TIMBER TRESPASS CASES DISMISSED

William Hanley and J. Frank Adams Wrongly Indicted, Prosecutor Says.

COURT AGREES WITH VIEW

Land Department and Department of Justice Held to Have Been in Error in Policy Followed in Recent Years.

That the United States Department of Justice has no right to prosecute individuals for trespass upon timber lands, or for cutting timber upon Government land unless more than $50 worth is cut in one year or if it is used for other than mining, agricultural or domestic purposes, was the statement make by United States District Attorney McCourt before Federal Judge Bean yesterday morning. The question came up upon Mr. McCourt's application for dismissal of the indictments against William Hanley and J. Frank Adams, of Klamath Falls, charging illegal timber cutting. The indictments were dismissed, Judge Bean saying he had no doubt that the statement of Mr. McCourt as to the law was correct.

In moving for a dismissal of the Hanley case, Mr. McCourt said, in part:

"In the first place, Mr. Hanley has fully settled his civil liability for the timber removed by him. In the next place, it seems that the Land Department or the Department of Justice has been laboring under an error for some time past in the procedure in these cases for trespass on timber lands.

Indictment Was Mistake.

"The Circuit Court of Appeals for the Eighth Circuit, a few years ago, decided that this section 2461, so far as the public land states were concerned, had been amended or a portion of it repealed by implication by the passage of the timber and stone act, which prohibits the cutting of timber upon the public lands for the purpose of export or sale, and provides a punishment of a fine, merely; while section 2461 of the Revised Statutes provided imprisonment and a fine of not less than—I don't know whether double or treble—the value of the timber cut.

"Now, in that case, United States vs. Morgan, the Circuit Court of Appeals held that the timber and stone act repealed or amended that act insofar as the punishment was concerned, that is, it did away with the imprisonment altogether, and that it left the law so that a person could not be prosecuted for cutting timber upon the public domain unless he intended to sell or dispose of it.

"In this case, Mr. Hanley cut this timber for the purpose of using it in a dredge that he was operating on what is known as the 'P' Ranch in Harney County. They were cutting a channel through for the purpose of reclaiming a swamp—so that, under that decision, Mr. Hanley had no criminal responsibility whatever and should not have been indicted.

"The Land Department and the Department of Justice have been going ahead for the past few years and indicting persons who cut timber upon the public domain, even for their own use, when they cut in excess of $50, without a permit or the consent of the Secretary of the Interior.

Liability Not Criminal.

"Section 5 of the act of 1891 provides that timber may be cut upon the public domain for mining, agricultural or domestic purposes under rules and regulations to be prescribed by the Secretary of the Interior, and the Secretary of the Interior has prescribed a rule that $50 worth of timber may be cut by any one person in any one year, but if more than that is desired to be cut, there must be a permit secured or agreement with the Secretary of the Interior and Mr. Hanley had no such agreement. For these reasons, Mr. Hanley was not liable criminally, and I move to dismiss the case.

"Now the same applies to case of United States vs. J. Frank Adams, of Klamath Falls. Mr. Adams also was charged with a similar offense. His timber was cut for the purpose of fencing a large tract of land owned by him, and for the same reason that case should be dismissed. And, notwithstanding the fact that he has offered heretofore to plead guilty and pay his fine, it would not be proper, in my judgment, to take the fine from him under the circumstances of the case."

POINT OF RESIDENCE RAISED

Defendants Live in Two States; Plaintiffs in Britain.

Federal Judge Bean has under advisement the question whether a resident of Great Britain can bring suit in the Oregon district of the Federal Court where one of the defendants is a resident of Oregon and the other a resident of Montana. The case is that of Duncan and Roderick McAulay, residents of the Isle of Skye, against Z. F. Moody, M. A. Moody and John McAulay. John McAulay lives in Montana and the Moodys in Oregon. The question went before the court yesterday morning on a demurrer to the complaint.

The McAulays were doing business as John McAulay Brothers. The Moodys are alleged to have given a note for $5000 on October 17, 1899. It was not paid and John McAulay is alleged to have refused to join his brothers in a suit. They demand two-thirds of the money alleged to be due on the note.

ACCOUNTS ARE CHIEF ASSETS

Andrew Kan Says $12,234 Is Due Him From Various Sources.

Andrew Kan, of Andrew Kan & Co., has filed in the Federal Court a statement of his assets and liabilities, in the bankruptcy case brought against him by Ying Lun Company, Honeyman Hardware Company and Zan Brothers. Kan says the company's liabilities are $14,778.28, of which $14,339.53 are classed as unsecured claims. His assets, he says, are $16,730, of which $12,234.18 represents debts due upon open accounts.

A. G. Boesen, a farmer of Enterprise, Or., filed a voluntary petition in bankruptcy, saying his debts were $5229 and assets $232.

ALLEGED WHITE SLAVER HELD

Nick Cosmos Released From Custody in Bonds of $1000.

Nick Cosmos, arrested under the white slave law for alleged complicity with Charles Peters in securing the transportation of Minnie Hall from Redding, Cal., to Medford, Or., obtained bail yesterday, and was released from custody. He was taken in custody last Tuesday at Medford.

J. F. Eggert and George D. Leo are Cosmos' bondsmen. They each gave $500 bond, the total amount of the bonds in which the alleged white slaver is held being $1000. He probably will have a hearing before United States Commissioner Cannon today.

TRIP ON SKIS ENJOYED

Portland Excursionists Home From Mount Hood Expedition.

Somewhat tired, but nevertheless enthusiastic over their trip to Mount Hood, the half dozen members of the Portland Ski Club, who left Portland Saturday morning, returned at midnight Wednesday, and spent yesterday regaling their friends with stories of their experiences.

"It was the finest trip we have ever taken," said Ed Jorgensen, leader of the party. "We enjoyed splendid weather and were able to go as high on the mountain as we ever did in the five years we have repeated this trip. Leaving Portland Saturday morning we reached Camp Rhododendron late that night and made the journey up the mountain to the ice line by Sunday noon. The weather was clear and fair on Sunday and Monday, and we enjoyed skiing over the snow, which was from five to eight feet deep at various points. The air was keen and brisk and not very much wind was stirring, which helped make the outing the most pleasant of any of the annual events I have attended.

"'Old Man' Yoakum, custodian of Cloud Cap Inn, treated us royally, and we were made to feel at home all the time. Each day we climbed the mountain side and sailed down on our skis. It is the most exhilarating sport I know of, and all of us heartily enjoyed the outing.

"We left the mountain early Wednesday morning and the return trip to Portland consumed that entire day, which was the hardest part of the journey. When the Mount Hood Railway is completed this excursion can be made without any inconvenience whatever."

Thomas Monks, Oliver Jeffery, Ed Jeffery, Joe Cronin and Ralph Knight, the other Ski Club members who made the trip, voiced the same sentiments.

HILL COMING ON SPECIAL

Visit of Great Northern President Not Official in Nature.

While Louis W. Hill, president of the Great Northern Railway, and son of James J. Hill, is speeding toward Portland on a special train, he has been unable to advise local officials of the exact time that he will arrive in the city because he does not know how long he may want to stop at Spokane and Puget Sound points.

By operating on fast time he can arrive here late tonight, but if he remains long in either of the Washington cities he may not arrive until Saturday morning.

President Hill's mission to Portland, it is announced, is not one of business, but merely as a complimentary visit on his way to California where he will meet his family.

It is possible that he may visit the Deschutes Valley to view the construction work on the Oregon Trunk and in the event that he expresses a desire to do that President Stevens will be ready to take him over the new road.

ALL TALKING OF OREGON

Real Estate Man, Home From East, Tells of Prosperity.

Business and financial conditions throughout the East are much improved compared with only a few months ago. S. D. Vincent, of the realty firm of S. D. Vincent & Co., who returned yesterday from a six weeks' trip to Chicago and Detroit, said yesterday.

"I went home to Lapeer, Mich., to spend the holidays with my parents," said Mr. Vincent, "and I took occasion to investigate the business situation in order to map out my own business course for the year. Things could not be better, and I intend to proceed accordingly. People all over the country are talking about Portland and Oregon now, and I met three families who were preparing to pick up, bag and baggage, and move to Portland in a few weeks."

PERSONAL MENTION.

C. K. Mills, of Vale, is at the Perkins.

F. E. Ramsey, of Ashland, is at the Oregon.

R. E. Williams, of Dallas, is at the Imperial.

J. M. Reeder, of Shaniko, is at the Cornelius.

P. J. Vall, of Prindle, Wash., is at the Portland.

E. M. and A. M. Lara, of Bend, are at the Cornelius.

L. C. Smith, of La Grande, is registered at the Oregon.

C. Knowell, of San Francisco, is registered at the Lenox.

J. J. Clark, of South Bend, is registered at the Perkins.

Dr. C. E. Wade, of Drain, is registered at the Cornelius.

P. S. Davidson, of Hood River, is registered at the Portland.

Mr. and Mrs. W. C. Harding, of Roseburg, are at the Imperial.

O. Sanders and C. Sanders, of Vivian, S. D., are at the Lenox.

James A. Cooper and Floyd E. Bogue, of Corvallis, are at the Oregon.

Mr. and Mrs. W. M. Chamberlain, of Spokane, are staying at the Lenox.

Mr. and Mrs. W. F. McGregor, of Astoria, are staying at the Imperial.

Mr. and Mrs. Frank Jackson, of Shelton, are staying at the Perkins.

Dr. and Mrs. C. S. Prescott, of Aberdeen, Wash., are staying at the Portland.

Dr. E. B. Merchant, a hardware merchant of Newberg, is registered at the Imperial.

NEW YORK, Jan. 26.—(Special.)—Northwestern people registered at the hotels today as follows:

From Portland—A. Jasman, at the Flanders; F. Bauer, at the Great Northern; Mrs. H. W. Goode, at the Savoy; W. R. Parker, at the Breslin.

From North Yakima, Wash.—A. E. Austin, at the Grand.

From Tacoma—J. Heitman, at the Herald Square; W. N. Cuddy, at the Breslin.

From Seattle—Mrs. C. Guin, S. Barrett, at the Cadillac; R. C. Post, at the Herald Square.

From Walla Walla, Wash.—B. S. Wadsworth, at the Wolcott.

From Spokane—L. H. Wells, at the Grand Union.

SPECIAL TRAIN SATURDAYS

To Clatsop Beach Points.

Hotels at Gearhart and Seaside are open all year. Splendid salt air resorts for Winter rest and recreation. Astoria & Columbia River Railroad trains 8 A. M. daily, 6:30 P. M. Saturday. Round trips $3 weekend; $4 daily. **

PROPERTY OWNERS CHARGE COLLUSION

City Engineer and Contracting Firm Sued on Improvement Work.

CHANGED ESTIMATE VEXES

Hall-Street Lot Owners Declare $17,939 Additional Called For Is Imposition and Say Morris Knew of Defects in Work.

Charges of collusion and conspiracy between City Engineer Morris and the contracting firm of Giebisch & Joplin are made the basis of a suit filed with the Circuit Court yesterday by property owners on Hall street, wherein it is asked that the city be restrained from collecting for street improvements recently completed.

The action, which is brought by F. I. McKenna, H. M. Tomlinson, F. I. Fuller, and a score of other property owners, marks the beginning of a legal contest that promises to give the courts considerable activity for some time to come for the Executive Board has already indorsed the conduct of the City Engineer in the matter and the City Council has passed the necessary ordinance providing for the collection of sums sufficient to pay off the indebtedness for improvements.

The improvements affect property owners between Fourteenth and Sixteenth streets on Hall. It is charged that the original estimate made by the City Engineer for the work was $12,652. The contracting firm, which was the only firm to submit a bid for the work, took the contract for $12,905.83. Afterwards the scope and extent of the work was wholly changed, the complaint sets up, and the City Engineer filed a corrected estimate, calling for an expenditure of $30,844.

No Notices Received.

It is contended by the complaining property owners that the first estimate was in reality excessive. As to the increase they say they received no notice of the increase and so had no opportunity of remonstrating. The additional work is of no benefit to them, they say.

The charge is then made that the contractors failed utterly to live up to the original contract which called for a macadam road, among other things. The complaint recites that instead of a macadam road the firm constructed a roadway from unevenly broken stone, very small quantities of sand and very large quantities of ordinary yellow clay. This was wilful and intentional violation of contract, it is charged, and was performed with the full knowledge and consent of the City Engineer. The cost was not more than half the bill presented, so the complaint estimates.

Sidewalks Are Faulty.

Complaint is made, too, of the quality of sidewalks, curbings and gutters installed by the contracting company. Already these improvements have commenced sagging and are really unfit for travel at the present time, it is charged.

As to the acceptance of the work by the Mayor's Executive Board, it is charged that the acceptance was made entirely on the report of Engineer Morris and without personal examination by the members of the board. The Council, in making the levy to pay for the work, was fully advised of the protests and complaints, the complaint says. The whole transaction is set down as a violation of the rights extended property owners under the state constitution. The property owners signify in their complaint, a willingness to pay the original price as estimated by the Engineer, but not a dollar more.

An order of court is asked restraining the Auditor from issuing liens against the property and setting aside the levy made by the City Council in ordinance No. 22796.

MINIMUM PENALTY TOO HIGH

Judge Morrow Scores Framers of Law in Sentencing Highwayman.

Ten years as a minimum penalty for highway robbery is too much, in the opinion of Circuit Judge Morrow, who mildly scored the framers of the law yesterday in passing sentence on Pat McClure, a young highwayman.

"I think the Legislature was led astray by sentiment," said the Court. "There should be a lesser minimum than ten years for such offenses."

Young McClure was found guilty of having engaged with Walter Kerschner in two holdups. Kerschner, a pugilist, was recently sentenced to a term of 12 years by Judge Morrow. But McClure displayed some very good qualities. It was his first time in trouble and his past record was found to be without blemish. Judge Morrow recently said he hated to sentence the man, but since a jury had found him guilty there was no alternative.

"Ten years is a long time to send this man to the penitentiary," said Judge Morrow in passing sentence. "There should be a shorter term, but the court has no discretion. The very shortest term I can impose is ten years."

McClure may avoid the penitentiary yet, however, as the authorities have relented considerably in his favor. Judge Morrow has taken a personal interest in the youth and a new trial has been asked.

Wife Charges Cruelty.

Charging that her husband is enjoying comfortable means while she is penniless with their four children to support, Mrs. Wilhelmina Zink brought an action for divorce and division of property in the Circuit Court yesterday against Emil Zink. In her complain Mrs. Zink charges that her husband is of violent temper and that some time ago he ran her off the place with her children, ranging in years from 19 to 13 years, first beating the entire family in a brutal manner.

He has at least $3000 in cash and property worth $3200, she charges, while she is penniless. Before the family breakup he even borrowed from her the $140 she had saved through economy and self-denial in many years. She asks judgment for $140 in addition to a divorce and a suitable property settlement. The couple was married in Russia 22 years ago.

Action Brought Following Suit.

Charles P. Kelly's fighting methods served to get him into a $5000 damage suit as defendant in the Circuit Court yesterday. As the outcome of a fight he had some time ago with George Holt, action was brought by Holt, who alleges that Kelly bit his cheek and disfigured him for life. For two weeks after the encounter Kelly says he was under the care of a doctor. He asks an award of $75, in addition to the $5000, to cover doctor bills.

MOTIVE IN QUESTION

Ulterior Purpose Seen in School Bill Change.

RESIGNATIONS TO FOLLOW

Members of Present Board Feel Chagrined by Intimations in New Bills—"Loosely Drawn," Lawyer Believes.

Supplementary to a bill which, if passed, would legislate all the present members of the Board of Education summarily out of office, a special committee of the Civic Council has prepared two additional measures, one of which enlarges the powers of a grand jury to such an extent that such a body would have the right to employ accountants at county expense to examine the books of any public officer about whose honesty the grand jury might be in doubt.

The second proposed bill provides that any public officer who, directly or indirectly, receives emolument of any kind other than that to which he is by law entitled shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than $500 or imprisonment not exceeding six months, or both. The punishment applies also to the giver of a bribe.

Intimations Vex Directors.

Chagrined by the intimations of dishonesty on the part of School Directors contained in the proposed measures prepared by the Civic Council committee, I. N. Fleischner and H. C. Campbell, two members of the Board of Education, declared yesterday that their resignations would become effective immediately if the bills were passed at Salem.

"I question whether the motive back of this proposed legislation is of the kind generally branded public-spirited," said Mr. Fleischner after making the declaration relative to resigning. "I have reason to believe that some who are supporting this anti-Board of Education propaganda are doing so for selfish reasons."

The terms of the School Directors whose official life would be cut short were the Civic Council's new school law to be adopted at Salem are as follows, each expiring at the end of the fiscal year in June: Mrs. L. W. Sitton, 1911; J. V. Beach, 1912; H. C. Campbell, 1913; R. L. Sabin, 1914, and I. N. Fleischner, 1915.

Bill "Loosely Drawn."

H. H. Northrup, a pioneer attorney of Portland, who had much to do with drafting the legislation under which the school district now operates, said yesterday with respect to the new law proposed by the Civic Council committee:

"To say the least the measure is very loosely drawn. Some of the improvements sought might be beneficial, particularly the one requiring registration for school elections, but the majority of the changes proposed would be detrimental.

"Cutting down the terms of School Directors to two and three years would be a bad move, for the reason that it usually takes a new member of the board a year or two to familiarize himself with conditions and become valuable to the district.

"Then it seems to me unnecessary to require a School Director to take an oath of office in which it is specified that he will not become, directly or indirectly, a party to any contract with the board. The present oath of office binds him to observe the laws and there is legislation guarding against his becoming interested in a way. To me it appears to intimate that the man taking office is naturally dishonest.

"Altogether too much power is given the officers to be known as the Superintendent of Public Instruction and the Commissioner of School Buildings. The members of the Board of Education would be really subordinate to these officials and not their superiors. Neither can I see any reason for allowing the Mayor to fill vacancies. That smacks altogether too much of political encroachment.

"It seems to be that a surplus of officials is provided for and that they would be distinguished by unnecessarily high-sounding titles. The Superintendent of City Schools should be continued by such designation, not as Superintendent of Public Instruction. The Commissioner of School Buildings would really be a sort of head janitor for all the schools. It would be dangerous to endow these two officials with the autocratic powers which the proposed act would allow.

"It is foolish even to think of allowing ten taxpayers to force an investigation of the official acts and books of the Board of Education. The dangers of such a system are obvious. There is at present ample provision for investigation should one be necessary."

Turner to Get Lights.

TURNER, Or., Jan. 26.—(Special)—Representatives of Balfour, Guthrie & Co. were here today going over the ground with a view to starting work on erecting the poles for the electric light system which will be installed here by the Interior Warehouse Company.

That Little Hacking Cough

Hard coughs are bad enough, to be sure. But it's often the little, hacking, tickling, persistent cough that means the most, especially when there is a history of weak lungs in the family. What should be done? Ask your doctor. He knows. Ask him about the formula on the label of every bottle of Ayer's Cherry Pectoral. Ask him if this medicine has his full approval for throat and lung troubles. Then do as he says.

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Be well; be strong. You cannot if your bowels are constipated. The best laxative is Ayer's Pills, all vegetable. Ask your doctor if he agrees with us. Do as he says.

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We could not afford to so strongly indorse Rexall "93" Hair Tonic and continue to sell it as we do, if we were not certain that it would do all we claim it will. Should our enthusiasm carry us away, and Rexall "93" Hair Tonic not give entire satisfaction to the users, they would lose faith in us and our statements, and in consequence our business prestige would suffer.

Therefore, when we assure you that if your hair is beginning to unnaturally fall out or if you have any scalp trouble, Rexall "93" Hair Tonic will promptly eradicate dandruff, stimulate hair growth and prevent premature baldness, you may rest assured that we know what we are talking about.

Out of one hundred test cases Rexall "93" Hair Tonic gave entire satisfaction in ninety-three cases. It has been proved that it will grow hair even on bald heads, when, of course, the baldness had not existed for so long a time that the follicles, which are the roots of the hair, had not become absolutely lifeless.

Rexall "93" Hair Tonic is vastly different from other similar preparations. We believe that it will do more than any other human agency toward restoring hair growth and hair health. It is not greasy and will not gum the scalp or hair or cause permanent stain. It is as pleasant to use as pure cold water.

Our faith in Rexall "93" Hair Tonic is so strong that we ask you to try it on our positive guarantee that your money will be cheerfully refunded without question or quibble if it does not do as we claim. Certainly we can offer no stronger argument. It comes in two sizes, prices 50 cents and $1.00. Remember you can obtain it only at The Owl Drug Co., Inc., Cor. 7th and Washington Sts.

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