ALL WANTED THE NUMBER ONE TAG

MANY PORTLAND CANINE FANCIERS WERE ON HAND AT THE DOG LICENSE WINDOW THIS MORNING IN AN ENDEAVOR TO SECURE PERMIT NO. 1.

Dr. G. O. Jefferson Was Awarded the Prize and Dr. D. H. Rand Gets No. 2 After Striving for Years for the Lowest Number—J. M. Mann Takes No. "13" Because He Says It Is Lucky for Him.

If dog license No. 1, which was issued by the authorities today, was put up at auction, it is safe to say the purchaser would need dig up a good round sum to purchase it. A large number of local canine fanciers were on hand to try and get the coveted tag, but they were all disappointed. Dr. G. O. Jefferson, of 207 East Sixth street north, who has held the number for years, was there bright and early with the rest and he got it for another year.

The chagrin manifested by a number of the keenly disappointed dog owners was almost extraordinary. One would judge that the number represented the open sesame to some great treasure or happiness, to see how it affected them.

J. M. Mann does not believe that No. 13 is unlucky, as advanced by the superstitious. He claims it to be lucky, at least for him. He made a strong plea for the tag with that figure and had no trouble securing it. "It has always been my lucky number," was his only comment, in a manner that immediately dispensed with any argument to the contrary.

The contest for No. 1 was not confined to the men, by any means, for several women very much desired it too. Miss C. Myers, a well-known young lady of this city, made a plea for the tag, but the best the officials could do for her was No. 5, which she thankfully accepted.

Dr. D. H. Rand has been after the magic tag No. 1 for many years and number by number he has crawled up near to the goal. He was given No. 2 this time and is next in line for No. 1 when it comes into the open market.

The officials were overjoyed at getting rid of both No. 13's, but that tag number was very much in demand, and both the male and female dog numbers went off with a rush.

Miss N. Hilderbrand succeeded in drawing license No. 1 for female dogs. She has been striving for years to secure the tag and was overjoyed at her success.

Frank R. Huber was not so successful, but his disappointment at not getting No. 1 was somewhat assuaged by the fact that he secured No. 2, for female dogs.

NORTHRUP STREET WILL BE CLOSED

RESOLUTION TO COME UP BEFORE CITY COUNCIL TOMORROW ORDERING THAT THE THOROUGHFARE BE SHUT TO TRAFFIC BETWEEN FIRST AND TWELFTH.

Similar Action Will Be Taken With Many Other Streets in Bad Condition, Unless the Property-Owners Affected Show a Willingness to Have the Necessary Repairs Made in the Immediate Future—Roadways Closed.

Northrup street is to be closed to traffic the entire length from First to Twelfth street, a distance of twelve city blocks, and a resolution to that effect will be introduced at the regular council meeting tomorrow. Councilman Flegel is said to have had the resolution drawn up, and there is no doubt but what the action will be ordered carried out by the council.

This drastic action is taken because the street needs repairs, it is claimed, and needs them badly, but so far the residents have not taken it upon themselves to bring about the improvements. As a sort of reminder that such should be done, the council will simply wall up the street from traffic.

This is the climax the city councilmen have reached in their endeavors to secure permanent and substantial improvements, but if certain claims are made good it will not be the last big thoroughfare nailed up from business. And when a street is ordered closed it is not to be used again until the necessary improvements are made.

Several instances of where people have removed barriers from elevated roadways which were declared closed have come to the attention of the officials, and if the offenders are found out they will be arrested. In acting so they are violating the city statute, which prohibits the destroying of property belonging to the city, and for which there is a severe penalty.

There are now about ten or twelve bridges and streets which have been closed up by the street committee and city council and a number of other sections of thoroughfares and elevated roadways will be treated likewise in the near future unless immediate repairs are arranged for by the property-owners.

ELECTROCUTED AT POLE TOP.

(Journal Special Service.)

Stockton, Cal., Sept. 1.—Charles Stith, a lineman, was electrocuted today by 2,000 volts of electricity passing through his body while seated at the top of a pole in sight of 3,000 people who were unable to assist him.

COUNTY WINS SWEEPING VICTORY

(Continued from Page One.)

the proper officer for collection. It cannot be successfully maintained that the power in question is granted by Sub. 9, Sec. 912, for the reason that the general care and management of the county funds and business there given is expressly limited to those cases where the law does not otherwise expressly provide. It has just been made plain that in the business of the collection of the revenue the law does otherwise expressly provide. Nor can the power be held to be conferred by Sub. 10, Sec. 912, since the authority therein granted to "compromise for or release in whole or in part any debt or damages arising out of contract due the county," is by the very terms of the grant limited to debts and damages arising out of contract. It does not require argument to establish the proposition that state, county, etc., taxes assessed and levied in the ordinary course of business are neither debts or damages arising out of contract due the county.

The authority of the county commissioners to make the orders in question must be sought in the general terms of Section 2,518, the general statute and the necessary implications which may be drawn from it.

Before proceeding to consider what are the general powers of county commissioners it is important to notice that the supreme court has declared certain limitations to exist where particular officers are charged with particular duties. The county court does not possess the power to interfere in the discharge of official duties delegated to particular persons. In Burness vs. Multnomah county, 37 Ore., 470, Mr. Justice Bean, speaking of a contract to collect taxes, says: "A more serious and unsurmountable one (objection), however, is that the board of county commissioners undertakes by the contract to interfere with the duties of the county clerk by stipulating how and from what data he shall make delinquent tax lists when his duties in that regard are specifically prescribed by statute, and the board of county commissioners or county court has no control over him, except, perhaps, to see that he faithfully executes the duties of his office."

In the absence of any grant of direct power to the board of county commissioners as fiscal agents of the county to grant a deduction from the amount of taxes assessed and levied against an individual taxpayer, it must be determined that power does not exist unless the power and jurisdiction is necessarily implied. The rule is already noted that jurisdiction will not be implied where the existence of the power is doubtful and does not result as necessarily and inevitably as when expressly conferred. The solution of this question is rendered comparatively easy with respect to taxes, whether delinquent or not, at any time before a sale of the property by the tax collector. The statutes covering the subject show the board of county commissioners is not charged with the performance of any duty, the performance whereof can or does involve any investigation of the legality or illegality of the assessment or levy of taxes as between the tax collector and the taxpayer. Broadly stated it is by law made the duty of the tax collector to collect the amount of taxes assessed and levied from the taxpayer, and it is the duty of the latter to attend and pay the amount. These public duties are specifically provided for and do not require the intervention of the board. "The supreme court in Burness vs. Multnomah county say the board has no control over an officer charged with such duty, except perhaps to see that he faithfully executes the duties of his office. In State ex rel vs. Hall, 37 Ore., 482, the supreme court in upholding a contract for services in assisting the sheriff in the collection of taxes says: "The decision in Burness vs. Multnomah county is in no way in conflict with this conclusion. In that case the contract between the county and Noble was held void because it undertook to interfere with the duties of the county clerk by stipulating how and from what data he should make delinquent tax rolls. But, as already said, in this case there was no attempt to interfere with the duties of the sheriff, but rather to give him assistance in order that something might be realized on delinquent taxes which could not be collected by legal process."

The transactions set out in the complaints, if upheld, amount to substantial interference with the duty of the officer to collect, since the effect of the orders is to materially reduce the amount to be collected or even to remit it all, and this without any regard to the judgment or discretion of the officer charged with the duty of receiving and remitting the money. The collecting officer has no authority to abate the amount of redemption. These decisions are binding upon this court and applying the principles announced it must be determined the board of county commissioners, acting as the fiscal agent of the county, did not, when the orders were passed, and does not now, possess the power to remit or cancel delinquent taxes. While the court believes the decisions of the supreme court of Oregon settle the question of the power to release delinquent taxes before tax sale, the decisions of other states indicate what is deemed the safe rule of public policy. In Illinois the court say: "The general assembly has conferred no power on the board (board of supervisors of the county) to abate state or other than county taxes, and we are not informed of any express authority for that body to abate county taxes. If the county board may abate state and other municipal taxes in one case they may in all cases. If they may do so for one reason they may for any reason or without reason, and thus defeat the collection of all revenue."

Madison county vs. Smith, 95 Ill., 335.

State ex rel Coe vs. Tyler, 48 Conn., 159.

Wilson vs. Supervisors, 47 Cal., 91.

Coaley on Taxation, p. 747.

Other authorities might be cited but reference may be had to the same through those given.

It appears from the complaints the taxes assessed on the lands affected by the orders were regularly assessed and valid. This being true, and so it must be assumed to be, for the purposes of this case upon demurrer, if the taxes and all of them belonged to the county, nevertheless, the board of county commissioners could not by gift or otherwise surrender the same for less than the amount due thereon according to law.

In Union county vs. Hyde, 26 Ore., 24, it is held the county may sue for and recover money paid out on the warrant of the county court where the payment was not authorized by law. See also Grant county vs. Sells, 5 Ore., 243.

The difference in principle between paying money on an invalid claim and remitting or forgiving money actually due on a valid claim does not exist, or at least if it does the court cannot perceive it. In these cases, however, a considerable portion of the taxes affected by the orders of the county court had passed to tax sale and it was not only the tax entries but the certificates issued on the tax sales which were cancelled and surrendered under authority of the orders. It therefore becomes necessary to consider what power the county court possesses and may exercise after tax sale where the county judge has bid in the lands. The attendant circumstances are material. In 1891 the legislative assembly established the port of Portland and empowered it to assess, levy and collect taxes. The act made the tax collector of the county the tax collector of the port, and the taxes, when collected, were to be paid by the officer collecting the same to the treasurer of the corporation. This corporation was and is a distinct entity capable of suing and being sued, etc. It was authorized to issue bonds and did so. The transaction of its affairs is provided for in the act, and it is sufficient for the present purpose to state that the county court or board of county commissioners has been given no power or authority over the affairs, funds, taxes or revenue of the port of Portland. Taxes have been assessed and levied by and on account of the port of Portland each year since the port was established.

In 1893, page 116, the statutes were amended to require school and city taxes to be collected at the same time as taxes for county purposes and by the same tax collector. The act particularly specifies the duties of the clerks of the county court and other designated officers, but does not undertake to impose any duty upon the county court or increase its authority in the matter of the collection of taxes.

In 1893, page 28, an act of the legislative assembly empowered and authorized the county judge of each county and the clerk of every school district, "at any legal sale of land for taxes in his county, to bid for, and in behalf of the county or school district, the amount of taxes and costs that are charged against such land or each parcel thereof, and if there be no higher and better bidder such land shall be sold to and become the property of the county or school district, subject to redemption as provided by law."

Prior to the act of 1893, page 116, school districts and cities exercised the power of assessing, levying and collecting taxes by means entirely independent of the county officers. Each of these municipal corporations possessed the power to borrow money and incur indebtedness, and each was charged with the performance of public duties impossible if the corporations be deprived of the necessary income.

The act of 1893, page 28, was perhaps only intended, when adopted, to apply to the condition existing prior to the adoption of the act of 1893, page 116. It seems, however, to have been assumed the two acts construed together authorized the county judge to bid in lands at tax sales for county taxes, and also for school taxes, which the act at page 28 expressly authorized the school clerk to do, and in addition for taxes belonging to cities, and in Multnomah county those belonging to the port of Portland, though nothing appears in the act to show that city taxes or port of Portland taxes were even considered in this connection. At any rate it was by the exercise of such assumed authority that the county judge bid in the lands described in the complaints.

It is now contended that under the terms of the act of 1893, page 28, viz., "such land shall be sold to and become the property of the county or school district, subject to redemption as provided by law," are sufficiently comprehensive to warrant a construction that immediately upon the completion of such sales in the ordinary manner the certificates issued by the sheriff become the absolute property of the county; that since the county court is the fiscal agent of the county, and the county is authorized to do all necessary acts in relation to the property and concerns of the county, a disposition of the certificates is clearly within the power of the board of commissioners.

If it should be admitted the county court at the time had the power to sell in the open market such certificates, though it does not appear it did, still in the cases at bar there were no transactions amounting to sales. The complaints show the business done was carried on with the owners of the fee of the lands in question. The statute of 1893, page 28, provides how the taxpayer may recover the lands sold at tax sale, and that is by redemption. The statute is definite and certain as to what shall constitute a redemption, and there is nothing in any act the court has been able to discover even tending to show the legislative assembly even contemplated clothing the board of commissioners with the power to change or modify the terms of redemption in any case. Considered as an attempt to authorize a redemption contrary to the terms of the law, the orders of the county court in these cases are void. It must be remembered that in all the cases set out in the complaints the regular statutory period in which redemption from tax sales might be made had not expired.

It is unnecessary to discuss whether the dealings between the county court and the taxpayers described in the complaints amounted to sales of the certificates, since no one claims this to be the effect of the action taken. But the county court has no power to make sales of the certificates.

The court is of the opinion that the fact that the county judge assumed the right to bid in the lands under the act of 1893, page 28, and did so, conferred no power upon the county or the board of county commissioners to cancel or release any tax or part of a tax assessed and levied theretofore in favor of the port of Portland or the city or Portland or any other city or incorporated town or any school district within Multnomah county. Any attempt so to do must be held void.

It is claimed that where the county judge has bid in the lands the effect may be to create an indebtedness in favor of the particular corporation and against the county, but that the defendants are not parties to any controversy between these corporations and the county.

The defendants, as taxpayers, were parties to the taxes assessed against them in favor of the several corporations. If defendants had made redemption of the lands according to law, the demands of the several corporations would have been paid and satisfied. The defendants elected not to redeem, but to pursue another course, and if in so doing it happens they have applied for and secured a receipt for release which is not effectual because of lack of power in the board or officer issuing it, the loss, if any, is the necessary consequence of the course pursued and defendants cannot be heard to complain.

The practical result of holding the board of county commissioners may at will cancel taxes assessed and levied in favor of the corporations named would be either to deprive them of a substantial part of the revenue necessary for the performance of corporate duties or to transfer a very considerable amount of the indebtedness of the city of Portland, the port of Portland and the school districts within Multnomah county to the county itself. The county in such case would have received nothing of value for and on account of the indebtedness thus incurred. All the authority granted to the board of county commissioners by the express terms of the statutes comes far short of the power sought to be maintained in these cases as existing by necessary implication. The court is not prepared to approve such a construction of the law.

In the Title Guarantee & Trust Company case the order in question was made by the county court in December, 1900, before the statutory period of redemption had expired, and before the act of 1901 was adopted. The order was beyond the power of the county court and must be held void.

The orders in the other cases seem to the court to be particularly provided for by statutes existing at the time the orders were made, but if not must be held void for the same reason as that in the Title Guarantee & Trust Company case.

The county, as such, is one of the agencies through which the state exercises the powers of government. Its powers and duties are always subject to law.

In 1901, page 71, the legislative assembly amended the act of 1893, page 28, declared an emergency, and the amended act went into force, February 23, 1901. This was before the orders in controversy in the other suits were made. This law fixed the date of redemption of lands theretofore sold at July 1, 1901. It also provided that the title to lands not redeemed should pass without conveyance to the county. There are also provisions to protect the corporations interested in the taxes and securing to them the ratable share that may be realized from a sale at public auction of the lands after title acquired. The act contains nothing tending to show any cancellation or assignment of tax certificates was contemplated. Section 5 expressly declares all tax sales theretofore made to counties legal and valid, notwithstanding certain enumerated informalities. These are important but need not be stated.

The act in its last section recites there is no law providing for the sale by counties of lands purchased at tax sale, and this is the emergency.

The validity of the other orders depends upon the power granted by this statute.

The act requires a sale of the lands to which the county or other public corporation has acquired title by tax sale. The first sale to take place on the first Monday after July 1, 1901. The period of redemption, according to the act, expired July 1, 1901. The sheriff is required to give notice and make the sale. The county commissioners and officers of school districts are required to furnish the sheriff the records of sales lists and all other proper and necessary information. This provision does not confer any power of disposition upon the county commissioners or county court.

The whole scope of the act is consistent with the construction already given of the statutes governing the collection of taxes before tax sale, and is inconsistent with the theory that the county court possessed the power to sell tax certificates or permit redemption in any manner not provided by law.

The board of county commissioners has no jurisdiction to hear and determine litigation involving the title to lands.

The act under consideration contains important rules to be applied by the courts in adjudicating the validity of titles acquired by counties at tax sale. It is particularly provided that in any action, suit or proceeding brought to set aside any sale of lands to counties for taxes, or to quiet title against the same, or remove the cloud thereof, or to recover the lands sold before or after the issuance of a deed, the person claiming to be the owner as against the purchaser shall tender and pay into court with his first pleading the amount of the taxes and costs for which the lands were sold, etc. The court cannot doubt that these provisions were intended to be, and are, exclusive as applied to such tax sales. It would exceed the limits to which construction may or ought to be extended, to hold that all of these statutory enactments, designed to secure the collection of the revenue necessary for the use of county and other public corporations, may be disregarded. To so hold would require the court to write into the statute words which do not appear therein, and to interpret the terms of the statute in a sense directly contrary to their plain and evident import.

Defendant, The Title Guarantee & Trust Company, insists that because the order in its case was made in a compromise of a suit to quiet title by it brought against the county, the order should be sustained as a valid exercise of power by the county court, and in any event the plaintiff cannot maintain the suit without restoring the defendant to the position it occupied before it dismissed its appeal to the supreme court. The fact that defendant instituted a suit against the plaintiff would not increase the power of the county court beyond what the statute has conferred. The court is of the opinion the county court is not authorized under the circumstances set out in the complaint to abate, compromise or release valid taxes, valid tax certificates or other valid claims for taxes. Neither defendant or the county court, or both, could, by any act performed at or about the time the order was made, render a transaction legal which was by law unauthorized or forbidden.

It is argued the statute of limitations has run in the Dekum case. As a general proposition, the statute cannot be invoked as against the state or any of its governmental agencies, unless express provision to that effect is made by the legislature. In this state the statute does not provide that there shall be any limitation upon the power of the state or its representatives to collect taxes. Further, the Dekum case comes directly within the provision of the act of 1901. It certainly forbids any conclusion that any taxes were to be deemed outlawed. In terms, all taxes are declared valid except for certain informalities, and time is not an element of any defense which may be successfully interposed.

It is alleged in the complaint the Title Guarantee & Trust Company, in applying for the order, incorrectly stated the amount of taxes due. It is unnecessary to discuss the effect of misrepresentations, if any were made, to the county commissioners, since the case is disposed of on demurrer upon other questions. It is sufficient to say that the aggregate stated in defendant's application appears to have been taken from an aggregate stated in the county's answer in the suit to quiet title, and does not amount to a misrepresentation. In any event, the county commissioners were bound to know the amount of taxes without relying upon the statement of the defendant.

Defendants insist that to deny the board of county commissioners power to compromise taxes, as was attempted in the case at bar, would deprive them of the power of acting in numberless instances where the interests of the county would be subserved. These suggestions have had great weight with the court. The fact that the board has assumed to exercise this power in many cases, presents a situation in which the court would not in any doubtful case pronounce a decision which would practically nullify the action of the county court. Under the rules announced by Judge Lord in Crossen vs. Wasco County, the power of the board of county commissioners to make orders in such cases must appear, either expressly in the terms of the statute or by necessary implication therefrom. The court has been unable to find the authority is expressly granted, and so far from appearing to exist by necessary implication, the court believes the natural and necessary implication to be deducted from existing statutes is that the board of county commissioners has no power to abate taxes, cancel the same or provide in any way for the release of taxes levied for the payment of a less sum than that assessed, nor to cancel, assign or release tax certificates issued for sales made to the county at tax sales. Opinions may differ as to whether or not the county's interest would be better promoted if the county commissioners possessed the power sought to be exercised in these cases. The opinion of the legislative assembly has changed on this subject. From 1854 until 1864, Titles V and VI, statutes of Oregon, were in full force. It would be interesting and perhaps profitable to review Titles V and VI, which were repealed in 1864, but the length of this opinion forbids. Section 75 is as follows:

"Whenever, on account of any erroneous or defective description of any land, or any other error or defect, if such land were justly taxable, the same shall have been stricken from the assessment roll, or shall have been omitted to be sold at any tax sale, or when so sold, the county auditor shall withhold the tax deed therefor, as provided by law, the board of commissioners shall cause such land to be correctly described, and such uncollected tax to be entered upon the assessment roll of the next succeeding year, but if such lands cannot be correctly described, or if from any other cause the tax so unpaid cannot be collected on the same, the said board shall correct such error as they shall deem best."

Under such a statute it is easy to understand how a practice might become established under which the county commissioners would correct errors and settle tax matters in dispute at their discretion. Once established, it would be likely to be continued from one board of county commissioners to another, even after the law which gave color of authority for the proceedings was repealed. An illustration of how the full effect of the repeal of a law may be delayed is furnished by the recent litigation wherein a mortgage lien was declared superior to that for taxes in the given case. The case was decided by Judge Sears within the past year and affirmed by the supreme court.

Since 1864 the statutes of the state have, under proper circumstances, warranted such a decision, yet the law was deemed unsettled until determined by the supreme court in 1903.

The statutes of the state no longer contain any provisions equivalent to those quoted from the act of 1854. The court must determine the questions presented according to the statutes and decisions of the supreme court, and the practice should be corrected to conform to existing laws.

The demurrers are overruled.

LIEUT. HALL HERE.

Lieut. D. P. Hall of the Marine Corps of the flagship New York, now at Bremerton navy yard, was in the city a short time yesterday calling on his friend, Lieut. Larder. Mr. Hall was on his way back from Mare Island, where he had gone to stand examination for captain.

COLOMBIANS ARE AGAINST CANAL

CONSUL GEORGE W. COLVIG, STATIONED AT BARRONQUILLA, SAYS THE TEMPER OF THE PEOPLE IS AGAINST CESSION TO UNITED STATES.

They Believe that Their Government Should Not Sell a Perpetual Franchise for the Use of a Foreign Power—A Serious Obstacle in the Way of the Building of the Interoceanic Highway.

"I have not resigned from the consulship at Barronquilla, Colombia," said George W. Colvig today, at the Imperial hotel. "I am on leave of absence and am merely taking the two months always granted to federal consuls each year, under the long-established rule of the state department. Having remained at my post last year, this year I have an extra month, and am therefore to remain in this country longer than the usual time."

Consul Colvig added, however, that he had not yet decided whether or not he would return to Colombia, and was not ready to announce a decision.

"Colombia is wonderfully rich in natural resources," said he. "There is a large export trade, and valuable products are sent into the markets of the United States. I can cite a peculiar condition, that, whereas most of the business men in Barronquilla are German or French, nearly all of the products are exported to New York. Lumber—cedar, mahogany and lignum vitae—goes out from the immense forests along the Magdelina river, coffee from the mountainous regions, gold in bars, these products going to New York; cattle to Cuba, and cotton to England.

Natives Oppose the Canal.

"It will be of interest to learn here that the natives of Colombia oppose quite generally the construction of a canal by the United States. The argument has taken strong hold of the people's sense of patriotism, that under the constitution of that country it is not competent for the government to concede lands and rights necessary for the permanent ownership of the canal by a foreign power. It will be readily understood that such a plea must be potent, and can scarcely be overcome without the lapse of time and extensive agitation.

"Perpetual franchise must be granted if the canal be built. With public sentiment opposed upon grounds of patriotism, the obstacles in the pathway of the canal supporters are not inconsiderable."

Mr. Colvig is here for a brief visit from his Oregon home in Grants Pass.