SECURITY FOR LEASE NOT ALL FORFEITED

Recent Court Decisions Against Liquidated Damages.

TENANT'S RIGHTS UPHELD

Eviction by Landlord Entitles Latter Only to Such Part of Cash Deposit as Equals Earned Rental.

BY W. B. SHIVELY,
Chairman Legal Committee Portland Realty Board.

Where a lease provides that cash security deposited by a tenant shall be absolutely forfeited if the tenant fails to pay the stipulated rent, may the landlord, upon the tenant's default in rental payments, evict the tenant and retain the full amount of the cash security as liquidated damages?

This question has been answered by the supreme court of the state of Oregon in the negative in numerous cases.

In the case of Yuen Suey vs. Fleaman, 65 Or., 606, 133, Pac, 803, the tenant deposited with his landlord $5000 to secure the payment of the stipulated rent. The lease, one for 20 years, provided that in case the lease should be declared forfeited for non-payment of rent the said $5000 was to be forfeited and become the property of the lessor.

Judgment for Tenant Sustained.

In the second pear of the lease the tenant fell behind in his rental payments, whereupon the landlord evicted him, repossessed himself of the premises and retained the $5000 deposit. The tenant then brought suit to recover this deposit, or, rather, what remained thereof after deducting rentals due and owing at the time of the eviction.

In sustaining a judgment for the tenant our supreme court held, notwithstanding the express language of the lease to the effect that the $5000 was forfeited and should "become the property of the lessor," that the money was to be considered at all times as security only out of which the lessor was to be permitted to satisfy all rents accruing up to the time of the eviction, the surplus, if any, to be paid over to the tenant.

Interest Paid on Deposit.

In the comparatively late case of Moumal vs. Parkhurst, 89 Or., 248, 173, Pac. 669, the facts were that the tenant turned over $10,000 to the landlord as rental "for the final months of the lease" and certain taxes. The lease provided that so long as the tenant was not in default the landlord should pay him 6 per cent interest on the $10,000 and further provided that if the tenant defaulted in the performance of the lease by non-payment of rent or otherwise, the $10,000 should "be and become the property of the lessor."

It should be noted that the lease did not designate the $10,000 as security, but as rental paid in advance for the final months of the lease. The tenant failed to pay the agreed rentals and was evicted by the landlord, whereupon the tenant sued to recover the $10,000. The landlord claimed that the money was paid him as rental for the final months of the lease and that, therefore, it could not be recovered. The supreme court held, however, that if this were true, then the landlord in effect would be paying interest to the tenant, $600 per annum, for the use of his (the landlord's) own money, which would be rather a poor business proposition for the landlord. The court thereupon held that the $10,000 was not a payment of rent in advance, as claimed by the landlord, but was really a deposit of security and that the title to the money remained in the tenant until earned by the landlord under the terms of the lease and that, therefore, upon the cancellation of the lease by eviction, the landlord was not entitled to retain the money except so much of it as was necessary to pay the rentals accrued when the eviction took place.

Interest of Parties Inquired Into.

A similar question arose in the case of Alvord vs Banfield 85 Ore. 49, 166 Pac. 549, where the lease provided for a payment by the tenant of $2500 which was to be retained by the landlord in case of the tenant's default "as liquidated, fixed and agreed damages" suffered by the landlord by reason of the tenant's failure to comply with the contract. About three years before the expiration of the lease, the tenant surrendered possession of the leased premises to the landlord who accepted the surrender, thus terminating the lease. The tenant sued to recover his deposit. The landlord sought to retain it under the terms of the lease as his "liquidated, fixed and agreed" damages. The court proceeded to inquire into the intent of the parties in using the quoted language—did they intend that the $2500 should be wholly forfeited to the landlord as the agreed damages, or that the money was merely a deposit? The court held that as a general rule the intention of the contracting parties is an important, if not a conclusive, element in determining whether a sum stipulated to be paid in case of the breach of a contract is to be regarded as liquidated damages or a deposit of security; that the tendency and preference of the law is to regard the stipulation or covenant as of the nature of a deposit rather than as liquidated damages, for the reason that then it may be apportioned to the actual loss sustained and that compensation for actual losses "is the full measure of right and justice."

Injustice Pointed Out.

"Especially is this the rule," said the court, "if the damages are neither doubtful, speculative, or difficult of proof." The court then pointed out that if the lease were taken literally, the entire $2500 could be forfeited if the tenant failed to repair a water pipe or replace a broken window pane, which would be wholly unjust. Whereupon the court held that the money was deposited as security only and required the landlord to repay to the tenant the full amount of the deposit.

From the foregoing it will be seen that notwithstanding the careful selection of words and phrases used in describing the deposit and the disposition of it, the courts go beyond the strict meaning of the language used and seek out the actual intent of the parties, protecting the landlord by securing to him the full payment of all rents actually earned under the lease but returning to the tenant the surplus.

BROWNSVILLE BUILDERS BUSY

Modern Business Structures Are Being Erected.

BROWNSVILLE, Or., July 14.—(Special.)—Several new business buildings are being erected here. The new blacksmith shop being built by Fred Burke is practically completed and is modern in all respects. Another building nearing completion is the large warehouse being erected near the Southern Pacific depot by the farmers' co-operative exchange. The new creamery, which is of concrete blocks, is situated on Main street and is being put up by Egglestón brothers, owners of the Brownsville Creamery company.

Portland Man Buys Tract.

ABERDEEN, Wash., July 19.—(Special.)—One of the largest realty deals made in Grays Harbor county recently was the purchase from Bowes Bros. this week of 900 acres of land by J. T. Royston of Portland. The land is located about 15 miles north of Aberdeen on the Wishkah river, adjacent to holdings of the Standard Oil company. The purchase price was $13,000.

Sixty-Acre Berry Farm Sold.

CHEHALIS, Wash., July 19.—(Special.)—V. O. Wallace has sold his Claquato hill 60-acre berry farm to Frederick Blosl of Puyallup for $14,000, taking as part in the deal an acre tract at Puyallup. Mr. Wallace will remain here. Mr. Blosl will move to the place and expects to put practically the whole tract into berries for the Chehalis cannery.

New Detention Home Planned.

ABERDEEN, Wash., July 17.—(Special.)—County commissioners are considering plans for building a detention home for delinquent boys and girls. It is proposed to build cottages along lines similar to those already erected for the residences of the county farm. The proposal is the result of the crowded conditions at the state detention home.

Douglas County Plans Good Roads.

WENATCHEE, Wash., July 19.—More than $750,000 in roads improvements comprises the proposed programme of Douglas county for the years 1919 and 1920. Of the total $450,000 in bonds have been disposed of.

Japanese Crown Prince Betrothed.

TOKIO, July 19.—Announcement has been made of the betrothal of Crown Prince Hirohito with Princess Nagako, the eldest daughter of Prince and Princess Kuni. Princess Nasako is 16 years old and a student at the Peers school. It is expected that the imperial wedding will not take place before several years.

ORDERS PILE UP ON WEST COAST MILLS

Freight Situation Is Better but New Tieup Feared.

CUTTING IS ATTRACTIVE

Report of Early Advance of Rates Causes Flurry and New Sales Are Made Subject to Rise.

New business, booked in excess of production and shipments, served further to congest the order files of west coast lumber mills during the last week, according to the weekly review by the West Coast Lumbermen's association. The industry's attitude of selective order acceptance continues, while the week's new business is held to indicate attractive cutting.

Equipment on railroads for handling shipments still is lacking, notwithstanding close co-operation between members of the association and the railroad administration, it is asserted, although in the last ten days the car shortage has been cut down fully 50 per cent and it is probable another ten days will re-establish the normal supply. The relief, however, will be only temporary, for another car shortage is predicted for September, becoming very acute in October.

One of the disturbing factors in trade during the week was the report of an early advance in freight rates by the railroad administration. This report seemed to be authentic, borne out in testimony before the congressional committee on the Cummins bill, wherein the railroad administration opposed the restoration of the interstate commerce commission's power to suspend a newly-advanced freight rate pending a hearing as to its reasonableness.

This situation has further increased the necessity for caution in acceptance of orders by the west coast lumber industry, and it is understood there is now a general policy wherein mills are accepting practically all new business subject to future freight advance.

The weekly trade barometer of the association indicates actual production of 64,935,530 feet; new business, 74,408,111 feet, and shipments, 64,618,989 feet. These are based upon returns from 113 mills, which are representative of the industry. It is estimated that the unshipped balance of all forest products in the Pacific northwest at this time amounts to not less than 18,000 carloads and possibly 20,000 carloads.

POWERS HAS AUDITORIUM

Building Erected at Cost of $6000 in Time for Chautauqua.

MARSHFIELD, Or., July 19.—(Special.)—The city of Powers, in the southern part of Coos county, has just completed a public auditorium, or hut, which was constructed at a cost of $6000. The first function to be held in the building is the Ellison-White Chautauqua, now giving entertainments throughout the county. Afterwards the hut will be opened for a great community sing on Sunday, July 27.

The building, which is 47x120 feet, has provided for various accommodations and has hot and cold water, dishes, stoves, tables, etc. The hut was erected by F. W. Reynolds, with money supplied from New York, and is to be known as a peace time hut. Mr. Reynolds spent considerable time in France during the war.

O. A. C. MAN TO INSTRUCT

E. D. Doxsee to Handle Farm Education at Corvallis.

OREGON AGRICULTURAL COLLEGE, Corvallis, July 19.—(Special.)—E. D. Doxsee, a graduate of the college in 1915, has arrived from California to take charge of the department of vocational agriculture in the Corvallis high school and to be an instructor in agricultural education at the college.

Mr. Doxsee was head of the animal industry department at the California Polytechnic school in San Luis Obispo and also had charge of the boys' and girls' club work in the school. Previous to his work in San Luis Obispo Mr. Doxsee was an instructor in the Del Norte county high school, California, where he was district club leader and farm adviser.

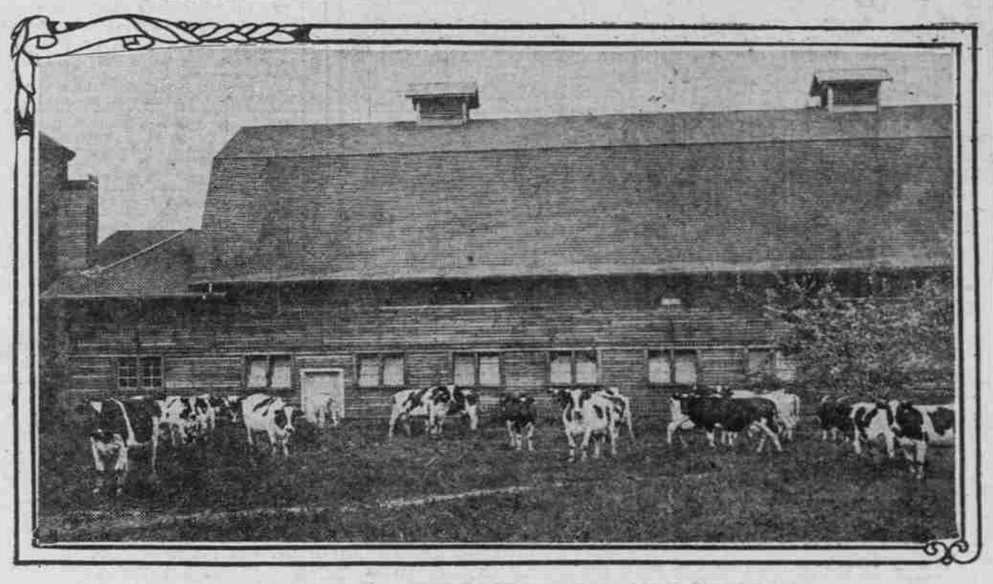
IRRIGATION NEED SHOWN

Montana Project Would Make 56,000 Acres of Land Fertile.

BRIDGER, Mont., July 19.—Steps have been taken by prominent residents of the Clark Fork valley to revive interest in an irrigation project proposing to water approximately 56,000 acres of fertile land in Carbon county. It was one of the first projects investigated by the federal reclamation service.

An effort will be made to obtain federal aid for construction of a ditch from the canyon of the Clark Fork to Cherry Springs. State engineers made a survey of the proposed project 14 years ago. If built, the project would guarantee water to 100,000 acres now under irrigation and bring 56,000 acres more under irrigation.

FAMOUS HERD OF OREGON HOLSTEINS WILL BE SOLD AT AUCTION.



PART OF CATTLE OWNED BY JAMES POMEROY OF SCAPPOOSE.

Fanciers of blooded cattle will witness the dispersal of one of the best herds of Holstein stock west of the Rocky mountains at the sale to be held on July 28 at Scappoose by James Pomeroy, prominent Oregon dairyman and present owner of the herd.

The foundation of this herd of cattle was selected for the late Martin Winch when he was opening his model farm east of Portland a few years previous to his death. Mr. Winch employed W. S. McClure, then working for the United States animal husbandry department, who spent several weeks selecting the choicest animals from the best herds in the east. Mr. Winch sold this herd to Mr. Pomeroy, and it was the latter's desire to make a name for it in western Oregon. At present, however, the pressure of other interests, foremost of which is the formation of an organization for the benefit of the dairymen as a whole, has made it necessary for Mr. Pomeroy to dispose of his cattle.

The Pomeroy herd is exceptionally well bred, including many world-record animals in both the second and third generations. A number of the cows came from the Iowana farm, at Davenport, Ia., owned by Colonel French, one of the largest breeders in the middle west.

George A. Gue of Yakima, Wash., probably the best authority on Holsteins in the northwest, if not in the United States, recently visited this herd and in writing his observations said: "I consider this sale one of the most important Holstein events of the year."

FORMER RESIDENTS OF JOSEPHINE COUNTY ENJOY PICNIC BENEATH BIG FIRS IN LAURELHURST PARK.

Upper—Picnickers gathering for basket supper. Lower—(Right) Mrs. Fanny Borchert, elected secretary. (Left) F. W. Chausse, president.

More than 150 former residents of Josephine county gathered at Laurelhurst park last Sunday afternoon for a picnic and reunion, an annual affair held for the first time last year. William Ireland presided at the feast. Election of officers was held, F. W. Chausse being chosen to serve as president and Mrs. Fanny Borchert secretary-treasurer.

Many of the southern Oregon people were interested in the visit of Dr. and Mrs. Arthur Harth, who are here from California and were present at the gathering. Dr. Harth was a dentist in Josephine county until 11 years ago. This is the first time he has been back to Oregon.

Bring $25.00 Tomorrow

it will send this splendid player piano home. Then pay $25 on your next payday. That will give us the usual $50 down. Then $14 or $17 monthly to suit your convenience.

$750 1919 MODEL FOR $562
$50 Cash, $17 Monthly

Prices Are Going Higher

All the new player pianos now arriving will be priced higher; the cost has gone higher—You can still save $$ buying this 750 player piano for $562 during mid-summer clearance sale now in progress. No Portland store will offer you such value for less than $750 in new 1919 models. You need but to compare.

Big Buying Works Both Ways—for You and for Us

Following up our purchase of 15 carloads—300—1917 and 1918 Model Pianos and Player Pianos, sold during past sales, comes our new purchase of 12 more carloads—250 Pianos and Player Pianos, therefore, we must close out the remaining stock as per the following inventory, and for that purpose are making prices and terms that will sell them now before arrival of new purchase—Buy now; prices are going higher.

Principally high-grade pianos, which, not selling rapidly at $500 to $650, will now sell at prices of cheaper grades. These pianos have all of the up-to-date improvements, 50% more tone and efficiency.

99% New
Upright Pianos

28-1918 MODELS
$15 sends one home, then $8, $10 or $12 monthly.

1 Bradford	$375	$265
1 Knelsel	425	280
1 Davis&Sons	425	315
1 Mend'hall	450	335
3 Thompson	450	335
1 Thompson	500	345
6 Thompson	475	355
4 Thompson	550	395
1 Reed & Son	550	395
2 Singer	550	395
1 Steger	625	395
1 Reed & Son	550	415
2 Reed & Son	625	445
1 Steger	650	465
1 Reed & Son	650	465

6-1918-MODEL PLAYER PIANOS

1 Artemis	$650	$435
1 Thompson	750	495
1 Singer	900	595
1 Reed & Son	900	635
2 Steger	1150	795

2-1918-MODEL GRAND PIANOS

1 Steger	$1050	$765
1 Steger	1300	845

23-1919 MODELS
100% New Pianos at 25% lower than local market prices.

2 Sch'r Bros	$375	$281
4 Davis&Sons	450	315
3 Thompsons	475	356
5 Thompson	500	375
4 Thompson	550	395
1 Singer	550	412
1 Reed&Sons	625	465
1 Reed&Sons	650	487
1 Steger	650	487
2 Steger	750	562

10-1919 MODELS PLAYER PIANOS

1 Artemis	$650	$485
1 Mend'hall	$650	$485
2 Thompson	750	562
1 Steger	900	675
2 Reed&Sons	900	675
3 Steger	1150	862

3-1919 MODELS GRAND PIANOS

1 Steger	$950	$695
1 Steger	1050	797
1 Steger	1300	975

USED ORCHESTRA
Berry Wood $1750 $595
Including music.

17-95% NEW RESALE AND USED PIANOS

$275 Collard Up	$ 65
200 Bord&Co. Up	75
350 Emerson Up	120
325 Arion Up	165
375 Hallet&Davis	190
350 New England	195
425 Hamilton	210
410 Kingsbury	215
500 Weber	235
450 Conover	245
450 Kimball	290
475 Thompson	315
650 Steger Miss'n	395

USED PLAYER PIANOS

$300 Singer	$495
950 Steger	595

USED PARLOR ORGANS

$100 Cl'h&Warren	$25
115 Durand Co.	28
100 Cornish Co.	30
125 Chicago Cot.	35
150 Pacific Queen	45
165 Mason&Hamlin	50
165 Estey & Co.	55
175 Tabor Org. Co.	65

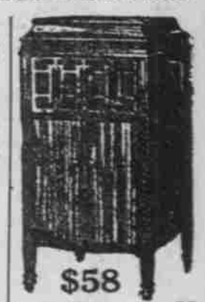
$10 Cash, $5 Monthly.

NEW AND USED PHONOGRAPHS
$5 or $10 in Records purchased sends one home.

Lakeside	$20	$10
Edison	50	15
Columbia	25	15
Edison	60	20
Victor	60	45
Domestic	100	65
Victor	100	85
Sewald	75	58

NEW 1919 TYPES

Table Type	$20



$58

Table Type	32
Table Type	50
Table Type	60
Cabinet	90
Cabinet	100
Cabinet	115

TRUTHFUL ADVERTISING. This store satisfies the people through its unprecedented values. Truths fully named. Sincerity is our chief business policy. We tell you now, prices are going higher.

PRICE IDENTITY Why should pianos not have a price identity? Why should market values not be observed? Why should you pay inflated prices? Let us finance your piano purchase, $15 or more cash, $5 or more monthly.

NO FOLLOW UP SALESMAN Saves fully 20% in our cost of selling. We are not interested in your address if our 25% lower price inducements do not sell you. There is no need to pay $500 to $650 for a piano now.

Liberty Bonds or other securities taken in part or full payment of Pianos or Player-Pianos during this sale. Also, your old Piano, Organ or Talking Machine.

Order Your Piano by Mail Read, study and compare our quality, prices and terms, as advertised, and you will learn why we have hundreds of mail-order buyers.

OUT-OF-TOWN BUYERS—WE PREPAY AND MAKE FREE DELIVERY OF PIANO TO YOUR HOME within 200 miles, and the piano will be shipped subject to exchange within one year, we allowing the full amount paid. This virtually gives you a one-year trial of the piano you order.

Every piano or player-piano purchased carries with it the Schwan Piano Co. guarantee of satisfaction, as also the usual guarantee from each manufacturer of these new musical instruments.

Manufacturers' Coast Distributors. 111 Fourth Street, at Washington.

Schwan Piano Co.

WARRANTEE BACKED BY MANY MILLIONS IN CAPITAL

LAKE IS GREAT RESERVOIR

IMMENSE VOLUME OF WATER TO BE USED IN IRRIGATION.

Wallowa Can Supply All Moisture Needed by Prairie Creek Farms During Dry Summers.

ENTERPRISE, Or., July 19.—(Special.)—To provide more water for irrigating Prairie creek farms, the Associated Ditch companies are preparing to blast, dredge and deepen the channel of the outlet of Wallowa lake nearly four feet. This will add to the available water supply the quantity now stored in the lake to a depth of this four feet, and, of course, will lower the level of the lake by that amount. As the lake is nearly five miles long and a mile and a half wide, this four feet of water is an immense volume.

When this surplus is drawn out, the supply will return to its present volume, that is, the quantity flowing into the lake from the mountain streams which feed it. But by the time the surplus is used it is believed the pressing need will be past, for the grain and hay will have been irrigated and the crops made.

The associated companies include all the ditches taking water from the lake and the river below it. A total of 15,000 acres of choice farm land is irrigated from these ditches. In ordinary years the supply is ample; often there is much more water than is used. When summer rains come in normal abundance, the farms need little irrigating and at the same time the sources of the lake are augmented so that the streams run bank full.

But there has not been one good rain in the county all spring since the winter's snow ceased. The early spring weeks passed without the ordinary moisture and then June brought no showers whatever, although this is one of the wet months of the year, according to the records of the weather office.

Seattle Boys Win Decorations.

SEATTLE, July 19.—Two more Seattle boys have received notice of decorations won for gallantry during the war. Sergeant Jasper C. Stickney, a marine living at Bothell, near here, won the Croix de Guerre, with three citations for bravery, in the Belleau wood battle. Arthur M. Shepard, ambulance driver, was cited for bravery by Marshal Petain for his unflinching work under fire.

DROUTH RELIEF ORGANIZED

Great Falls, Mont., to Care for Farmers in Burnt-Up Area.

GREAT FALLS, Mont., July 19.—The questionnaire system has been adopted by the directors of the Great Falls Commercial club as a means of extending relief to droughth-stricken areas in the 17 northern and central counties of Montana. A questionnaire will be sent to 100 county agents, bankers and merchants in the various communities and through this the club hopes to learn the actual crop conditions, acreage lost and that will yield; number of head of stock that must be moved to obtain pasture; number of farmers who may have to leave the district; the number of acres that will remain unplanted next spring; the availability of county funds through bonding to buy seed, and suggestions and recommendations will be included.

With this material at hand, the club will decide whether the help for farmers should come from private subscription, from counties, from the state or from the national government. Relief in the form of credit is promised to carry Montana farmers through the coming winter.

Schoolhouses to Be Disinfected.

ALBANY, Or., July 18.—(Special.)—Desks in all Linn county schoolhouses will be disinfected and floors will be scrubbed and then dressed with an oil varnish before the next school year opens if the recommendations of Ida Maxwell Cummings, county school superintendent, are followed. These steps are urged to assist in the prevention of influenza or other epidemics during the next school year.

Incorporation Articles Filed.

SALEM, Or., July 19.—(Special.)—Articles of incorporation were filed here yesterday by the Liberty laundry of Portland. The capital stock is fixed at $10,000 and the incorporators are Perry Goodwin, George Oldom and J. W. Willimont. T. A. Sweeney, Dan Powers and N. Leader are incorporators of the Inland Construction company. This concern has a capitalization of $5000, with head offices in Portland. General real estate and land brokerage is given as the business of the corporation. The Arnold Bluing company of Portland has filed articles of incorporation, with a capital stock of $10,000. The incorporators are A. W. Arnold, J. E. Bronaugh and Joyce Savage. Incorporators of the Western construction company, which filed articles today are J. J. Sullivan, Claud Lilly and H. M. Isaacs. The corporation will engage in a general contracting business at Portland. The capital stock is $15,000.

Let Cuticura Be Your Beauty Doctor

The Soap to Purify
Ointment to Soothe

Let Cuticura be your beauty doctor, one that really does something to purify and beautify your hair and skin. Bathe with Cuticura Soap and hot water to cleanse the pores. If signs of redness, roughness or eruptions are present, or dandruff on scalp, touch gently with Cuticura Ointment before bathing or shampooing; finally dust on a few grains of the exquisitely scented Cuticura Talcum Powder to perfume the skin.

Soap 25c. Ointment 25 and 50c. Talcum 25c. Sold throughout the world. For sample each free address: "Cuticura Laboratories, Dept. 12F, Malden, Mass."
Cuticura Soap shaves without mug.

DERWILLO

Instantly Beautifies the Complexion. Druggists refund the money if it fails.

Lift Off Corns!

Doesn't hurt! Lift touchy corns and calluses right off with fingers

Apply a few drops of "Freezone" upon that old, bothersome corn. Instantly that corn stops hurting. Then shortly you lift it right off, root and all, without pain or soreness.

Hard corns, soft corns, corns between the toes, and the hard skin calluses on bottom of feet lift right off—no humbug!

Tiny bottles of "Freezone" cost but a few cents at drug stores