

POOLSELLING IS ENJOINED

Further Hearing Is Granted for the Case in Court Tomorrow.

COURT TALKS ON GAMBLING

Says If the Plaintiffs Have Not Come Into Court With Clean Hands It Will Throw Out the Case.

POOLSELLING RESTRAINED.

A preliminary injunction restraining the sale of pools on horse races at the Irvington racetrack was granted by Judge Frazer yesterday in the suit of Captain E. W. Spencer, attorney in fact for Elizabeth Ryan et al. against the Multnomah Fair Association, A. R. Diamond, Sanford Hirsch and others. M. L. Pipes, attorney for the defendant, filed an answer reciting that any unlawful purpose. Following the decision of the Oregon Supreme Court in the Nease poolroom case, Judge Frazer decided that a place where pools on horse races were sold was a common gaming or gambling-house, and was a nuisance at common law, and a violation of section 1209 of the laws of this state.

In granting an injunction against the sale of pools at the racetrack Judge Frazer held that the courts have decided that the violation of a covenant in a lease can be prevented by injunction whether it appears the lessor suffers any damage or not. The lease in this instance contains a contract against the use of the premises for any unlawful purpose. Following the decision of the Oregon Supreme Court in the Nease poolroom case, Judge Frazer decided that a place where pools on horse races were sold was a common gaming or gambling-house, and was a nuisance at common law, and a violation of section 1209 of the laws of this state.

What the Complaint Recites.

The complaint recites that poolselling was indulged, and a place conducted where pools were sold and betting devices operated contrary to a clause in the lease restricting the use of the premises for any unlawful purpose. A demurrer was filed which the court held was an admission of the allegations in the complaint, and it was solely a question for the court to pass upon if there was a violation of the restrictive clause in the lease. The court was not sitting as a criminal court to try any person for a violation of the criminal laws, although the question of criminal law figured in the case because of the provision in the lease that nothing unlawful should take place.

"The court," said Judge Frazer, "is not sitting here to pass upon a question of morals or whether poolselling should be allowed or not, or whether it is good or bad. The only question is if the court can restrain by injunction the violation of a covenant in a lease."

Authorities were read showing where there is a restrictive clause in a lease, an injunction will be granted as a matter of course. The question is if the owner suffered any damages is a matter of indifference where there has been a breach of the covenant. It is not a question of damages, or the question of whether there has been a violation which really might be a benefit. It is for the lessor to say if the violation has caused any injury.

Refers to Supreme Court Decision. After discussing various other legal points, Judge Frazer referred to the decision of the Supreme Court in the Nease case holding his poolroom to be a gaming-house and a nuisance at common law. The court said it made no difference if the poolselling was done in the heart of the city, or at the racetrack. Poolselling was gambling, and that was using the premises for an unlawful purpose, and violating the clause in the lease. It was agreed not to use the property for any unlawful purpose, and the injunction should be allowed.

Mr. Pipes, of counsel for the defense, attempted to dissuade the court from granting a preliminary injunction. He said he had just filed an answer which showed that the plaintiffs had waived the restrictive clause in the lease, and had always allowed the sale of pools, and it was understood the track was to be conducted as it has always been heretofore. A hearing was desired upon the facts presented in the answer.

Opposes Further Hearing. R. W. Montague, attorney for Captain Spencer, jumped to his feet to oppose any further hearing. He said the case had been pending for two weeks. Mr. Pipes had elected what policy to pursue and had agreed to stand upon the demurrer. He was not to be allowed to speculate, and now come into court and take some other position. The case was important and should be ended.

Judge Frazer, directing his remarks to Mr. Pipes, said: "The matter came up on a hearing to show cause why the preliminary injunction should not be granted. You had the right to show any cause you had. You had your day in court. You chose to stand on the complaint. Should you have a right to try the case over and over to have it decided whether a preliminary injunction should be granted? I concede that you have the right to try the case out, and have the preliminary injunction dissolved, if you can. Why should you not have presented this before? You might have done both together."

Mr. Pipes explained that until the court had rendered its decision and held to the contrary, he did not think the complaint showed anything, and

he did not think there was anything to answer or show cause on. Judge Frazer asked if counsel thought he ought to ask the court to do anything further in the matter in view of the fact that poolselling was an indictable offense under the decision of the Supreme Court.

As to Quarrel Between Gamblers.

Mr. Pipes responded that it was a case of particeps criminus, where both parties were concerned and had consented to the sale of pools until recently, but had quarreled. If the plaintiff did not come into court with clean hands, he should not be heard. Judge Frazer said if it appeared, as was hinted in the newspapers, that it was a quarrel between gamblers, the court would not have interfered.

Mr. Pipes resumed that the question would not altogether if they sold pools, but if they had to close pools altogether. They had been selling pools for three years, and they wouldn't assign the lease to the defendants unless under the agreement that poolselling continue. It was a controversy between themselves, and the court, if it could not help them, could not help their adversary.

Judge McGinn interrupted with the remark: "No poolselling will ever be done on that property any more."

Pipes Quotes Verse.

"They should have told us that before," continued Mr. Pipes, "and not allowed us to have advertised for six months and brought people here from all over the United States. We have put up \$40,000 purses, and have made ourselves liable, and it may ruin us. Their position reminds me," said the attorney, dropping into verse, "When the Devil was sick, the Devil a monk would be; when the Devil got well, the Devil a monk was he."

Judge Frazer adhered to the proposition that the defendants had stood on the demurrer to the complaint, and granted the preliminary injunction. The plaintiffs were required to give a bond in the sum of \$10,000, and Judge Frazer commented: "If, upon the final hearing, it appears that this is only a quarrel between gamblers, the court will not hesitate to dissolve the injunction."

The answer filed by the Multnomah Fair Association recites that it leased the racetrack from W. S. Dickson, who held a lease from Mrs. Ryan. The assignment of the lease was made in June, 1903. It is alleged that it was mutually agreed between all the parties that pools should be sold, as before, and that pools were sold during the season of 1904 and consented to. Mr. Pipes says he will raise the point again that the complaint is not good because it does not say the plaintiffs are the owners of the property. He called their attention to it before, and admitted the fatal defect and promised to amend it, but did not do so. Counsel says it is too late for them now to amend and their complaint must fall, which would put the case out of court entirely.

TWO AGREE TO LEAVE TOWN

YOUNG MEN ASSOCIATES OF CROOKS GO HOME.

Records of a Day's Cases in the Court of Municipal Judge Cameron.

John Golden and Frank Grigware, arrested with Frank O'Connor and Francis Mitchell, as being a part of a gang that has been committing rooming-house robberies in Portland, were released by Judge Cameron in Police Court yesterday with the proviso that they leave town immediately. Golden and Grigware admitted that they had been associating with O'Connor and Mitchell, who are at the County Jail awaiting a session of the grand jury, but claimed to have not been implicated in any of their alleged crimes.

Golden and Grigware say that they are sons of well-to-do families in British Columbia, and were in Portland to visit the fair. Both promised to leave for their homes at once when given permission to leave the court.

Thinking that it was a great joke to play that F. Fritts, an elderly gentleman was Santa Claus by pulling the long gray whiskers of the latter, James Peoples, Jesse Davis and William McCormick were sent to the juvenile court by Judge Cameron yesterday.

Mr. Fritts, who objected to having his whiskers pulled, and did not want to play Santa Claus, told the boys so.

TWELVE MORE SHERLOCK HOLMES STORIES

Publication Begins in the Sunday Oregonian, August 13

In their special realm of fiction, the Sherlock Holmes stories, by Sir A. Conan Doyle, hold the very highest place. Readers of The Sunday Oregonian will be pleased to learn that we have secured 12 more of these famous detective tales. Titles and publication dates follow:

- August 13th—The Adventure of the Speckled Band.
- August 20th—The Adventure of the Engineer's Thumb.
- August 27th—The Adventure of the Noble Bachelor.
- September 3d—The Adventure of the Beryl Coronet.
- September 10th—The Adventure of the Copper Beeches.
- September 17th—The Red Headed League.
- September 24th—A Case of Identity.
- October 1st—Silver Blaze.
- October 8th—The Yellow Face.
- October 15th—The Stockbroker's Clerk.
- October 22d—The Gloria Scott.
- October 29th—The Musgrave Ritual.

Publication Begins Next Sunday

The three boys are all under 17 years of age, but complaint has been made that they have been a nuisance in their neighborhood.

Ah Yim, a Chinese, who believes in happy dreams caused by hitting the pipe, was sentenced to the County Jail for 60 days and ordered to pay \$100 fine for running an opium joint. He admitted that he had permitted James Cooley, a young man, to smoke opium in his bunk to the extent of three pipefuls. Ah Yim and the white man were arrested at 185 Second street, by Sergeant Hogeboom.

E. J. Hayes, who is charged with severely beating his former wife, Mrs. Augusta Hayes, who is now confined in the hospital as the result of the whipping, was released yesterday on \$100 bail, and his trial set for tomorrow. Mrs. Hayes will not be able to appear in court before that time because of her injuries. It is claimed that Hayes cannot be held for wife beating because his wife has procured a divorce, and he will be tried for assault and battery.

Visit Historical Quarters.

The Historical Society at the City Hall is doing a land office business these days, so far as visitors are concerned. Never

A NEW SONG HIT "Valley of Willamette"

Dedicated to those Heroes of the Philippine War, The Oregon 2d Regiment. By Francis James McHenry.

"It is a second 'Banks of the Wabash,'" says a well-known critic.

Hear Mr. Thos. W. Ray, the great tenor soloist, sing it at

THE LYRIC THEATER

Monday, August 7, and the Balance of the Week

ASK YOUR MUSIC DEALER FOR IT

before in its history have so many persons registered at its rooms in the same length of time as during the present rush. Aside from the natural interest attaching to anything of historical value, there is an exhibition one of the best-appointed displays, from a zoological standpoint, of any on the Coast, and in addition the taxidermist's art has been brought to the aid of the association in making the exhibit as attractive as possible. Visitors to the Fair will miss a splendid chance of conferring with the natural advantages of Oregon if they fail to avail themselves of the splendid opportunities afforded by a visit to the society's rooms.

STATE ROAD BOARD NAMED

GOVERNOR CHAMBERLAIN MAKES FIVE APPOINTMENTS.

Commission Will Report to Next Legislature Regarding Convict Labor on Highways.

Governor Chamberlain has appointed the members of the State Road Commission as provided for by a Senate concurrent resolution at the last session of the Legislature. R. A. Harris of Portland; A. B. Cavender, of Brownsville, W. K. Newell, of Dilley; G. W. Jette, of Baker City, and J. W. Shattuck, of Gresham, have been named as those who are to compose the commission.

At the last session of the Legislature a resolution was introduced and passed authorizing the appointment of a commission of five members which should investigate the feasibility of constructing a macadamized state road from Portland south to the California State line, employing convicts from the state penitentiary at Salem to do the work. After a thorough investigation of the proposition the commission is to report to the next session of the Legislature, and upon this decision will depend the action of the lawmaking body. If it is the opinion of the commission, after investigation, that the scheme is a practical one, a bill will be prepared by it for the consideration of the Legislature.

Mr. Harris, the Portland member of the commission, was at the Legislature during the discussion of the convict labor question, in the interests of the Federated Trades Council. In his opinion most of the work of the commission can be done by correspondence with occasional meetings. He is in favor of the utilization of convict labor in any manner that will prevent its coming into direct competition with free labor, and if it is possible to use the prisoners upon the construction of public roads, will favor the preparation of a bill to that effect for the consideration of the next Legislature.

IN DARKNESS FOR DAYS

Winemucca's Lighting System Destroyed in General Fire.

WINEMUCCA, Nev., Aug. 5.—A disastrous fire swept through the business section of Winemucca today, burning 15 business houses, and inflicting damage variously estimated from \$30,000 to \$100,000. It started in Armory Hall and raged for several hours.

The heaviest loser is the Eagle Jewelry & Drug Company, its loss amounting to

PROGRESSION THE WATCHWORD

In no other field of science have there been such marvellous revelations in the past few years as in the science of optics. Theories of a few years back are exploded.

Education has given us the means of PROVING when we are RIGHT.—No guess work here.



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EYESIGHT SPECIALISTS
Y. M. C. A. BUILDING
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The Women's Progressive Dress Club

PRESENTS—JANE BREWSTER OF New York In a Series of Daily Talks at The Portland Parlor 328 230 P. M.

THE ART OF PROPER CORSETTING should give to the wearer dignity, style, carriage, comfort and health. That these can be obtained with the latest-front corset is being demonstrated most convincingly with "IRRESISTIBLE" AND THE "GOSARD" CORSETS.

They bring the highest and most advanced type of the French model corset. You are cordially invited to meet Miss Brewster. Perhaps she may be of much service to you.

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MELVILLE CLARK
KURTZMANN
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and other fine makes of pianos.

Apollo Piano Players

We have just added 600 rolls of Apollo music to our player library. We cordially invite your close inspection of our goods, and when you think of GOOD PIANOS think of

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372-4 Morrison St., Cor. W. Park.

SCHOOL SUPERINTENDENTS
SCHOOL PRINCIPALS
SCHOOL ARCHITECTS
SCHOOL JANITORS

COLUMBIA RIVER STEAMER

Fine Steamer Bailey Gatzert Leaves This Morning at 9 A. M.

A trip to the celebrated Cascade Locks and return on the finest steamboat on the river. Round trip, \$1.50. Starts from Alder-street dock. Tomorrow steamer Dalles City leaves 8:30 A. M. Phone Main 914.

CHEAP RATES EAST.

The Canadian Pacific has announced a special rate of \$7.50 to Buffalo and return, account Foresters of America convention. Tickets on sale August 14 and 15, good for stopovers with final limit of 90 days. For full particulars call on or address F. R. Johnson, P. & F. A., Canadian Pacific, 142 Third street, Portland, Or.

4 GREAT BARGAINS FOR THIS WEEK

BOYS' WASHABLE SAILOR SUITS
The Best 50-Cent Suits in the City—

SALE PRICE **25c**

BOYS' RUSSIAN WASHABLE SUITS
The Best 75-Cent Values in the City, 2½ to 8—

SALE PRICE **49c**

MEN'S BALBRIGGAN UNDERWEAR
MEN'S JERSEY RIBBED UNDERWEAR

50c and 35c Values **25c**

GOLF SHIRTS—ALL PATTERNS

The Best 50- and 75-Cent Values in the City—

39c

OUR GREAT SPECIAL
500 MEN'S SUITS **\$10**

The Equal of any \$15.00 Suits in the City.
EVERY SIZE—STOUT, SLIM AND REGULAR SIZES

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Just Across Morrison Bridge

Out of the High-Rent District
Out of the High-Priced Clique

Where we can sell on the easy-payment plan at prices far below any of the other dealers.

Who has not seen and admired the beautiful IMPORT-ED REED CHAIRS and ROCKERS in the Oregon State Building, which was furnished complete by Calef Bros.

We are now showing in our windows, samples of these IMPORTED Reed Chairs and Rockers out of another shipment we have just received.

THE PRICES ARE RIGHT

Let Calef Bros. furnish your home.

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MORRIS CHAIR

In Solid Oak or Imitation Mahogany—Fancy Velour Cushions—A \$10.00 Chair.

\$8.55

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HALL TREES

In Golden and Weathered Oak. Rich furniture and a Convenience you would not be without after using once.

\$8.50 UP

A line of Hall Seats and Mirrors you should see. Convenient, durable and ornamental. Sensible and necessary Furniture.

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