LEASE OF PITTOCK BLOCK ANNULLED

Judge Bean's Ruling Settles Controversy Over Valuable Property.

WOOD FAILS TO PAY RENT

Defendants' Contention as to Verbal Extension Agreement Disproved — Second Suit on Bond Now Pending.

By the terms of an opinion filed in the United States Circuit Court yesterday by Judge Bean, the lease executed on February 23, 1907, by H. L. Pittock on the Pittock homesite, constituting an entire block in the retail business section of Portland, to J. Whyte Evans is annulled.

The lease was for a term of approximately 99 years and at the time of the inauguration of the suit the rights under it were held by W. D. Wood, of Seattle, under assignment from Mr. Evans. The property involved in the case is the largest tract in the main business district now unoccupied by buildings devoted to commercial purposes. The property is designated on the city plats as block 2[illegible] and is bounded by Washington, Tenth, West Park and Stark streets. Two residences are now on the property, one a cottage that was occupied by Mr. Pittock in early days in Portland, the other a larger residence built by him for a home some years later.

Under the terms of the lease Mr. Evans, or his assigns, was to begin construction on the block not later than July 1, 1908, of a building to cost not less than $500,000 and to be constructed of steel or concrete or a combination of both. The terms further provided for the payment to Mr. Pittock of the sum of $2500 a month for the first 10 years, which rental was increased at the rate of 5 per cent every five years thereafter for the full term of the lease.

Suit Filed Year Ago.

Suit for the cancellation of the lease was filed in October, 1909, by Mr. Pittock on the ground that the terms of the lease had not been complied with. At that time there was due in unpaid rentals and taxes approximately $70,000 and Mr. Wood had made no move toward construction of a business block on the premises, although more than one year had expired after the time limit fixed in the lease for the commencement of work. Mr. Wood had paid the rental specified in the lease up to December 1, 1907, but thereafter had paid no amounts until January, 1909, except about $3030 in street assessments. Between January and March, 1909, he paid the further sum of $10,000, making a total payment on the lease of about $30,000, or less than one-third of the total amount that should have been paid to the time of commencement of the suit.

Before filing suit Mr. Pittock had sent a written notice to Mr. Wood, as provided by the terms of the lease, notifying him that the lease would be terminated at the expiration of 60 days unless the rent due was paid. This was in August, 1909, and no money being thereafter paid on the accrued rental, the action was commenced.

Extension Point at Issue.

As a defense to the suit for cancellation of the lease Mr. Wood alleged that on or about May 13, 1909, Mr. Pittock, in an interview with him, extended the time for the performance of the conditions of the document until the completion of the Olds, Wortman & King building, which Mr. Wood was constructing and which was to have been completed about February 7, 1910. Mr. Pittock filed a reply to this defense denying the existence of any agreement for an extension of the terms of the lease.

In addition to this defense the defendant Wood set out in his answer that the lease had not been delivered, nor possession of the premises surrendered to him, and that Mr. Pittock had brought the suit in bad faith, seeking to cancel the lease because of the increased value of the property. It was alleged that this value had doubled since the execution of the lease. The latter issues were abandoned on the trial of the case, however, it being shown that Mr. Pittock had extended every reasonable courtesy to the defendant, and the issues as finally drawn in the trial involved only the question of an extension of the conditions of the lease.

Wood's Actions Held Damaging.

In the opinion filed by Judge Bean yesterday, this question alone is discussed. It is pointed out that there was a sharp conflict of testimony in the trial on the question whether the time for the performance of the covenants and conditions of the lease was extended by agreement of the parties. Mr. Wood and Mr. Hawley, who was associated with him, says the court, testified that such an agreement had been entered into, but these allegations were denied by Mr. Pittock and his secretary, Mr. Price, who was present during the interview. The court holds that the burden of proof was on the defendant to sustain the allegations of the answer by a preponderance of evidence, "and," says the court, "in my judgment he has not done so." The court then reviews the subsequent conduct of Mr. Wood and Mr. Hawley in relation to the matter and reaches the conclusion that it was inconsistent with the existence of an agreement for an extension of time as claimed.

The opinion recites that after Mr. Pittock, in August, 1909, served the formal notice of forfeiture of the lease if the rent was not paid in 60 days, the defendant made no claim or contention that the forfeiture would be in violation of a previous extension agreed upon.

Other Pleas Made at First.

That when notified by Mr. Price in October, 1909, that he had positive instructions to begin suit if the rent was not paid by October 10, the defendant protested on the ground that it would avail the plaintiff nothing, would be an absolute bar to his own handling of the property and do violence to the other work being carried on by the defendant in Portland, but did not assert that such suit would be in violation of or contrary to an agreement between them.

That after the complaint had been filed, but before service, Mr. Wood, in an interview with Mr. Price and Mr. Pittock's attorney, endeavored to persuade the postponement of the action, offering to give his individual note, guaranteed by the Trustee Securities Company, but did not insist that the suit would be contrary to agreement.

And, again, that after the suit had begun Mr. Hawley had had several interviews with Mr. Pittock in Pittsburg and New York and made no contention of a violation of agreement.

Ruling Is for Plaintiff.

The conclusion of the court follows: "If such an agreement had in fact been made, it is improbable that the defendant or Hawley would have omitted, in their several interviews, to have insisted upon the fulfillment of such an agreement. While I have no doubt that the defendant and Hawley had intended to testify on the trial to what they understood to be the arrangement with the plaintiff, I am constrained to find from the testimony of the plaintiff and Price and from their subsequent conduct that they are mistaken.

"Decree will therefore be entered in favor of the plaintiff as prayed for in the bill."

The suit was not for the recovery of money, but simply for annulment of the lease. In 1907, however, Mr. Wood filed a bond in the sum of $150,000 with the Trustee Securities Company of Seattle, having assets represented to be $1,301,000, as surety.

Another Action Pending.

Another action instituted by Mr. Pittock is pending against W. D. Wood and the Trustee Securities Company for the recovery of the amount due on the bond. At the date of bringing the suit for cancellation there was due upon the lease about $70,000, without interest, including taxes. There are now due, including taxes and rental, about $120,000 and attorney's fees and costs. In the action at law pending against Mr. Wood and his surety, recovery of the amount due at the date of commencement of the suit is asked. The issues are not entirely complete in this action, but it is expected that it will soon be tried. Both cases were brought in the State Circuit Court, but were removed on petition of the defendant to the United States Circuit Court.

The firm of Cake & Cake represent Mr. Pittock as attorneys in both actions and the firm of Williams, Wood & Linthicum appear for Mr. Wood.

TAX COMPLAINTS ON TODAY

Board of Equalization to Have Busy Session on Assessments.

The County Board of Equalization will begin the consideration of complaints today. Yesterday was the last day for property owners to object to their assessments. A large number of complaints were filed, but they were for the most part of little importance to others than the persons interested.

Among the petitions filed yesterday was one asking that an assessment of $50,000 on King's Heights real property be raised to $150,000. The petition was presented by J. R. Wetherbee. He said the owners of the property expect to put in hard surfaced streets and other improvements, and that as the law prevents them from issuing bonds except to the assessed valuation, the company wants the assessment raised.

The Hibernia Savings Bank filed a petition that the assessment of its capital stock, surplus funds and undivided profits be reduced from $159,560 to $125,117.12.

"Because of ladies' wearing apparel which depreciates," is the reason assigned by the Eastern Outfitting Company in asking a reduction from $35,000 to $25,000 in the amount of its merchandise assessment.

HOW WILL VOTERS BALLOT

(Continued From Page 10.)

this whole problem. The other vital fact is that the saloonkeepers were the hosts. It was the same thing in the theater. The saloonkeeper was in reality the host and the women on the stage, who would interrupt a song to speak to a man in the audience or give him an inviting glance on leaving the stage to go into boxes, were the hostesses.

In the boxes presumably a bottle of near-beer (or the genuine stuff) could be had for a dollar and a man could chat with a woman, possibly good-looking or perchance ugly, but who at any rate was bright enough to entertain a crowd for a few minutes. I don't know the saloonkeeper's share of that dollar, but presumably it was the larger part. I dare say the men should know better, but even Dr. Jekyl, who had agreeable places where he could call in respectable society (and these guests on Burnside street lack that often) was immensely entertained by setting Mr. Hyde free to go where he would and do what invited him. This does not excuse or extenuate. It merely is a recognition of certain facts that our voters are going to affect on November 8 by our ballots.

A Suggestion to the Ministers.

I came away from Burnside street with a wish and a decision. I wish that the prohibition ministers of Portland could see and study the problem of prohibition by spending say every evening for a week in the North End resorts (and others), not with a thought of pity for the regular guests and hosts and hostesses, or of condemnation or with any feeling of superiority, but simply with a determination to study the reasons and motives in a commonsense way for an aspect of life that they preach against. There are difficulties in the way, I know. Mr. So-and-So, who contributes $350 a year to the church treasury, and who has a voice in the policy of the church, would probably disapprove. Ministers are hired to preach the word of God, denounce sin while welcoming sinners, bury the dead and marry the living and be socially the leaders of the church society. Sociological studies of vice and intemperance are not part of a minister's duties and they tend to tarnish his reputation. It's not conventional, and, besides, it's only the beginning of trouble.

My personal decision was to vote against prohibition; to vote against the law to enforce it, and to vote against that absurd amendment to give cities home rule. The local option law is a good thing. Why not let it alone?

As for Portland—when the citizens through their city government are willing and determined to limit the number of saloons to say 100; to insist that any saloonkeeper who violates the law shall lose his license and never hold another, they will have taken one step. Milwaukee, Wis., with a population of 370 odd thousand, has 142 saloons, according to the Associated Press reports of the census. Portland, with 150,000 less, has 419 saloons. Milwaukee proposes to interest saloon loungers in other attractions to an extent.

It would not ruin the taxpayers of Portland to have public toilets on the down-town streets, which would lessen the visits of men to the saloons, where a drink at the bar is almost inevitable. Perhaps it would be dangerous to suggest that the city government be the host of thousands of men in search of recreation by furnishing municipal dance halls and social centers and even a municipal theater, to be made self-supporting so far as possible. However, even that socialistic (so-called) movement might be cheaper than the cost of criminals, neglected children and poverty-stricken families. Possibly it would be better to continue to try to drive men by prohibition and kindred laws. The city's assets are its citizens and the never-ending stream of visitors to the city are an asset of the state. How do you plan to vote November 8? GEORGE THACHER.

288 Tillamook street.

In 1909 fiscal year the government of Italy made profit of $12,821,605 out of its salt monopoly.

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PHONE USERS 'KICK'

Bell System Officials Object to City Interference.

ARGUMENTS TO BE HEARD

Council Committee to Investigate Numerous Complaints—Company to Be Given Chance to Present Its Side of Case.

The judiciary committee of the City Council will listen to the officers of the Pacific Telephone & Telegraph Company in contending that City Attorney Grant is in error in advising that the city has the right to interfere with the present rate of charges made for telephone service, on Monday, November 7. A committee from the company were present yesterday and intimated that strenuous objection would be made to any disturbance of the present franchise relating to rates, or the incorporation of clauses which may require repairs and installations to be made within a specified time after notice has been given the company.

After receiving the reply to the brief prepared by the City Attorney and listening to the arguments of the attorneys for the company, the committee of the Council proposes to fix a time when the users of Pacific phones may appear and detail in just what particulars they have not been properly served. That meeting will probably be held November 21.

The entire matter is the result of an effort on the part of the Council to secure improved telephone service and was precipitated by numerous complaints from persons in all parts of the city.

Engineer Phillips, representing the company, yesterday appeared before the committee and asserted that the company is doing its best to keep pace with the rapid growth of the city.

"We have spent $300,000 in Portland in the last two years in laying cables," said Mr. Phillips, "and we intend to spend an additional $150,000 immediately in extending the lines to the suburbs. It is an engineering feat which requires the most careful study, so to lay the cables as to give the best service.

"The cable will carry only so many wires and ofttimes the installation of phones is delayed by the necessity of laying new cables. In the outside districts it is frequently the case that complaints come from people in isolated places, where we would have to bear the expense of a long cable and carrying poles in order to accommodate the one customer.

"We wish an opportunity to place this entire matter before the Council, to have them examine our plants and to investigate thoroughly the entire situation."

Mr. Phillips declared that a delay of more than 24 hours in making repairs on an established phone line which was reported to be in "trouble" was inexcusable and declared that he would welcome any complaint of any longer time consumed.

DITCHBURN CASE CITED

CANDIDATE'S RECORD UNPRINTABLE, HINTS SNOW.

Disbarment of Nominee for State Circuit Bench Recalled—Family History Mentioned.

PORTLAND, Or., Oct. 24.—(To the Editor.)—We older members of the bar, doubtless many of the younger also, who have some historic memories touching the Judges of our courts, have been wondering what the public thinks of the aspirations to the bench of one John Ditchburn, familiarly known as "Dutch John, the sailor." Politics, it has been said, makes strange bedfellows, but who could foresee in these piping time of peace that the public voters of Multnomah County would be called upon to choose between Judge Gatens and Ditchburn? For whatever may be said of Judge Gatens, this much is certain, his private life is clean and wholesome, while the family history of Ditchburn will hardly bear writing, the writing of which, however, would reflect upon no one but himself.

With his personal and private life, however, we probably have no concern, but it is important to know something of the man who now asks the support of Multnomah County in his candidacy for Circuit Judge. At this writing I have before me a volume of the Oregon Reports (volume 32, page 538), in which is reported a case entitled "Ex Parte Ditchburn." It was a contempt proceeding against Ditchburn, growing out of his wholesale use of names of sureties to undertakings which had been filed in court and out of which grew charges of forgery and unprofessional conduct. Ditchburn was prosecuted by Judge Webster at the instance of the grievance committee of the Bar Association. The Judges of the court, Judges Moore, Wolverton and Bean sitting, found the charges of unprofessional conduct true. The court in its opinion said:

"An examination of all the evidence tends to convince us that he (Ditchburn) was aware of, if not a party to, the scheme (a scheme involving deception of the court and counsel in respect to the matter under investigation), and such being the case, it is ordered that he be suspended from the practice of his profession for the term of six months and that the state recover from him the costs and disbursements of this proceeding."

Shades of the Shattucks and the Hurleys defend us! What a revision of the judicial tariff downward! Imagine Ditchburn on the bench with this finding against him. Ditchburn, I observe, was an anti-assemblyite before election. He has suddenly been converted to a pro-assembly man as the election approaches. Well might the assembly people say, "Heaven save us from our friends." "If John, the sailor," shall undertake to explain the Supreme Court record above quoted, he must needs take time also for further explanation, because an examination of the Circuit Court records of this county discloses some interesting indictments in the case of the State vs. Ditchburn, of which, however, more anon.

ZERA SNOW.

BAD FAITH IS CHARGED

FOUR EMPLOYMENT COMPANIES TO BE EXAMINED.

Ellis Fails to Secure Vote to Cancel One License and Attacks Honesty of Others.

After failing to secure a vote on his effort to report the license of the Canadian Employment Company for cancellation, which would have had the effect of forcing that company out of business of supplying labor in this city, Councilman Ellis yesterday charged that concern, the Pioneer Employment Company, the Pacific Employment Company and Charles E. Hansen, Jr., with exercising bad faith in sending out men who are seeking positions. The charges were supported by Deputy City Attorney Sullivan, who asserted that he was in receipt of dozens of complaints every week to the effect that laborers were not being squarely treated.

The case came up on a report from the City Attorney on the treatment accorded two men who were recently sent to Estacada to take employment in a sawmill. They paid $1.50 each for the information as to the position, and later expended $1.50 each in reaching the scene of their work. After working a portion of a day the men were laid off, and the mill shut down. The men returned to Portland and asked for a refund of a portion of the money they had paid out. It was refused, together with an offer of compromise for $1 each.

An attorney representing the Canadian Employment Company informed the committee that the company was within the law and the city ordinance regarding a license when it furnished the men the opportunity to obtain work. The attorney contended that the company could not be held responsible for the shutting down of the operations at the logging camp where the men were sent.

Mr. Ellis believed that the employment agency was responsible and called attention to an instance where its proprietor, E. P. McCroskey, had been reported to have sent men to his own logging camp in Washington and then discharged them in order to keep his employment agency in operation here.

The Assistant City Attorney asserts that they are constantly receiving complaints that employment agencies are taking money from poor men and are not rendering an adequate return. Attorney Sullivan announced his intention of bringing the matter to a head before the City Council and either securing the revocation of all licenses held by employment agencies against whom complaints are substantiated or asking the Council for a new law which will require specific performance of contract between the agency and the laborer.

The license committee of the Council will take the matter up for another investigation on November 7, at which time all the employment agencies under suspicion will be cited to appear and evidence will be taken from men who are said to have been duped into parting with their funds on promise of securing work.

For Over Three Decades

Foley's Honey and Tar has been a reliable household medicine, and the "children's children" find it today the same safe and sure remedy for coughs and colds that their grandsires did. Mahla Stockwell, Hannibal, Missouri, writing under date of August 28, 1910, has this to say about this great medicine: "I have recently used for the first time Foley's Honey and Tar Cough medicine. To say that I am pleased with it does not half express my feelings. It is by far the best I ever used. I had contracted a bad cold and was nearly sick in bed, having a terrible headache as well as a cough, and was threatened with pneumonia. I used but one bottle of your Foley's Honey and Tar and was completely cured. It beats all the remedies I ever used, and I have used many different kinds." Sold by all druggists.

Lame back is one of the most common forms of muscular rheumatism. A few applications of Chamberlain's Liniment will give relief. For sale by all dealers.

PRISON FIGHT WON

C. Sam Smith, Accused of Burning Sheep Pens, Freed.

3-YEAR CONTEST OVER

Charge Against Cook County Resident Filed in 1908—Dropped After Sentence Is Imposed. Case Is Reversed.

After fighting sentence to prison since 1908, during which period he has contended that the state was prosecuting the wrong man, C. Sam Smith, ex-Sheriff and old-time cattle-owner of Crook County, has been freed of charges against him alleging burning of sheep camps and shearing pens belonging to ex-Representative Williamson. The District Attorney for Crook County yesterday notified J. R. Wyatt, attorney for Smith, that the complaints would be dismissed.

It is said among those familiar with the circumstances surrounding the great sheep range war of Central Oregon, that Smith could have cleared himself of the charges at any time. He knew the persons who set the torch to the property of the sheepowners, but refused to betray friends to secure his own liberty.

Mr. Smith was arrested on information furnished by another cattleman, Larkin Elliott, who confessed arson and who named Smith as an accomplice. The trial of Smith divided the county into factions and was attended by armed men who maintained a close guard over the actions of the authorities, and who even attempted to influence newspaper reports of the court proceedings. Smith was convicted and was sentenced to serve four years in the penitentiary. The case went to the Supreme Court, where it was reversed and sent back for new trial.

In the meantime Elliott was sent to prison for three years. He served a portion of the time and was pardoned. It is probable that nothing more will ever come of the attempt to prosecute the persons who set fire to the sheep camps. Smith will not name the firebugs and nobody else knows their identity.

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15c Dress Gingham 10c—An endless choice in checks and striped Ginghhams, splendid for house dresses or kitchen aprons. This launders fine and wears well. A staple artiele that is regularly sold at 15c the yard **10c**

85c FANCY SILKS, 49¢ YARD A new shipment of Silk, in plain and fancy effects. Plain Messaline and soft finish French taffeta. A full range of excellent shades. Smart styles in plaids, stripes and checks; good, honest value at 85c, very special, yard **49c**

Men's $2.50 Shoes $1.98—A special lot of 200 pairs of good kid and calf leather. These give good service and comfort; regular $2.50 val., pair **$1.98**

Women's Shoes—We offer a lot of Fall Shoes in patent kid and calf leather; all good styles. $2.50 and $3.00 values **$2.35**

Women's Underwear—Odd lot of Vests and Pants, full length pants. Regular 50c quality, special at low price of only, each **25c**

Boys' Underwear—Good, heavy weight Shirts and Drawers. Color tan; in all sizes. Regular $1 value, special, garment **49c**

$2.25 Pillows $1.65—Full size, with fancy art ticking cases and filled with good quality feathers. These are of the $2.25 quality, on special sale at **$1.65**

Ladies' Outing Flannel Gowns, in high and low-cut neck, trimmed in braid; colors blue and pink, in all sizes, cut full; regular $1 values, special for only, ea. **69c**

5c Coat Hangers, 2 for 5c—Made of heavy twisted wire, fine finish; regular 5c value, 2 for **5c**

Ladies' Pajamas, made of the best grade of outing flannel, trimmed in braid; colors pink and blue; $2.25 values, for **$1.98**

Ladies' Corset Covers, cambric and nainsook, tight or loose fitting; trimmed in Val. and Torchon lace and embroidery; some are slightly soiled; also black. These sold for $1.25; special, each **98c**

Ladies' Chemise, made of longcloth and nainsook, trimmed in embroidery and beading, also lace. Values up to $1.25, special **79c**

Ladies' Knit Skirts, in all colors, gray and white striped and solid navy and blue; regular $1 values, special at only, ea. **89c**

Ladies' Cambric Petticoats, trim'd in Torchon lace flounce and also embroidery; cut full and made well; good $2.50 value, priced special at, each **$1.49**

10c Toilet Paper 5c—1000 rolls of fine quality tissue, extra strong and soft; regular 10c rolls, special at the low price **5c**

Men's Neckwear—A choice line of all the best and most wanted colors. Thousands of patterns to choose from; values to 35c and 50c; for this sale, choice at **25c**

$2.00 Suitings 98c—20 pieces new Fall Suitings, dark, medium and light shades, in stripes, checks and overplaid effects; also new mannish mixtures. All wool, 54 and 56 inches wide, $2.00 value, very special price, the yd. **98c**

$1.25 Taffeta Silk 89c—A yard wide, very fine, lustrous finish, excellent quality, black only. Unusual values, at, the yard **89c**

$1.25 Cotton Blankets 89c—Extra fine grade, in gray, pink, blue, brown borders; full size, good weight; regular $1.25 values, selling for low price of **89c**

$1.75 Comforters $1.39—These are full size, covered with silkoline and are filled with pure clean cotton down; unusual value at $1.75; very special, ea. **$1.39**

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A Charter Oak in your home provides you with all the heat you require, yet it consumes a minimum amount of fuel. You can regulate the volume of heat to suit yourself. You can keep your fire over night and be sure to have it next morning. It needs no attention.

It is made extra heavy and for over half a century has proven its lasting strength. Each stove is gas proof so that your room or kitchen is not filled with unpleasant odors. One in your house will improve your home conditions and insure well cooked meals.

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