MUST STAND TRIAL Nease's Demurer to Indictment Is Overruled.

and welfare.

JUDGE GEORGE DECIDES CASE

Indictment Charging Nease Under Nuisance Act With Conducting Poolroom is Sustained in an Exhaustive Decision.

...................... The rapidly growing prevalence of the new form of race-horse handbook gam-bling, not merely at race tracks, but ven thousands of miles distant, and in the very center of business and population, and at the very doorsteps of the people of this Nation generally, and the namenance of such public houses, in the nature of clearance-houses for gaming, if resulting an the indictment charges, is certainly much more a disturbance of the public peace than any more sending of challenges, or going armed, to the alarm of the public, or other ants of a similar character, which repeatedly have been held by the authorities as constituting breach of the public peace or welfare.

The above decision was rendered by Judge George yesterday in overruling the demurrer to the indictment against M. G. Nense for selling pools on horse races, drawn on section 1956 of the code, which provides for the punishment of any percommit any act which . . . grossly dis-urbs the public peace, . . . or which turbs the public peace, . . . or which openly outrages the public decency, or is

The court held the indictment valid, and Nesse must now stand trial, or al-low a judgment of conviction to be en-tered against him, and appeal to the Sureme Court for a final decision as to the nterpretation of the law, that is, whether t can be made to apply to poolselling or not.

Nease operated under a city license, the Council having passed an ordinance

Council having passed an ordinance licensing poolselling. Sheriff Word, asserting that poolselling is contrary to the state law, took pos-session of the Warwick Club on Fourth street, where Nease was doing business, and still has a deputy in charge. Yester-day Sheriff Word said he will retain pos-session until the case is ended. The specific charge arginst the defend.

The specific charge against the defend-ant is that he did "for gain habitually sell pools upon horse races and habitually peocure idle and evil-disposed persons to come to his house to buy pools and to bet upon horse races, to the common naisance and annoyance of all good citi-zens." This is euglvalent not only to charging the defendant with keeping a samin-house under the authorities has gaming-house under the authorities, but charges also resultant effects to the pub-lie peace of the acts. For the defense Judge Watson and John M. Gearin ap-peared, while Henry E. McGinn ap-peared as amicus curiae and presented the legal argument on behalf of the state.

Discussing the case in his decision,

Judge George said: Generally oriminal statutes mention cer-tain specific acts, stating them particularly, as consciluting a crime, when willfully com-mitted, and also give the crime a name. This statute is an exception. It merely un dertakes to provide that any act which grossly disturbs the public peace or which epsnly outrages the public decency and is inforious to public morals, is a crime, leav-ing the particular acts to be described by the indictment, defined by the court and found by a jury and also the states.

found by a jury, and also this statute does not give any name to the crime. In these respects it differs from criminal statutes cenerally. To constitute a crime there must be som overt act or overt resulting act, and there may be various ways and manners in which uch overt act, or acts, may be committed The overs act alleged in this indictment, as the Court reads it, is in effect that the defeedant has maintained a public gaming house to the common nuisance and annoy-ance of all good citizens, or, as the indict-met puts it, the defendant for gain habitually sells pools upon horseraces and habitu-ally procures idls and evil-disposed persons to come to his house to buy pools and to bet upon horseraces, to the common nuisance and annoyance of all good citizens. The question before the court now on demurrer is simply whether any person who for gain habitually sells pools upon horse-raves, and for gain habitually procurse idle and evil-disposed persons to come to his arrangement including work that cannot possibly be performed by ten people. No expense will be spared to make the fair a house to buy pools and to bet on horsesuccess in every way. Though given by Congregation Ahavai Sholom, the fair races to the common nulsance and annoy-ance of all good citizens, is committing an act, or acts, either grossly disturbing the public peace or openly outraging public decency and injurious to public morals. If such is the fact and so found to be by the tions jury on the trial, this Court thinks it con-stitutes a crime in this state, under section 1930, and is punishable as such. This Court, as a question of law, so holds. Whether such are the facts must be a question to be left to the jury on the trial to determine. As defendant in his argument and brief has conceded, it is well settled that where a statute amploys words as descriptive of of-fenses that had a settled meaning at common law, they will be accorded the same meaning in the statute; quoting both Endlich and Sutherland on Statutory Construc-tion. It is also a correct principle that in the construction of statutes, courts will be aided, so far as is applicable, by the courses, tendencies and principles of the common law and common-law decisions. Common gaming houses were at common law indictable as a nuisance, not so much because of any particular description of crime committed within their walls, but even "because they are temptation to idlearea not because they are apt to draw to-gether great numbers of disorderly persons." And in this indictment it is alleged that such has occurred-the "actual disurbance" which defendant contends section 1900 Our great manufacturers' sale is still on for this week. Don't miss it. We make all our garments. They are ready to THERDS. It is conceded also that the act charged in the indictment was an indictable nulsance at common law. Gaming houses were in-dictable, not only when "actual distur-ances" occurred, but also when "actual disthem fit you if there should be any fitting to do. Tourist coats, rain coats, the best turbances" did not really occur, simply be-cause of the inherent tendency, in them-selves, of gaming houses to so operate. This indictment does not stop with any mere nat-ural tendency of such houses to produce dis-order, but goes on and alleges that idle and evil-disposed persons habitually came to the house at defendant's procurement and bought pools and made bets on horseraces, and all to the common nulsance and annoyance of all good citizens, and if a jury should find such alleged "actual disturbances" and "disorderly" conduct occurred in fact, then in law it was an act grossly disturbing the public peace, under a long line of decisions and authorities. No matter how quiet and orderly a gaming house was, it was still a public and indictable nuisance at common law, and even its evil tendencies alone were enough to establish its status. It is claimed that in this indictment, no It is claimed that in this indictment, no actual disturbance of the public peace is charged, but can this indeed be frue? The indictment plainly charges the defendant with maintaining a common gaming house, which act constituted a disorderly ait at common law, and it goes on and charges what, if so found, is tantamount in law to actual disorder resulting. It is expressly conceded by the defendant, both in argument and in briefs, that this indictment charges an indictable nuisance at common law. It is also expressly conceded that maintaining a gaming house is an indictable nuisance saming house is an indictable nuisance

at common law, not because of any actually committed offense of incling actual disturb-ance of the peace as committing vice or immorality or crime, but simply because of the inherent tendency of such places to lead to these results, and such evil tendency even made it an indictable nuleance, per se. No actual disturbances or other had results were really necessary. Such being conceded, it is not going much further to hold that if act-ual disturbance, according to common law meaning, is alleged, a crime has been meaning, is alleged, a crime has been charged. This much of the common law on the

subject of public nuisance, this Court holds, as set forth in the indictment, is included by our statute, section 1930, in both its letter and its spirit. The courts of this state-though no common-law crimes are here pun-ishable unless made so by statute-in construing our statutes are not unmindful of the changing forms, but not of substance, of gaming and gaming houses, and of the rap-idly growing prevalence of the new form of racehorse handbook, gambling not merely at racetracks, but even thousands of miles distant, and in the very center of business and popultation, and at the very doorsteps of the homes of the people of this Nation gen-erally. The maintenance of such public houses, in the nature of clearance houses for gaming, if resulting as the indictment charges, is certainly much more a disturb-ance of the public peace than any mere send-ing of challenges, or of going armed to the alarm of the public, or other acts of a sim-ilar character, which repeatedly have been so held by the authorities as constitutes a struing our statutes are not unmindful of so held by the authorities as constitutes a breach or disturbance of the public peace

SAYS SHE ANNOYED HIM.

Harry Howard Accuses His Wife in Suit for Divorce.

"Soon after we came to Portland," says Harry Howard, in answer to the suit of his wife, Myrtle Howard, for a divorce, "my wife began a systematic method of annoyance by telling me of her escapades with other men. She would leave home for hours at a time, and on returning would inform me what a fine time she had here having. She answered telephone been having. She answered telephone calls, and said they were from young fel-lows, old friends of hers, who lived up

lows, old friends of hers, who lived up the Valley." Once, he alleges, she said: "If I am compelled to stay at home, you will have no peace while I am here," and struck a newspaper out of his hand. On November 3, 1904, she packed her trunk for the purpose of leaving him, and atruck him in the face, and snatched the pleture of his mother and threw it upon

biture of his mother and threw it upon the stove. When he was sick, she refused to wait upon him, and remained out of the house until late at night, and when ahe came home told him she had been out with a swell young man, drinking bee and whisky and eating sausages.

KERN GETS DAMAGES.

Jury Awards Him \$5000 for Brutal Assault.

In the suit of John Kern against George Milger, A. Baum, Jacob Hartung, Philip Schmidt and George Wolf the jury, In Judge Scar's Court, yesterday afternoon returned a verdict in favor of Kern for

\$5000 damages. Kern was assaulted by the defendants in August last, and his skull was smashed in by a rock in the hands of Milger, and the others beat him with their fists. Milger was recently convicted on a charge of assault with a dangerous weapon for the part he took in the affair. John F. Logan and Robert Galloway, attorneys, conducted the case for Kern.

Looking Into Arson Case.

The charge of arson against A. B. Coon. the specific form of which is that he hired persons to set fire to a lodging-house at Fifth and Madison streets, was the sub-Fifth and Madison streets, was the sub-ject of inquiry by the grand jury yester-day. Mrs. Fouchet was a witness before the grand jury. Bhe states that Coon of-fered her 500 to do the deed, and she re-fused, telling him she did not want to go to the penitentiary. Coon once lived at Dillon, Mont., and he owns a saloon at West Park and Burnside streets.

Jury Unable to Agree.

The jury in the M. A. Ward adultery case were unable to agree and were discase were unable to agree and were dis-charged by Judge Cleland at 7:45 o'clock men Will Speak last evening. The jury retired for delib eration about 11 o'clock. Concerning City's Welfare.

THE SUNDAY OREGONIAN, PORTLAND, DECEMBER 18, 1904.

"ERUPTION SALE" ENDS SATURDAY NIGHT

PRICES SMASHED TO PIECES

Men's Overcoats **Men's Suits**

Worth \$12.50 and \$15.00 put into this sale at . . .

ERUPTION PRICES ON MEN'S AND BOYS' UNDERWEAR ALL THIS WEEK

TOYS GIVEN AWAY WITH BOYS' SUITS AND OVERCOATS

WHEN YOU SEE IT IN OUR AD IT'S SO

MOYER CLOTHING CO.

REFORMERS MEET TODAY MASSMEETING WILL BE HELD AT MARQUAM THEATER.

Prominent Business Men and Clergy- : Regular Price

Christmas Gifts at January Sale Prices A Choice Stock of Novelties, Easy Rockers. Etc., and Every Article Reduced

If Reasonable Reductions

WILL GIVE A FAIR.

Congregation Ahavai Sholom to Raise Mortgage on Property.

FOR THE XMAS TRADE.

LADIES' COATS.

Jacob Rils did not visit Portland in wain. 'He stirred up the reform move-ment which takes action this afternoon in the Marquam Grand Theater at 3 o'clock. A few enthusiasts sat in his audience the other evening and, gather-ing together afterward, decided that this city needed reform. They say they no Congregation Ahaval Sholom will give a fair about March 15. The purpose is to raise enough money to pay off the \$6000 mortgage on its property. It is intended to make this the largest, most attractive sooner mentioned the notion but it was taken up generally. For this afternoon they have secured a number of prominent and in every way the most beautiful of its kind ever given in this city. The utmen who will speak on the various re-forms needed in the city. This meetmost enthusiasm prevails among its meming is not carried on under the bers. Many unique and original plans are presented. The committee of ten appointauspices of the Municipal Lengue, but has received the patronage of that august ed met last night and arranged for an additional committee of ten, the present organization.

This afternoon's programme will be: "The Value to a Community of Officials Who Do Their Duty," Rabbi Stephen S. 'Eliminate Politics From Municipal

Affairs " Richard W. Montague. Representing business interests, Samuel will be participated in by other congregaonnell. Representing commercial travelers, W.

Gibson. Representing banking interests, Robert Livingstone.

Tailor-Made for Men. Representing the Catholic Church,

There are always a lot of men who want a good tailor-made overcoat for Christmas, and they put it off until the iast moment and then we tailors don't have enough of time to make them a coat, Father Thompson, Other speakers: Dr. A. A. Morrison, Dr. E P. Hill, N. J. Blagen, chairman. There has been bolling beneath the calm of the city, say those who are arranging the meeting, a strong desire for reform. The recent unearthing of scan-duls in the City Hall has set the people so they have to go and get a ready-made cheap cost. Anticipating these fellows, we have had our tailor make up a few elegant over-coats ready to wear and you can get them ready to put on. This is forethought inagog. So the few men who set the move-ment on its legs have looked with aston-ishment at the rate it has run and have deed, but we don't want to miss you. We want your trade. These overcoats are \$12.50 to \$15.50. Easy terms, \$1 per week. THE J. M. ACHESON CO., had unexpected sympathy extended them. They had no trouble getting together speakers and an even larger leading body of citizens to sit on the stage of the theater and lend their approval to the meeting. There will also be on the stage Merchant Tailors. Fifth and Alder Sts.

a number of prominent ministers and many men who represent the solid bustness interests of the city. It is evidently expected that the church-going portion of the population

all our garments. They are ready to wear. You get easy payments if you want them, fi per week. Any one and every one can have elegant, comfortable, warm Christmas garments. Just the things for presents. This is a great chance for you. We have the tailors to make them fit you if there should be any fitting

Inquiries are often heard on the streets cont on earth, will be offered this week at \$10-a fine Xmas present. Ladies' suita -spiendid genuine tailor cloth: ladies' skirts, also tailor cloth. This week we will where is the best place to purchase gas and electric chandeliers, show-window and storeroom lighting apparatus, gas table lamps and glassware. The answer is al-ways the M. J. Walsh Co. They are very make skirts to order; tailor cloth. \$5.85. These are \$10 and \$12 garments. This is much up to date in their line, prices and workmanship. They also carry a beauti-ful selection of andlrons, firesets, fenders done to keep our factory busy, as we are through making Fall and Winter stock. Come along and encourage the only man-ufacturing establishment of the kind that and screens, in wrought iron and old brass, any of which will make a handsome Christmas gift. Their showroom is at 343 Washington street, corner Seventh.

terms-\$1 per week. THE J. M. ACHESON CO., Fifth and Alder. Makers of Ladies' Garments ready to

wear or to order. A BOY'S CHRISTMAS.

STOP THINKING

We have just received the finest line of picture frame molding ever brought to this city; also a large line of ovals in gold, ebony and gold, brown and gold. Better values not in the market. Open evenings. Sanborn, Vall & Co., 170 First Make it last the entire year by getting him a membership in the boys' depart-ment of the Y. M. C. A. Then he can enjoy the game and reading-room, gym-nasium and swimming pool for 12 months. Annual tickets, 54, 55, 57.

"Do you ride on free railroad passes?" shouted a man in the audience to the candi-date making a speech. "You bet I do. It's anything to best the railroads with me."---Detroit Free Press.

About your wife's Christmas gift, as MURINE EVE REMEDY. she is sure to be pleased with one of our tailor gowns. E. GURNEY, Ladies' Tailor, Mohawk Bldg.



A, Rich and Beautiful CHRISTMAS PRESENT One that will last a thousand years AN ORIENTAL RUG

Is always appreciated. It never wears out-that is, one will last a thousand We have the largest variety in rears. Portland-our own importations-at prices lower than those of any other lealers on the Coast or west of New York. We carry the largest stock of Oriental goods on the Coast, consisting of ORIENTAL RUGS, TURKISH EM-BROIDERIES, CLUNY LACES, SILK SHAWLS AND ANTIQUE

BRASS WARE. And if readers of this advertisement will step into our store at 411 Washington Street, they will be shown a display of Oriental goods richer than anything they have yet seen in this region

A. ATIYEH & BRO., IMPORTERS 411 Washington Street, Between Tenth and Eleventh Streets.

PICTURE FRAMES.

An immense variety of moldings for framing pictures to order, also readymade frames, all new shapes and finishes Open evenings. Sanborn, Vail & Co., 170 First St. between Morrison and Yamhili.

The Denver & Rio Grande scenery is even more beautiful in Winter than Sum-mer. Travel East via that line and spend a day in Sait Lake City. You have doubtless been wondering

what to get for Christmas. Why not have the silverware, knives, forks, spoons and hollow-ware

replated so that they will look and be as serviceable as new? Or no doubt the gas and electric fixor no doust the gas and electric fix-tures are tarnished and need polishing: perhaps the finish is wearing off your brass bed; if it is we are prepared to refinish it. Our specialty is making old or worn articles as good as new and

A CHRISTMAS

SUGGESTION



401 Washington St., Portland, Oregon.

combined with first-class workmanship and honest business methods appeal to you, we intend making this communication the Entering Wedge to our future business relations with you.

A backward season has made it incumbent upon us to unload at almost any cost. Never before has our stock been so complete at this time of year, and never before have we been able to offer such handsome. inducements to buy.

> Full dress and tuxedo suits a specialty Garments to order in a day if required Satisfaction guaranteed in all cases Samples mailed; garments expressed



108 Third Street

WEAK MEN MADE STRONG

Munhood" sent free. Munhood" sent free. Dept. A. 1411 ist ave., Beattle, Waah,

PICTURE-FRAME MOLDING. PIANOS Special sale this week, including the famous "Decker," fifty

years before the public; over 50,-000 in use. Factory prices. Will make present of the freight if you buy this week.

E. U. Will's Music House 350 Alder Street

"Cecilian" Self-playing Planos

A home cure for Eye troubles. Never falls to win friends. Used for infant and adult. Murine don't smart. Boothes Eye-pain.