UNWARRANTED CRITICISM

J. W. Bennett Writes An Open Letter to Portland Journal.

March 1, 1911.

Editor Journal, Portland, Oregon

—In your issue of the 20th ult. there appears an unjust attack upon our Circuit Judge, Hon. John S. Coke, by reason of his decision in the case of National Automatic Fire Alarm Company vs. City of Portland et al, and something of a similar character appeared in the Telegram and your Mayor Simon was also guilty of expressing himself in a similar way.

Judge Coke stands very high in the profession, not only as an attorney of long experience but also as a capable, painstaking, impartial judge and a number of his friends down here feel that you, the Telegram and Mayor Simon have done him a great injustice without having looked into the questions involved.

This case was originally commenced in your Multnomah Circuit Court and a preliminary injunction was issued by Judge Robert G. Morrow, and afterwards a motion was made to dissolve the injunction and a full hearing had and after due deliberation Judge Morrow decided to sustain the injunction. Then a demurrer to the complaint brought up the same questions and again Judge Morrow sustained the injunction and held the complaint sufficient and Judge Coke's decision at the final hearing is to the same effect and after these two judges have fully investigated the matter, heard the arguments, one being a resident of your own City and our Circuit Judge is a non resident, not acquainted with the plaintiff corporation or any of its officers, after hearing the testimony argument of counsel and investigation of the briefs decides the matter conscientiously and in accordance with his best judgment and now the two newspapers and the mayor of your city without deliberating or without investigating the matter speak uncomplimentary of the decision without probably giving it more than a passing thought. It is hardly fair to the courts generally, after bestowing the labor which is necessary in a case of this character, to arrive at a correct conclusion as to what is fair between the litigating parties, that they should be criticized by any one, whether newspapers or officials, who have not given the matter the necessary consideration, and this statement that there is nothing of record showing that the National Automatic Fire Alarm Company ever received any legal authority to connect its system with the wire of the city, though they have been established since 1903, is wholly incorrect. On November 5th, 1902, the records of the city show that the following action was taken by the Board of Fire Commissioners of the City of Portland who had authority to act in the premises. That record says,

"After a full discussion of the sub-
" ject matter of the communication
" it was agreed that if upon through
" investigation by the Chief and
" Supt. of F. A. T. (Fire alarm Tele-
" graph) it was deemed advisable,
" the system of auxiliary fire alarm
" boxes should be adopted by this
" department."

And again at the meeting of the board held January 5, 1903, the records show the following:

"On motion of Commissioner Eve-
" ding it was ordered that the board
" enter into and make a contract
" with the National Automatic Fire
" Alarm Company for a system of
" Auxiliary fire alarm boxes, said
" contract to be satisfactory when
" submitted."

It was provided that as a condition to the granting of the permission asked by the plaintiff the chief of the fire department had insisted upon the plaintiff supplying all of the fire alarm boxes, of the keyless door construction and that these boxes when installed should become the property of the City of Portland. Notwithstanding that by some reason no written contract was entered into altho the Automatic Fire Alarm company and the City of Portland accepted and acted upon the terms agreed upon at and prior to January 5th, 1903, and the Automatic company began the installation of the fire alarm boxes under the supervision of the Superintendent of fire alarm telegraph, who connected the defendant's fire alarm wires thereto and in this way the Auxiliary company expended $15,000, both parties acquiescing, and the value of the usefulness of this auxiliary system was recognized by the municipal officers of the City of Portland on April 9, 1907, when a written contract was entered into between them by which the City of Portland agreed to pay the Automatic company as rental the sum of ten dollars a month for the term of two years for ten auxiliary stations to be and which were installed by the Automatic company in the defendant City of Portland's West Side Barn, a provision of the contract being that the plaintiff should place in position, at its own expense, one of the latest improved noninterfering successive fire alarm street boxes with keyless door, said boxes to be the absolute property of said defendant as soon as placed in position.

And in 1905 at a regular meeting of the Executive Board of defendant a report of a special committee was adopted in which the installation of the auxiliary system was recommended to be installed at the Marquam Theatre, the plaintiff thereafter and in pursuance of the defandant's request installing the same, including an addition street fire alarm box.

I am simply citing these facts for the purpose of showing that the author of the articles or assertions could not have understood the position taken in making the assertions hereinbefore referred to, and to any fair minded person it would hardly seem fair under these conditions, after the expenditures by the Automatic Company of the amounts in the purchase and installation of its system, that at any moment when any misunderstanding might arise between the officials of the city of Portland and the officers of the Automatic company that they should immediately cut the wires, which they threatened to do when this suit was brought, without any hearing or authority from the courts and ignoring what the predecessors of the officials had done before them, taking the law in their own hands.

It seems that the present officials or some of them at least, on account of the Charter of the City of Portland providing that an agreement with the city must be in writing, or by Ordinance, think that they could therefore take the technical advantage of the Automatic Company notwithstanding what had been done and the amount which the City had permitted the Automatic Company to expend; but it has been repeatedly held by the courts that these provisions of the Charter cannot be used to perpetrate a fraud and that where the parties have acted in good faith and the city has received the benefits of the oral contract, even the purchase of property, that they are estopped from hiding behind the provisions of the Charter in these respects, and even if the courts would allow such an unfair advantage to be taken by reason of the agreement not having been reduced to writing, after the city had received the fruits of the agreement, would the City of Portland itself want to go on record as taking advantage of an irregularity for which they were as much responsible as the Automatic Company and to confiscate the property of the Automatic company without due process of law and that just compensation which the Constitution insures.

To outsiders who live in the woods, like we do down here 't seems strange that the City of Portland would not insist that a contract of this kind should be reduced to writing in the first place and it also seems strange that the Automatic company would make such an investment without having a written contract in the first place also and an ordinance if necessary. These things do happen sometimes in partially inhabited communities but there is really no reasonable excuse for it occurring in a city like Portland where there are so many capable attorneys, whose services can be obtained, but when such a condition does exist, and when an outside judge is called upon to pass upon the various features of the law bearing upon the above condition of facts, it is not fair for either the city officials or the newspapers to reward him for doing his official duty honestly by abuse, when they themselves are not familiar with the facts and when questions of law are involved and especially in a case like this when our Circuit Judge from Coos rendered a decision in harmony with the decision of one of your own Circuit Judges, who had passed upon it three times previously to the same effect as our Circuit Judge did.

Any way Hon. John S. Coke is the judge of Coos County and is known to be a good lawyer, thoroughly conscientious and his decisions are respected here and for this reason and in view of the facts I do feel that I am expressing the opinion of a great many others besides myself, that the assertions aboved referred to have been wholly unwarranted and that an investigation of his decision in this case shows that he has cited plenty of authorities for the decision which he has rendered and that he has taken a great deal of pains to arrive at what to him seems to be correct findings of facts, and conclusions of law upon which he bases his decree and it is not fair that he should be so unjustly criticized as he is in this instance.

I would add that I am not an attorney in the case, did not know that the National Automatic Fire Alarm company was in existence until I read the Journal of the 20th; do not know who any of its officers or stockholders are and simply do this to right a wrong which I believe you have committed.

When one or more of your Multnomah judges come down here to Coos Bay for their health or on business, we feed them on pound cake and lollipop and when you invite our Circuit Judge to your metropolis to solve some of your unbusiness-like dealings, we bespeak for him courteous treatment at least, especially when he pays his own freight and for what he takes for nourishment.

Respectfully submitted,

J. W. BENNETT.

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