CITY BUILDNG LAW AFFIRMED BY COURT

Berkshire Firm Fails in Effort to Get Permit.

BURNETT GIVES OPINION

Justice Declares Portland Is Within Its Rights to Provide Restrictions.

SALEM Or., July 31.—(Special.)—The Oregon supreme court, in an opinion written by Justice Burnett and handed down here today, dismissed the mandamus proceedings brought by George H. Kelly and C. V. Everett, trading under the title of the Berkshire company, to compel H. E. Plummer, building inspector of Portland, to issue a permit for the construction of an apartment house in what is known as a restricted residential district.

Evidence placed before the supreme court showed that the plaintiffs applied for a permit to construct the apartment house involved in the litigation on January 22, 1920, at the same time setting out the proposed site of the structure and that it would cost in the neighborhood of $225,000.

City Held Within Rights.

The application was denied by Mr. Plummer, whereupon the plaintiffs appealed to the city council for relief. The council upheld Mr. Plummer's decision and refused to issue the permit. Mandamus proceedings to compel Mr. Plummer to issue the permit then were filed in the supreme court.

Justice Burnett held that the city was within its rights to provide building restrictions and that the present building code of the municipality was subject to strict enforcement.

Justice Johns, in an opinion dismissing the mandamus action brought by the Salem Sand & Gravel company to compel the members of the state land board to accept a bid of three cents a cubic yard for sand and gravel taken from navigable streams of the state, held that it was the intention of the legislature that the state should receive a reasonable price for products under its control.

"If the defendants could be made to accept three cents a cubic yard for sand and gravel taken from navigable streams of the state," said Justice Johns in his opinion, "they could be made to accept a price even as low as one cent a cubic yard and enforce leases extending over periods of 25 or 50 years."

Unfair Competition Charged.

The state land board, at a meeting held last winter soon after the sand and gravel law went into effect, made an arbitrary rule that they would accept no bids less than ten cents a cubic yard. The plaintiffs objected to the fixing of this price on the grounds that it forestalled fair competition.

The law under which these leases are executed was passed at the special session of the legislature last January. It provides that the state shall receive compensation for all sand and gravel taken from navigable streams of the state and that the money derived from the sale shall go into the school funds.

Other opinions handed down today follow:

Felicite M. M. Manning and V. A. Manning, respondents, vs. Mary F. Gregoire, appellant; suit to establish title to land; appeal from Marion county; opinion by Justice Burnett; Judge George G. Bingham affirmed.

Redmond P. Marshall and Arthur Epperly Marshall, appellants, vs. J. H. Middleton and Bessie M. Marshall, executor and executrix of estate of William H. Marshall; appeal from Multnomah county; suit to enforce payment of liens. Opinion by Chief Justice McBride. Judge Robert G. Morrow affirmed.

Edgar Woodard vs. A. F. Coates Lumber company, appellant; appeal from Tillamook county; suit to recover damages for personal injury. Opinion by Justice Burnett. Judge George R. Bagley reversed.

John H. Seavey, appellant, vs. Clara Belle Williams, et al.; appeal from Lane county; suit to quiet title. Opinion by Justice Johns. Judge G. F. Skipworth reversed.

The court recessed today until September 1.

RAILWAY RATES TO GO UP

(Continued From First Page.)

the 50 per cent surcharge on Pullman fares will be general. Freight rate increases will vary according to territory, with 40 per cent in the east, 25 per cent in the south, 35 per cent in the west—from the Mississippi river to the Rocky mountains—and 25 per cent in mountain-Pacific territory—from east of the Rockies to the Pacific coast, not including Alaska.

The commission said that the increases were justified in view of the rapidly changing price conditions and the necessity for providing adequate transportation facilities during and after readjustment.

"It was my hope," he said, "that federal control might be continued, because it was evident that the transition back to private operation would create additional disturbance in a time of unsettlement and unrest, that existing railroad facilities could be made to do more work and meet more nearly the transportation needs of the country under unified control than under the control of the many separate companies; that the additional facilities, which are so greatly needed, could now be provided more easily and more economically by public than by private capital and the disturbances resulting from both rate increases and labor difficulties could be reduced to a minimum if the government retained direct responsibility for the roads."

From figures submitted by the carriers it was unofficially estimated that the apportionment of the advances would be about $1,285,300,000 on freight, $233,800,000 on passenger, $43,600,000 on Pullman, $4,500,000 on milk and $1,400,000 excess baggage charges.

On the same calculations, eastern roads would get the most, receiving approximately $873,930,000 as compared with $559,483,000 for all the western lines and $135,298,000 for the southern carriers.

Increased charges on freight alone were estimated as equaling a levy of $12 per capita per annum for every woman, man and child, basing the nation's population at 105,000,000 for 1920.

Increases in passenger, Pullman and excess baggage rates were those asked by the roads. Freight increases requested were 39.75 for the eastern roads, 32.03 for western roads and 28.91 for southern roads, the total estimated to yield $1,356,000,000. The eastern roads received .25 of one per cent more than they sought, the western roads approximately what they sought, but the southern roads received approximately 14 per cent less than they had requested.

The commission said that the financial condition of the southern roads was more favorable than any of the other lines. In view of this condition the commission held that they were better able to meet the demands on them than some of the other companies.

"The increases authorized," said the commission, "are intended to yield the additional one-half of 1 per cent of the aggregate value of the roads to make provisions for improvements, betterments and equipment, chargeable to capital account.

"The record leaves no doubt as to the needs of the country for additional transportation facilities. Carriers will be expected to make appropriations for additional improvements, betterments of equipment of a character chargeable to capital account and to make reports to us semi-annually, showing what portion of the increased revenues has been devoted to that purpose."

This one-half of 1 per cent will approximate $94,000,000. The commission said that the carriers had stated that they needed immediately at least 100,000 freight cars, 2000 locomotives and 3000 passenger coaches. These are to be paid for out of this fund and out of money advanced by the commission and borrowed by the carriers.

Conclusions as to general freight increases were:

"We find that the following percentage rate increases in the charges for freight service, including switching and special service, together with the other increases approved, would result in rates not unreasonable in the aggregate under section one of the transportation act, and would enable the carriers under honest, efficient and economical management, and reasonable expenditures for maintenance of way, structures and equipments to earn an aggregate annual railway operating income equal, as nearly as may be, to a return of 5½ per cent upon the aggregate value for the purposes of this proceding, of the railway property of such carriers held for and used in the service of transportation and one-half of 1 per cent in addition; eastern group, 40 per cent; southern group, 25 per cent; western group, 35 per cent, and mountain Pacific group, 25 per cent."

The decision was summed up as follows:

"Most of the factors with which we are dealing are constantly changing. It is impossible to forecast with any degree of certainty what the volume of traffic will be. The general price level is changing. It is impracticable to adjust all rates on individual commodities. The rates to be established on the basis approved must be subject to such readjustments as the facts may warrant. It is expected that shippers will take these matters up with the carriers, and the latter will be expected to deal promptly and effectively therewith, that necessary readjustments may be made in as many instances as practicable without appeal to us."

Federal Control Discussed.

Government railroad operation was brought into the case by Commissioner Eastman, who, in an opinion in which Commissioner Woolley concurred, disapproved the method used by the commission in reaching its conclusion. Commissioner McChord criticised Commissioner Eastman's position, declaring he "injects into this case large political questions of governmental policy nowhere in issue here."

Commissioner Eastman expressed regret that federal control was not permitted to continue at least until after readjustment. Commissioner McChord in his reply said:

"The congress has, for the time being, settled the question of government operation of the railroads by restoring them to private operation hedged around by comprehensive laws, vesting broad powers in this commission to regulate them. It is the duty of this commission to enforce the law as congress has written."

Discussing provisions for rates between the various groups of roads, the commission said that joint or single line through rates between points in one group and points in others should be increased 33 1-3 per cent. It also said that the increases should apply to individual commodity rates now in effect.

The commission went at some length into the question of aggregate values of the roads as well as their financial conditions, and said:

All Roads Are Included.

"We conclude that increases as indicated may be made by all steam roads subject to our jurisdiction:

"1. All passenger fares and charges may be increased 20 per cent. The term 'passenger fares' may be considered to include standard, local and interline fares; excursion, convention and other fares for special occasions; commutation and other multiple forms of tickets; extra fares on limited trains; club car charges.

"2. Excess baggage rates may be increased 20 per cent, provided that where stated as a percentage of or dependent upon passenger fares the increases in the latter will automatically effect the increase in the excess baggage charges.

"3. A surcharge upon passengers in sleeping and parlor cars may be made amounting to 50 per cent of the charge for space in such cars, such charge to be collected in connection with the charge for space.

"4. Milk and cream rates may be increased 20 per cent."

The commission said it found grain rates into and out of important grain markets in the middle west might be increased by the general percentages with the understanding that the carriers would within 30 days after the service of the report, file tariffs restoring an equalization of the rates from important producing states to important consuming regions.

FAST TRAIN LEAVES RAILS

SEVERAL REPORTED TO HAVE BEEN BADLY INJURED.

Six Cars Pile Up in Double-Header Wreck—Many Passengers Caught in Smoker.

OGDEN, Utah, July 31.—Four or five persons were seriously injured and many were bruised as a result of the derailment of Oregon Short Line fast train No. 32 near Downey, Idaho, according to a telephone message to the Standard-Examiner here.

A second message said 17 persons were hurt. Among those most seriously injured were a fireman and mail clerk. The injured were cared for temporarily at the hotel in Downey.

The wreck occurred on a sharp curve. A broken wheel on the first engine of the double-header pulling the train is said to have caused the derailment. Six cars were piled up, the message said. Most of the injured were in the smoker, which turned over.

SALT LAKE CITY, July 31.—Eight passengers and one trainman were injured seriously and 12 to 17 passengers were injured slightly when seven cars and an engine of train No. 32 on the Oregon Short Line railroad were derailed near Downey today, said an official report given out at the road's headquarters here.

None of the injured is expected to die, the report said. All but three have been taken to Pocatello for treatment.

POCATELLO, Idaho, July 31.—Train No. 32, Butte-Salt Lake express, was derailed at Venda, a small station on the short line south of Pocatello at 6:05 this morning. The train was a double-header in charge of Conductor Korenor and Engineers Thompson and Brenno. One Pullman remained on the track.

No one was killed but many were injured and a special train conveying physicians and trained nurses left for the scene.

The train consisted of two engines, mail car, two baggage cars, express car, two coaches, one diner and a Pullman. The first engine got over the derail, the second engine left the track but remained upright and all the cars but the Pullman turned over.

OIL SITUATION IS BETTER

"NO GASOLINE" SIGNS OUT BUT SUPPLY IS EXPECTED.

Motorists Who Expect to Go Out Today Must Get to Filling Stations Early.

Although the gasoline situation in Portland was reported to be improved, automobilists planning to hie to the wilds today must present themselves at filling stations early. The restrictions which have been imposed for the last few weeks are still in effect, and will be until the arrival of August shipments.

Yesterday the "no gas" signs were conspicuous in the majority of stations. The signs did not apply to commercial vehicles and in one stand operated by the Associated Oil company the attendant announced that pleasure vehicle drivers who had personal letters from the superintendent of the company would be served with gasoline. This incident was reported to the mayor by City Attorney La Roche Saturday and will be investigated.

The Associated Oil tanker William F. Herrin arrived at Willbridge late last night and it is probable that a portion of its consignment will be distributed among the stations for delivery today.

The gasoline situation throughout the state is improved, according to representatives of the oil companies yesterday.

AGED WOMAN IS KILLED

Mrs. Helen Fisher, 80, Struck by Street Car—Skull Fractured.

Mrs. Helen Fisher, 80, a resident of Portland for 37 years, suffered fatal injuries at 5:07 P. M. yesterday when she was struck by a street car in charge of Motorman Pickel and Conductor Harwick at East Thirty-seventh and Belmont streets. She was taken to St. Vincent's hospital where she died three hours later.

Mrs. Fisher was walking across the street intersection, and seemingly became excited when an eastbound Mount Tabor street car and an automobile approached side by side. In dodging the automobile she ran in front of the street car. Her injuries consisted of a fractured skull and bruises. She is a widow and has six children.

Candidates to Be Shown Up.

MONTGOMERY, Ala., July 31.—Dr. P. A. Baker, superintendent of the Anti-Saloon league, announced today that a committee of seven appointed recently would meet August 11 in Birmingham and publish the records of Senator Harding and Governor Cox on prohibition.

PORTLAND EXECUTIVE MEETS ALASKAN MAYOR WHO RULES CITY AND CONTROLS SHRIMP INDUSTRY.

MAYOR BAKER OF PORTLAND AND MAYOR OHMER OF PETERSBURG, ALASKA.

When Mayor Baker was in Alaska recently on the trip of imperial representatives of the Shrine, he met a mayor of one municipality whose only worry was the arrival of ships to carry shrimps to the markets of the United States.

This mayor, Earl N. Ohmer of Petersburg, Alaska, accompanied the party of imperial representatives of the Shrine on a portion of its journey to the far north. He acted as chairman of a Fourth of July celebration, at which Mayor Baker was the principal speaker.

Mayor Ohmer is a member of a large packing concern, which handles the largest output of shrimp and crab shipped from Alaska.

"SLICKERS" GET 15 DAYS

MEXICAN CARD GAME ENDS UP WITH PISTOL PLAY.

Varied Tale Related and Men Suspected Draw Sentence as Vagrants.

Conflicting evidence in an alleged hold-up case in Municipal court yesterday morning resulted in a 15-day sentence for vagrancy to John Grigo and Joseph Martell, both Mexicans. The men were arrested by Inspector Morak on the complaint of Pete Morano, also a Mexican, who claimed that he had been held up, beaten and robbed of $60.

Grigo was arrested at the Barr hotel Thursday and Martell was arrested at Ninth and Everett streets Friday. On their appearance in court yesterday morning the three men told three different stories, the only point of agreement being that there had been a card game in which Morano had lost some money. Morano claimed that while staying at Erickson's hotel, Second and Burnside streets, he had met the two Mexicans who invited him to play cards. He did so, he said, but after all his money was gone he had decided that the game was crooked and in the argument that resulted was struck by a pistol. The pistol was produced in court but all three disclaimed any ownership of it. The two alleged "card sharps" were given 15 days each, and Morano, who had evidently lost some money and had received a highly-decorated eye in the argument, was discharged.

Vancouver Pastor In Hospital.

VANCOUVER, Wash., July 31.—(Special.)—Rev. Charles W. Holmes, rector of the St. Luke's Episcopal church here for the past three years, is seriously ill at Good Samaritan hospital, Portland. He underwent an operation this week.

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