

AV ESCAPE JAIL ON TECHNICALITY

Prosecution of Title Bank Officers Hinges on Delicate Law Point.

IS BANK ACT OPERATIVE?

Arguments on Question Presented Before Three Judges in State Circuit Court, and Decision Is Taken Under Adversity.

Upon the question of whether the banking law passed by the last Legislature is yet operative will depend the further prosecution of the officials of the defunct Title Guaranty & Trust Company on charges of receiving deposits in an insolvent bank, knowing the same to be insolvent. Arguments on this question were presented before the State Circuit Court yesterday forenoon, when the demurrer lately filed by the accused men was ordered up for hearing. Circuit Judges Gantenbein, Bronough and O'Day heard the arguments of state and defense and then took the matter under advisement. Later the three judges held a conference but did not reach any decision. Another conference will be held this week and the attorneys in the case will be notified as soon as a finding is prepared. Of the four men accused, J. Thornburn Ross, T. T. Burkhart, J. E. Althoff and George H. Hill, the only one in court was Burkhart.

Section 15 of the new law is the one under which the indictments were drawn against the four men, and this section provides that "owners or officers of any bank who shall receive any deposit, knowing that such bank is insolvent, shall be deemed guilty of a felony and punished accordingly, by a fine not exceeding \$1000 or imprisonment in the State Penitentiary not exceeding two years, or by both such fine and imprisonment, at the discretion of the court."

Basils of Claim for Immunity.

The section under which the indicted officials claim immunity from prosecution is 24, which concludes with this sentence: "Within 18 months after the taking effect of this act, all banks doing business in this state at the time of taking effect of this act, shall conform to and in all respects comply with all the provisions of this act, and be subject to examination by the Examiner and the penalties herein provided."

District Attorney Manning and Judge Martin L. Pipes, special prosecutor in the case, appeared for the state while Wallace McCamant and C. C. O'Connell represented the accused four. Wallace McCamant, in presenting the contentions whereby it was asked that the demurrers be sustained, said:

"Section 18 creates a new offense, affixing a penalty of fine or imprisonment or both for its commission. There is nothing in the language in section 18 which shows that this penalty was excepted from the operation of the language contained in section 24, nothing to declare a legislative intent to put section 18 with its penalties in force at an earlier date. The penalty prescribed in section 18 must therefore necessarily be included among the penalties herein included as declared in section 24. The words used in section 24 so broad and comprehensive as to plainly include all penalties mentioned in the act, and among them those mentioned in section 18."

Denies Law Is in Force.

"Manifestly, section 18 is not in force," he said in conclusion, "and until it is in force there is no penalty attached to the act complained of. Until the law is in force there can be neither indictment nor information for its violation, nor can there be a conviction under it. Section 18 not being in force for the infliction of punishment for acts in violation of its provisions, its penalties having been eliminated by section 24 for a period of 18 months after the act takes effect, and the acts charged having been committed within this period of 18 months, the admission of the facts charged in the information would not justify a conviction nor would the acts therein charged be punishable with the penalty prescribed by section 18."

Judge Pipes replied convincingly. He said that a paramount rule of construction of any statute is in gauging the intention of the Legislature and the object aimed at. Language capable of more than one meaning is to be taken in that sense which will harmonize with such intention and object and effect the purpose of the enactment. He added, quoting a rule of construction:

"The first inquiry, therefore, will be—What is the object and intention of the act in question? Judge Pipes continued: "If it has only one object, and that is to protect depositors. There is not a word or line in the act, from the enacting clause to the last word, which is designed to promote this object. There is no conceivable reason why the Legislature shall meddle with or attempt to regulate the banking business except to protect depositors. The banking business is a necessity of modern business methods. It would be impossible now to hark back to the times when men kept their money in stockings, or in chests in the wall, or in safes, or in safety vaults. The whole business structure now depends upon the convenience, certainty and efficiency of the bank. It is the very breath of business."

Foundation of Public Confidence.

"The foundation of this structure is public confidence. The bank is the creditor of the business world. Its business is based on confidence. There could not be any banking without confidence. It is to promote that confidence and to protect the business world from the consequences of fraud that this act is passed."

"Examine carefully the section of the act and it will be found that not one of them has, or can have, any other object than that of making it safe for persons to deposit their money in a bank, and secured the money will be paid on demand."

Judge Pipes carefully dissected sections 18 and 24 and quoted extensively from authorities for the purpose of showing that any statute must be interpreted from its aim and purpose. He urged that the act went into effect February 25, 1907, and that it applies to banks organized since that time as well as to banks organized since.

Demurrers to the indictments charging the four men with having stolen state money and with having loaned state money out at interest are also being argued by Judge Cleland has them under advisement, and expects to announce a decision in the course of a few days.

Deportation Is Resisted.

Nomusaburo Hamaguchi, a subject of the Emperor of Japan, yesterday, by his attorney, Walter H. Evans, filed a petition in the Federal Court for a writ of habeas corpus. Hamaguchi seeks by this move to prevent his deportation, which

has been ordered by the Secretary of the Department of Commerce and Labor. The specific charge against Hamaguchi, who alleges that he is a student, is that he entered the United States without passing the usual inspection.

SUIT OVER AUTO INSURANCE

F. A. Bennett Seeks Judgment Against Harvey O'Brien.

Some interesting sidelights on automobile insurance were shown in a civil suit which was decided in the State Circuit Court yesterday afternoon. Likewise some interesting facts concerning the habits of securing cars were developed.

The suit was that of F. A. Bennett against Harvey O'Brien. Bennett is seeking to collect \$3000 from O'Brien in consequence of a wrecked car. It appears from the testimony that Bennett insured his car with O'Brien and then lost the machine by fire before the insurance paper had been accepted by the company.

It was several weeks ago that he took out the policy on his big \$2000 touring car. Afterwards he sold the machine to F. Prosser, who makes a business of hauling people about at so much an hour. Very often his patrons like a little speeding game. It was while a party from the Portland Hotel was enjoying the sensation of passing through Montavilla at a meteoric pace that the machine caught fire. It is alleged that the hotel party had to walk to the car and slip into the hotel by a side entrance because of the attachment they had formed for Montavilla real estate.

Bennett had received only part payment on the machine. It was still his property. He went down to collect his insurance. He says Mr. O'Brien exhibited a document showing his company had just rejected Bennett's application for auto insurance. He didn't know it was an application and told the insurance man he had been led to believe he was insuring his machine rather than signing a mere application for insurance. Bennett advised that auto insurance is accepted with great caution as the risks are very great.

The case was argued at great length yesterday morning before Circuit Judge Gantenbein, who took the matter under advisement.

NOT RELIEVED OF LIABILITY

Condemnation of Building Does Not Release Owner, Court Decides.

While building inspectors have authority to condemn buildings, yet the owner of a condemned building is not thereby relieved from possible damage to tenants, according to a decision made yesterday forenoon by Judge Cleland, in the State Circuit Court. The suit in question was that of Hung Sing & Company against Mrs. Cornelia Burkhart to collect \$24.49 damages because of the tearing away of a second-story building used by the firm. In an answer to the complaint, Mrs. Burkhart set up that the building has been removed under orders of the City Building Inspector.

The case was in court yesterday on a demurrer to the answer. It being urged that the action of the inspector did not relieve an owner from responsibility. Judge Cleland said the question as to the necessity of tearing away the building was a matter for the jury to pass upon. He sustained the demurrer.

NOT EXEMPT, COURT RULES

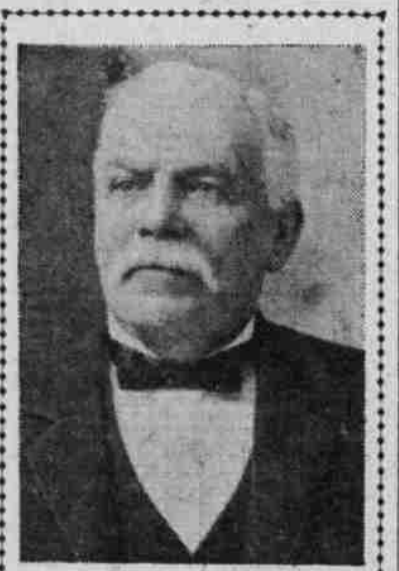
Non-resident Corporations Must Pay Taxes, Says Judge Cleland.

Non-resident corporations are amenable to all laws and particularly to the taxation laws of the state. Such, in effect, was the decision made by Circuit Judge Cleland yesterday in the suit of Marshall Wells Hardware Company against the county to restrain collection of taxes on money, notes and accounts aggregating \$225,000. The tax on this personal property amounts to \$135, and the company contended that it could be assessed only under the laws of New Jersey, where the firm is incorporated. The county's demurrer set out that the personal property involved is in Multnomah County and subject to taxation there. This demurrer was sustained, thus ending the suit, unless appeal is taken.

HIS 81ST ANNIVERSARY

Judge Bullock Will Celebrate Birthday Next Wednesday.

S. Bullock, for many years Justice of the Peace on the East Side, will celebrate his 81st birthday next Tuesday at the home of Ellis McLean, 75 Union avenue, North, where friends will gather in honor of the event. It is hardly correct to say 81 years old, for while his hair is white, his heart and spirit are



Judge S. Bullock.

young, and there is music in his soul. For 30 years Judge Bullock has been a resident of the East Side. For more than a decade he has been the leader of the famous Veterans Male Quartet, which has always been composed of veteran singers, who have long since given way in the church choir to professional directors and leaders. This quartet is the real spirit of music. Judge Bullock and the veterans sing the old songs and they sing so that every word is clear and distinct. Some of these veterans have dropped out of the circle since the quartet was organized, but others close up their ranks and they go on singing. So the veterans also will gather to rejoice with their leader on the attainment of his 81st birthday. Judge Bullock's voice shows no evidence of age, even if his snowy head proclaims it.

SAHLIN BUST FORMS.

The fact that McAllen & McDonnell carry in stock the Sahlin Bust Forms and Corset combined is sufficient guarantee of merit.

Oregon People in Chicago.

CHICAGO, Feb. 25.—(Special.)—Oregon people registered at Chicago hotels today as follows: Great Northern—A. E. Coville, A. K. Hawkins, Portland. Falmers House—J. W. Low, Portland.

HUGHSON ON TRIAL

Principal of School Accused of Beating Pupil.

PUNISHED FOR TRUANCY

Arthur Matthews Prosecuting Witness in Case Before Justice Reid. Hearing Will Be Resumed Next Saturday Morning.

The case of the State of Oregon against B. E. Hughson, principal of the Portsmouth School, charged with assault and battery on Arthur Matthews, one of his pupils, January 21, was taken up before Justice of the Peace Reid yesterday afternoon. At 5 o'clock an adjournment was taken until next Saturday at 9:30 A. M. The reason given for the long postponement of the trial is that a majority of the witnesses for the defense, yet to be examined, are schoolteachers and would be required to absent themselves from their duties in event the hearing were resumed Monday.

Professor Hughson was represented by Dan J. Malarky, while Deputy District Attorney Stevenson, assisted by W. W. Banks, special prosecutor retained by A. E. Matthews, father of the complainant, looked after the state's interests. The trial commenced at 2 o'clock and most of the afternoon was taken up by the examination of the Matthews boy, his mother, Mrs. Annie Matthews, and two of the pupils who are alleged to have been chastised by the principal at the same time as was the prosecuting witness.

Young Matthews made a good witness, adhering closely to the story he told at the time the charges were filed against the principal, February 11, the day the boy was sent to the hospital by Dr. E. B. Cable. According to the testimony of the boy Professor Hughson beat him with a paddle while playing truant with four other lads. The boy said the principal struck him with the sharp edge of the paddle on the knee and shin, inflicting a bruise of very serious character. When asked by Mrs. Malarky if it was not true that his injury was not received while horseback riding some time previous to the chastisement, the lad denied that such was the case.

Mrs. Matthews was the next witness. She told of the return of the boy from school on the day the beating was administered. She said that she and the boy were lame. On investigation she found bruises on the boy's right leg and dressed them, not thinking the injuries were serious and that the lad had to visit his father down town. On the boy's return home, she said, his leg was worse, and she was compelled to attend him practically the entire night. At the boy's earnest request he was allowed to attend the school examinations on the following Monday and Tuesday.

Monday, February 16, young Matthews was still suffering much pain, and his father took him to Dr. E. B. Cable. The physician ordered him removed to the hospital.

Dr. Cable testified that the bruises were of such an aggravated nature that they refused to yield to outward treatment, and he was forced to lance the knee. One piece of contradictory evidence brought out, having bearing on the case, was in the testimony of Walter Berry, one of the boys who was chastised by Professor Hughson at the time the alleged assault on young Matthews was committed. Young Berry said that Mr. Matthews had given him a dollar on a certain Saturday to the effect that he meet, on which day other witnesses had declared that Matthews was out of the city. Berry stuck to his assertion on cross-examination.

Sam Carlander, another of the five boys punished by Professor Hughson, testified that the principal beat Matthews quite severely. He also admitted that he and Matthews had been accustomed to ride horseback, and that on one occasion Matthews was injured while out riding. He could not fix the date.

Justice Reid announced at 5 o'clock that the hearing would be postponed until next Saturday morning at 9:30 o'clock, and Constable Wagner was instructed to notify the witnesses to be on hand at that time. The prosecution will introduce a few more witnesses and the examination of witnesses for the defense will then be taken up.

A number of schoolteachers summoned on behalf of Professor Hughson will be present. By their testimony it is expected to show that the charges against the principal are malicious and that the Matthews boy was prevailed upon to bring the charges by enemies of the principal.

WILL STAY IN PORTLAND

Effort to Move Pacific Monthly to Seattle Falls.

It is reported that a movement is on foot to remove The Pacific Monthly to Seattle. This has been supplemented by a statement published in a local paper yesterday to the effect that the magazine might be discontinued altogether. The latter report is emphatically denied by both Charles H. Jones, the general manager, and Lute Fess, editor of the magazine, who state as follows:

"The report that The Pacific Monthly is in a doubtful condition is unfortunate, because wholly untrue. The fact is, The Pacific Monthly management is discussing reorganization because of the very fact that it is so prosperous."

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It is expanding so rapidly that it has outgrown its swaddling clothes. "It should be a source of pride to Portland to know that The Pacific Monthly heads the list of all magazines for circulation and advertising growth during 1907 in the report recently published by 'Printer's Ink,' of New York.

"The Pacific Monthly has climbed the hill and is now on the high road to success, and is fast becoming one of the big magazines of the country. No one connected with the magazine has ever thought of discontinuing it. A stockholder's meeting has been called to discuss a plan of reorganization, electing new officers and mapping out a vigorous campaign for 1908.

"It is true that a number of Seattle capitalists opened negotiations for the purchase of the magazine and plant. They saw the great advertising value of such a magazine for Seattle, as well as the investment value, but from the way in which a number of leading Portland business men have subscribed for stock in the reorganized company, it looks as though Portland is also awake to the value of the magazine, and we want to say to the friends and readers of The Pacific Monthly, 'Just kick if you don't receive your next copy on time, because we will be right here doing business at the old stand.'"

YAKIMA INDIANS OBJECT

Demand That White Hunters Be Kept Off the Reservation.

NORTH YAKIMA, Wash., Feb. 25.—(Special.)—The Yakima Indian reservation population has arisen practically in its united might against further intrusion of the white hunter. It has appealed to Reservation Superintendent Jay Lynch for an order prohibiting the grant of any more privileges to white hunters within the bounds of these millions of rich acres. The reservation is the duck hunters' paradise in this part of South-Central Washington. It comprises the lower parts of the valleys of the Yakima and tributary streams and contains the swamps and bays of this part of the Inland Empire. Here it is that the grass growth is most abundant and feed is plentiful, there being many broad wheat fields near. Duck hunters from surrounding parts of the state are wont to flock here during the duck season and bag thousands of birds.

These hunters, the reservation people

allege, have become wantonly abusive of their privilege, shooting stock and crippling it in some instances in an effort to drive it away from the ponds and swamps where the birds are plentiful. They have become insolent and are charged with threatening the reservation police, who are Indians of courage and intelligence, and to whose discretion may be attributed the defeat of riotous encampments between the hunters and inhabitants of the reservation, the latter having armed themselves to protect their property.

Agent Lynch will probably issue an order forbidding further trespass on the reservation preserves by hunters of any class from the outside districts. White occupants of reservation lands have joined the Indians in an appeal for this order.

Deaf Man Takes His Own Life.

Dependently brought on by reason of his physical condition caused William Rogers, a glazier, 25 years of age, to hang himself some time Thursday night. His dead body was found suspended by a rope to an exhaust pipe in the engine-room of the old United States Brewery at Water and Harrison

streets, by two boys, yesterday morning. When 4 years of age Rogers was afflicted with spinal meningitis, which rendered him deaf, and this affliction is believed to have caused him to become dependent. He lived with his mother at 401 Water street. It is said that he made two previous attempts to end his life, but on each occasion was interrupted before the act had been consummated. Until three months ago he had been employed by the Povey Bros. Art Glass Works. Coroner Finley took charge of the remains, but it is not likely that an inquest will be held.

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