

LITTLE DIFFICULTY IN WAY OF ADJUSTMENT OF MUDDLE

Work on Court House Can Be Resumed Within Short Time by Plan Already Proposed.

The court house muddle occupied public attention in Astoria yesterday. On every hand could be heard expressions of disapproval of the evident effort to block the improvement, and the element supposed to be responsible for the affair was scathingly condemned. The situation is not, however, a serious one, as the errors already made will be righted and the construction work proceeded with in due course of time.

Yesterday Fulton Bros., at the request of the county court, filed an opinion bearing upon the legality of the contract entered into with Messrs. Hastie & Dougan, and also the legality of the general fund warrants issued in payment for the work during the past eight weeks. The law firm's opinion is that the general fund warrants thus issued are irregular, that the contract is illegal and that the court has no authority, under the present law, to levy a building tax running through a series of years.

How to Right the Error.

When the matter was brought up at the meeting of the court Thursday afternoon Mr. Dougan stated that he would be willing to go ahead with the work if arrangements could be made to raise \$7000 or \$8000 to pay the freight on material and the labor bills. With this sum the work could be prosecuted until January, when the court could make a levy for building purposes. Upon this levy being made the fund would be created and warrants could be issued against it immediately. A 3-mill levy would thus net between \$12,000 and \$13,000, which would be sufficient to carry on the work until the meeting of the legislature, which will afford the desired relief. The legislature will authorize the court to make the running levy for building purposes and will also legalize the general fund warrants thus far drawn. Upon this authorization being delegated to the court by the legislature, the building fund would be created, and the work would go on uninterrupted.

People Are Patriotic.

Already a movement to raise the \$7,000 or \$8000 necessary to carry on the project under Mr. Dougan's proposal has been started by progressive citizens, and there is good reason to believe that this amount will be set aside. The people are determined that the court house shall be built and are ready and willing to lend their financial assistance. On all sides the constitutional objection raised is regarded as an effort at obstruction, and there is a very pronounced sentiment that this effort must be resisted. Perhaps it will be a week before the construction work is resumed, but the assurance is given that the building will be delayed but little.

The county court will meet again November 25. At that time Mr. Dougan will be present and a plan for continuing the work will be adopted. In the meantime preparations for providing the necessary funds will be made. The situation is not a serious one and will be straightened out with little difficulty.

Judge Trenchard's Statement.

County Judge Trenchard said last evening, when seen by an Astorian representative:

"On the supposition that the people

of this county wanted a court house, the county court proceeded with the work. It has developed that the court has fallen into technical legal error. This is to be regretted, of course, but I am satisfied the affair will be corrected almost immediately. The general fund warrants thus far issued in payment for the work will not be repudiated, and when the legislature meets the court can be vested with authority to make a running levy for building purposes. This will straighten out the matter.

"I have been assured that the amount required by the contractors to carry on the work will be furnished by the people. This sum will make it possible to carry on the work until the levies are made in January, at which time a building levy can be provided. With the money derived from this levy work can be carried on until the legislature meets and authorizes the running levy."

The Text of the Legal Opinion.

The opinion filed yesterday by Fulton Bros. affecting the validity of the matter is as follows:

Astoria, Nov. 17.—The Honorable, the County Court of Clatsop County, Oregon—Gentlemen: Complying with your request, we submit our opinion as to the validity of county warrants issued, and proposed to be issued in payment for work and material entering into the construction of the new court house.

Section 10, article XI, constitution of Oregon reads as follows: "No county shall create any debts or liabilities which shall singly or in the aggregate exceed the sum of \$5000, except to suppress insurrection or repel invasion."

At the time the contract for the construction of the court house was entered into the county had outstanding voluntary obligations in excess of \$5000 but even if that were not a fact, by that contract the county obligates itself to pay to contractors within less than a year sums aggregating over \$100,000.

In *Salem Water Co. vs. City of Salem*, 5 Oregon Report 30, the supreme court held that a contract between the city of Salem and the water company whereby the city agreed to pay the company \$1500 per annum for 17 years for water to be furnished the city, "without any provision for raising and appropriating revenue to be applied in payment of such liabilities as the same became due, necessarily created a liability against the city within the meaning of a provision of the city charter prohibiting the common council from creating any debt or liabilities in any manner against the city exceeding the sum of \$1000."

In *Security Company vs. Baker County*, 33 Oregon 323, the supreme court held that an indebtedness created by a county court in the erection of a court house for a county is "voluntary" indebtedness and, if in excess of the constitutional limitation, invalid. In fact, there seems to be no reason whatever for doubting the invalidity of the contract for the erection of the court house or of the warrants issued or to be issued in payment thereof, as no provision has been made for the payment thereof. We are very clearly of the opinion that the contract is void and warrants is-

sued on account thereof invalid.

We are of the opinion that if a special tax had been levied sufficient to discharge such indebtedness it would not then have been within the constitutional inhibition, but of course to attempt to raise so large a sum for a special purpose in one year would be to impose an intolerable burden on the taxpayers of the county. Could the tax for such purpose be extended throughout a series of years the burden would not be severe and doubtless such a plan would quite generally receive the approval of the taxpayers, as the necessity for a new court house is conceded by all. The question, however, is, has the county court power to levy an annual tax to meet the cost of constructing such a building, running through several years? As the law now stands we are not prepared to advise the court that it is vested with such power. On the contrary, it is our judgment that the court has not the power. The theory of our laws on assessment and taxation apparently is that taxes for county purposes shall be levied annually. An exception which goes strongly to prove the rule, so far as the question under consideration is concerned, is the act of 1866, Bellinger & Cotton's code, sections 2520 and 2521, which authorizes the county court on the petition of the majority of the legal voters to "aid in the construction or repair of any public highway or river improvement," by levying "an annual tax, running through one or more years."

The fact that it was deemed necessary to enact this statute in order to authorize the levying of a tax running through a series of years would seem to be a legislative construction to the effect that in the absence of a statute such tax could not be levied, and as the statute applies only to highways, and river improvements, the power of other purpose would seem to be negatived. Consequently we are of the opinion that legislative authority to levy such a tax must be first secured.

We, therefore, advise that the court is without authority to proceed with the construction of the court house until the legislature shall authorize it to provide for meeting the expenses necessary thereto by levying an annual tax running through a series of years, creating a special fund against which all warrants in payment of the cost of construction should be drawn. Such a law being enacted, and the tax levied thereunder, we are of the opinion that a new contract should be made pursuant thereto. In making such new contract we think expenses now incurred might be taken care of as the work already done will be worth what it has cost. Respectfully,

FULTON BROS.

Removal Notice.

Dr. J. A. Regan has moved his dental office to rooms over A. V. Allen's grocery store.

Jeffries to Meet Johnson.

San Francisco, Nov. 18.—The Call says that Champion James Jeffries will meet Jack Johnson, the colored pugilist, in the ring next March. It claims that the men have been signed up and have agreed upon terms under which the matter will be fought.

It is no small comfort to have Schilling's Best on call at your grocer's; a pity one can't get everything such and so!



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P. S.—The reduction on OVERCOATS is still on.

PERSONAL MENTION.

F. M. Raymond of Seattle is in the city.

A. W. Jordan of Portland is in the city.

J. W. Hedrick has returned from a visit to Seattle.

H. H. Clark of Portland is among the late arrivals at the Occident.

W. A. Pittinger, a Portland traveling man, was among the passengers down on last night's train.

Mrs. Gertrude Reed Emerson of Portland, Me., is visiting in the city with her uncle, Captain G. Reed.

H. L. Bradley of Portland and A. W. Bradley of Duluth are in the city. The Messrs. Bradley are timbermen.

L. E. Loomis, L. A. Loomis and R. A. Hawkins came over from Ilwaco yesterday and left up the river last evening.

Save the LA Imperial band and get the diamond stud.

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LA IMPERIAL CIGAR

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Save the Bands

And get the diamond in Seymour's window, or the \$20 gold piece or a fine suit of clothes.

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P.T. Outsell

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