Conn., Albert P. French, aged 40 years, was thrown in such a way that his neck was broken.

Worn out by watching at her husband's sick bed, Mrs. S. N. Brown, of East Greaham, died of pneumonia yesterday. She was taken to the sanitarium and there took laudanum and died.

Twenty people gathered about the coffin of Mrs. Martin Myerhoff, at Chicago 280 Madison street, yesterday afternoon, to see the coffin with the corpse by the giving away of the floor. Seven were injured.

President Roosevelt will lay the cornerstone for a Y. M. C. A. building at Topeka, Kan., during the session of the International Convention of the Railroad Y. M. C. A., April 30 to May 2, in that city.

Giuseppe Bonino has asked a New York magistrate for permission to carry a revolver. His life has been threatened for causing the arrest of five Italians, who, he says, attempted to extort money for defense of prisoners in the Madonna number case.

Oregon Kidney Tea is prepared without chemicals. It is superior to kidney and bladder diseases.

LARGE MILL SITE BUILDING

STANDARD BOX FACTORY WILL COVER LARGE AREA.

East Side Lumber Company Will Soon Start Work on a Big Dock.

Before the next six months between four and five blocks will be covered at the foot of East Water by the Standard Box Factory Company and the East Side Lumber Company, whose mill is located at Sellwood. Work is being laid out on the Standard Box Factory plant. A roadway has been built on East Water to East Ankeny, and the foundation of the main mill building between East Ash and East Ankeny streets, is nearly completed, and timbers are being shaped for the building. S. B. Cobb, secretary of the company, said yesterday that there is a shortage of timbers. If the "hold up" by the sawmills continues, Mr. Cobb said the factory would saw out its own timbers, which it can easily do. The sawmill plant at the foot of East Alder street, Mr. Cobb, however, expressed the hope that there would be a settlement of the labor difficulties in a short time. The foundation for the engines is being laid in concrete on East Water, between East Ash and East Ankeny streets, and the company has already placed orders for most of the mill machinery.

Work will also start in a few days on the big lumber dock for the East Side Lumber Company. It will cover the block between East Pine and East Ash streets and west of East Water street with a dock, which it will use for a city lumber yard. The dock will be 100 feet long and 20 feet wide, and will be built on the foundation of the dock. With all these industries in this vicinity, it will make it a center of some importance. It will also be a part of the Railway Company will extend a branch on East Water street to this lumber dock, and will transport much of the lumber from the Sellwood mill to the dock. The dock will be built on the foundation of the dock. With all these industries in this vicinity, it will make it a center of some importance. It will also be a part of the Railway Company will extend a branch on East Water street to this lumber dock, and will transport much of the lumber from the Sellwood mill to the dock. The dock will be built on the foundation of the dock.

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WE HAVE MOVED

AND ARE READY FOR BUSINESS

AT 246 WASHINGTON ST. COMMERCIAL BLOCK, Bet. Second and Third

THE KILHAM STATIONERY CO.

ABSOLUTE CLEANLINESS IS OUR MOTTO. We do Crown and Bridge Work without using any of the old-fashioned methods. We enable us to fix your mouth comfortably. We have feeling as well as you. Dr. W. A. Wire, manager, has found a safe way to extract teeth absolutely without pain. Dr. T. P. Wire is an expert at Gold Filling and Crown and Bridge Work. Extracting teeth when plates or bridges are worn. DR. W. A. WIRE, are ordered. DR. T. P. WIRE.

WISE BROS., Dentists

1212 1/2 FILLING BUILDING, Cor. 2d and Wash Sts. Open evenings till 9. Sundays from 9 to 12. Or. South 2251.

The work will be continued from that end through to a connection with the end of the 24-inch line at the corner of East Stark and East Thirty-fifth streets. The Albin ends of the pipe line are not as large as the main pipe, which will be 24 inches. When it reaches East Twenty-eighth street, it will be a 24-inch main. When this pipe line is laid through to Albin, there should be an abundance of water. It will also afford fire protection for property in the district. A number of hydrants will be placed on the main.

East Side Notes. Mrs. J. L. Wells, who has been seriously ill at her home at No. 600 East Ankeny street, was reported yesterday to be considerably improved.

Mrs. J. H. McMillen, who has been on the sick bed for some time for her health, has returned to her home on Crosby street.

Samuel Connell, manager of the Northwest Door Company, Albin, Commissioner of the Louisiana Purchase Exposition, has started for St. Louis. He will remain there until the exposition opens.

The improvement of Union avenue between East Oak and East Stark streets is held up for want of some timbers. The contractor has lumber to finish up, but timbers for caps are needed and cannot be had. Business men have been greatly inconvenienced by the condition of Union avenue.

Billingsness, dizziness, nausea, headache, are relieved by small doses of Carter's Little Liver Pills.

DAILY METEOROLOGICAL REPORT. PORTLAND, APR. 28, 5 P. M.—Maximum temperature, 68; minimum temperature, 42; river reading, 11 A. M., 8.4 feet; change in 24 hours, 5.0 feet; total precipitation 5 P. M. to 5 P. M., 0; total precipitation since September 1, 1932, 38.85 inches; normal precipitation since September 1, 1932, 41.18 inches; deficiency, 4.33 inches; total sunshine April 27, 1933, 14.12 hours; total sunshine since September 1, 1932, 1,304.30 hours; normal, 1,304.30 hours; deficit, 0.00 hours; total wind velocity, 1,304.30 hours; normal, 1,304.30 hours; deficit, 0.00 hours.

WEATHER CONDITIONS