

"REPEAL" THE PLEA

MULTNOMAH COUNTY'S BRIEF IN THE SUIT TO TEST THE VALIDITY OF THE NEW TAX LAW FILED WITH THE SUPREME COURT AT SALEM.

It Points Out the Disastrous Results That Will Follow the Overthrow of the Act—Decision Expected in Time to Permit an Extra Legislative Session to Remedy Defects of the Law, if Held of No Effect.

The appellant's brief in the suit to test the validity of the state's new tax law was filed today with the supreme court at Salem. Counsel for both sides have joined in a request to the supreme court to advance the case on the docket, and expect the justices to follow the usual custom, and take up on the first day possible this case, involving, as it does, the collection of all public revenue and the payment of all claims based thereon throughout the entire state.

Should the supreme court hold the 1903 tax law invalid, general special elections must be held to fill vacancies in the senate and house, caused either by the resignation of members or their removal from the counties from which they were elected. At least two—Senators Fulton and Daly of Benton—will have to be replaced because of removal, and Representative Frank Davy of Marion and Senator Mulkey of Polk are each presumed to have removed to other counties. These elections held, the special session of the legislature can be called, when whatever defects in the tax law may have been pointed out in the litigation can be remedied.

History of the Case. September 18 The Journal published the fact that able lawyers believe the tax law adopted by the 1903 legislature invalid. The publication caused apprehension in the minds of everyone who appreciated the calamity that would befall the state were the assessment found to be uncollectible, and the revenues of the state government consequently cut off. Arrangements were therefore effected to begin a suit to test the constitutionality of the law. Maria L. Flanders appearing as plaintiff, asking the circuit court to restrain the officers of Multnomah county from assessing, levying and collecting taxes under the provisions of the law amended by the act of 1903, to take effect January 1, 1904.

The main defect appeared to be in the lack of a saving clause in the new act expressly reserving the right to proceed under the old law to complete the levy and collection after January 1, 1904, of the taxes based upon the current assessment roll which has been begun under the old law. It seemed to be inevitable that the entire assessment and levy of 1903, for the taxes to be paid in 1904, would thus be rendered uncollectible. The complaint filed September 18 set forth these things. September 19 A demurrer to the complaint was filed by the county officers, but was overruled by Judge Cleland. At the time of overruling the demurrer, Judge Cleland issued an injunction restraining the county officers from continuing the assessment roll and from collecting any of the taxes due under the forthcoming levy. Appeal was at once taken to the supreme court, Judge Cleland granting the application upon the day it was filed.

Position of the Appellants. The position assumed by Multnomah county set forth in its brief is as follows: "We assume the position that the act of 1903 was a revision of the law relating to the assessment and collection of public revenue, the object of which, as will be seen from an inspection of the several sections of the act, was not to make any change in the means of raising the public funds, but simply to shift the date. It will be found that the provisions of the new law are almost identical with the old, except in the re-adjustment of the time of the payment of the same. Incidental to this, the date of assessment is made January 1, instead of March 1, and the time of making the levy or apportionment by the county is shifted to the September term instead of the January term."

"The purpose, evidently, is to preserve the same system, but to re-adjust the dates. The amendment of the sections of the code in question may be said to be not a repeal of the former law, but rather a revision. And while a substitution of a new section by amendment is generally an implied repeal of the old, the rule should not be inflexible, or be applied when the legislative intent is clearly to the contrary, or when the result of the application of the rule is destructive of government institutions or functions."

"Now, the sections revised and amended are but parts of the whole scheme of assessment and collection and distribution of the public revenue. The scheme is not abolished, but simply amended or repaired. It is as necessary to give force to the sections of the old law that remain unamended as to the new amendatory section. Consequently, the Constitution Decision. After citing the usual authorities concerning the rule of interpretation of statutes, which is that the appellant court shall consider the entire statute, not any particular clause, by itself, and that the intention of the lawmaker is to be taken into account in determining the validity or invalidity of an enactment, the appellant's brief says: "The consequences of a contrary decision are very serious, so serious, indeed, that the operations of the state and all of its government will be obstructed. If the Port of Portland, or the city of Portland, for example, default in the payment of interest upon outstanding bonds, the credit of the state will be seriously injured. If the decision of the circuit court is affirmed, the courts must close; persons charged with crime must lie in jail awaiting delayed justice, and public officials must abandon their offices or find other means of subsistence than their overdues; the public institutions for the care of the poor and infirm, the blind and the deaf, the insane and the criminal, will be crippled in usefulness or will wholly cease operations; and the various counties and municipalities, being limited in their right to incur indebtedness, will be involved in a hopeless tangle of suits."

Itching skin, produce moisture and cause itching, this form, as well as Blurred Vision or Protruding Eyes, are cured by Dr. Bo-sanko's Pile Remedy. Stops itching and bleeding. Absorbs tumors. See a bottle at your drug store, or by mail, Treatise Free. Write above your case. Dr. Bo-sanko, Phila., Pa.

TO TAKE UP CEMENT CASE

CIVIL SERVICE COMMISSION MEETS THIS AFTERNOON TO SET A TIME FOR HEARING CHARGES AFFRONTING CITY CONTRACTS FOR CEMENT LAYING.

Nottingham's Allegations that Deputy City Engineer Scoggin Discriminated Against Certain Brands, Denied by the Man Accused—Will Be Thoroughly Sifted and It is Reported That Startling Evidence Will Be Produced.

The charges of discrimination in the selection of cement for street work and public improvements preferred against Engineer Scoggin, chief deputy city engineer, published in The Journal last evening, caused considerable stir at the city hall and among those who handle cement. At the office of the city engineer denial of the charge of favoritism is made by both Mr. Scoggin and his chief, Mr. Elliott. It is the duty of Mr. Scoggin to make tests of the various brands of cement offered and if they are up to standard contractors for street and other classes of work are furnished with a list of the brands that will be accepted.

In this connection it may be stated that the city officials have nothing whatever to do with the buying, as the contractor doing the work is required to furnish his own material. The only supervision the city engineer's office has is to see that cement of a certain quality is used and that the work is done properly.

Much Cement Used. Of recent years the cement business in this city has assumed a very great volume. Not only is it used for street work, but also for building like 18- and 1900 barrels were used on street and other work. Each barrel is supposed to contain 400 pounds of cement and the average price a barrel is \$2.75. A few brands, including the Heidelberg brand, can be purchased for less. The prices quoted provide for delivery at the place of work.

Among the brands that have passed muster at the city engineer's office and now being used in public improvements are—German and Josens brands, handled by Nottingham & Co.; Alsen brand, handled by J. McCracken & Co.; Heidelberg brand, handled by Meyer & Wilson, and the K. & S. and North Condor brands, handled by Balfour, Guthrie & Co. On the blacklist are the Asano brand, the Bona brand and the Teutonia, Fuller & Co. are agents for the Scale brand, Nottingham & Co. for the Teutonia and the Oriental-American company for the Asano brand.

Of the acceptable brands all the North Condor and the K. & S. brands are made in Germany. The K. & S. is an English cement and the North condor is of Belgium manufacture.

Commissioners Meet Today. The board of civil service commissioners, before whom the charges are laid, will meet in regular session this afternoon. The complaint of Mr. Nottingham will be read and a day fixed for a hearing. C. W. Nottingham, who is chief prosecuting witness in the matter, declares that he will push the charges and promises to introduce testimony that will show a startling state of affairs.

BANDIT IS IDENTIFIED.

(Continued from Page One.)

rating, made for different points on the railroad, going to Seattle singly and meeting in that city. Thence they went to Everett and went into hiding in the hills back of that town. Chief Nevins as soon as he succeeded in identifying the wounded robber, went to Goble and picked up the trail. He found the cabin in the mountains where the bandits had made their rendezvous, and then found some of their effects. This was last Sunday, and Monday he picked up some additional clues, all of which showed that the fugitives had succeeded in reaching the Sound county, and his men are now on the trail in that section.

Story Advertiser the Chase. Sheriff Storey, behind time, as usual, did not learn that Connors had been identified until late Tuesday, and he learned of it only by shadowing the Pinkerton chief. Storey went with haste to Goble and thence to the Farr camp and was soon in possession of a few facts. Taking one of the Farr brothers with him, he left for Seattle at once, arriving there last night. As usual, he soon ascertained the names of the high sheriff of Multnomah county, on the trail of the O. R. & N. hold-ups. The reporters were soon on his trail and by this time the fugitive bandits are probably aware that officers are close behind them and struck their trail, and will probably be taken into the hands of Multnomah catches up with them.

E. H. Betts Arrested. A dispatch to The Journal from Seattle this morning states that Storey had invoked the aid of the police force of Seattle and of the sheriff's office. Another special from Tacoma says: "E. H. Betts was arrested here this afternoon on suspicion of complicity in the O. R. & N. train hold-up at Corbett, Or. The arrest was made at the postoffice, while the man was getting his mail. The suspect is being held at the city jail, awaiting the arrival of Sheriff Storey of Portland, now in Everett."

Williams Convalescing. Williams, the wounded robber, is still confined in the Good Samaritan Hospital under guard. His condition during the past few days has shown marked improvement, and there is no doubt that he will recover. It will probably be several weeks before he will be well enough to stand removal to the county jail, or he will be arraigned in court.

TO MAKE NEW WAR ON SAN SALVADOR

(Journal Special Service.)

New Orleans, Oct. 1.—According to information just received, a plan is under consideration by President Cabrera, of Guatemala to join forces with Honduras and invade San Salvador. Reasons for the contemplated invasion are numerous, and largely concern the internal affairs of Guatemala. Cabrera is the most unpopular president in Central America.

JESSIE CHERRY IS DEAD.

(Journal Special Service.)

Hot Springs, Ark., Oct. 1.—Jessie Cherry, one of the famous Cherry sisters, vaudeville artists, is dead here.

'PHONE TALK NOT IMAGINARY

THE CONVERSATION QUOTED IN MONDAY'S JOURNAL IN WHICH MAYOR WILLIAMS INTIMATED THAT GAMBLER BLAZIER WAS GETTING PROTECTION CAME FROM AN AUTHENTIC SOURCE.

So did the Chat With Fred Fritz, Who Has a Few Games Running, and Said that He Thought the Mayor Would Live Up to "the Contract"—A Critic's Misapprehensions Are Corrected.

Portland, Sept. 30.—To the Editor of The Journal.—It seems unusual and beneath the dignity of The Journal to print such a article as that the first evening, published in your issue, telling of an imaginary telephone conversation with the mayor and with gambler Fritz. It is all very well to criticize the administration and to show up the mistakes made by both the mayor and the police in the matter of law enforcement; but such a method of attack as that referred to seems undignified.

If the conversation were genuine, it would indicate that the mayor and the chief of police were reported in violation of the law at so much a month. If you can prove that such an agreement exists you will be doing the people a service, but to publish an imaginary conversation is a long way from exposing a wrong. CITIZEN.

There is nothing imaginary about the telephone conversation between Mayor Williams, gambler Fred Fritz and a person representing himself as chief of police. Hunt, which was reported in yesterday's Journal. Transcripts of the conversation were sent The Journal by the persons who chose this method of learning whether or not there was any bargain with the gamblers to which the mayor and the chief of police were parties.

The information came from sources which The Journal believes undoubtedly authentic. About 9 o'clock last Friday evening telephone Main 380, in Mayor Williams' residence went ting-a-ding-ling and a voice said: "Hello! Is that you, mayor?" "Yes. What is it?" came the reply. "Have you heard about the new move to close down the gamblers?" "No. What is it?" "Well, the preachers have adopted a new plan of campaign."

"That so? What is it?" "Well, at a meeting this afternoon they decided to abandon the idea of taking the matter into the courts."

"Well, what the devil can they do then?" "They claim to have the money subscribed to buy the Oregonian and intend to turn its batteries loose on us."

"That so? Where'd you hear all that?" "At Blazier's."

"What's the matter with Blazier? He's got better lay low or he may get into trouble."

"Well, I thought I'd tell you and find out what you think of it. I'll tell you more about Blazier tomorrow. What had you heard?"

"Oh, nothing. We'll just lay low and see what turns up." But come in and see me in the morning, and we'll talk the situation over."

A few minutes later another person called up Main 1442.

"Hello!" said a voice at the other end of the line.

"Hello!" returned the interlocutor. "Is this Fred Fritz' saloon?"

"Yes."

"Is this Mr. Fritz?"

"No—Fritz is upstairs. Do you want him?"

"If you please."

"I'll go up and get him."

Presently another voice at the opposite end of the line:

"Hello! This is Fritz. Who is this talking?"

"This is Chief Hunt."

"Oh! Hello, chief. What do you want? There was no surprise in the voice, as there might have been at an unusual call.

"Got any games going?" "Yes. I've got a few going."

"Well, keep your eye out. The preachers had a special meeting in the Y. M. C. A. today. It's hard to tell what will happen with this new agitation. Do you think the mayor will stand pat on the contract made?"

"Think he will, eh?" "Oh, sure!" "All right."

"All right, chief. Much obliged for the information."

FRANKLIN K. LANE HEADS CLEAN TICKET

Accepts Nomination for Mayor Amid Great Enthusiasm—Agreed to Be Seat Lineup Ever put in the Local Field.

San Francisco, Cal., Oct. 1.—Franklin K. Lane, after keeping his party managers in suspense for several days, last night appeared before the last meeting of the convention and accepted the nomination amid a ringing speech, thus arousing great enthusiasm. P. J. Curtis for sheriff, A. W. Wehe county clerk, William Broderick auditor, and W. M. Hinton for treasurer completes the ticket which, with men previously named, makes the strongest and cleanest ticket this city has ever had in the field.

SENATOR MORGAN SAYS HE WON'T BELIEVE IT

Birmingham, Oct. 1.—Senator Morgan in an interview today declared that any attempt of Roosevelt to reopen negotiations with Panama would be an evasion of the Spooner law and an inexcusable breach of faith toward the men who voted for it. He says he cannot believe the president will submit to having America badgered in submission to Colombia.

CAULIFLOWER TWO FEET AROUND.

Leonard Geritz, a Multnomah county dairyman, residing near the Columbia river, has brought to the Oregon information bureau a huge head of cauliflower. The edible portion of the plant measures 10 inches across. The vegetable was sown June 26, transplanted July 25 and cut September 15, and is known as the Danish snowball cauliflower.

IT BARS FAIR PLAY

(Continued from Page One.)

To have presented an acceptable show, I do not believe there is a regular visitor to the Marquam or any other theatre but is willing to overlook the bad feature and say: "It doesn't happen often, and I know that I can expect something good next time."

But when, after the show of the barn-storming order—or worse—comes along and is rated as a first-class attraction at first-class prices, it is time for the people to express their righteous indignation. When the newspaper or more correctly speaking, newspaper, criticizes these indifferent attractions, the house management should heed the advice, for advice it really is, and cease signing such performances or else take down its little card as a "first-class place," and hang out a sign, "Popular Shows at Popular Prices."

If the manager of the Marquam says his attractions are all that they are claimed to be, ask him to explain "Where is Cobb?" that all-star aggregation direct from 'tween night in New York, or the other house? Days in an Oregon harvest field.

Of the entire company only two were even fair in their work, Miss Grace George and Bert P. Van Cleave. But "Where is Cobb?" really did have one good attraction. That was borrowed from the Empire theatre. It was work in the team pretty hard to do two turns in an evening, but it would not have been right to disappoint the crowd at the Marquam entirely.

The only show that has really come up to the expectations of the public at the Marquam was the Polard-Juvenile Opera Company in the "Belle of New York." These little tots demonstrated that they were good actors and gave a satisfactory show. But the Baker theatre was undergoing repairs, you know, so the "other house" had to use and some were sold at Baker theatre prices. It was distinctly understood that the performances were out of their class at the Marquam. PLAY-GOER.

THE LATE-COMER NURSE.

Portland, Sept. 28.—To the Editor.—One deplorable feature of the Marquam years has been the continual disregard of the rule to require late-comers to stand until the fall of the curtain on the first act. At the beginning of every season the management comes up with a statement of the regulations which will be strictly observed and then fails to keep its promise. This has existed for several years, and I hope that this publicity concerning the subject will bring about the desired result.

There is absolutely not the slightest ground for any accusation which will protect the early arrivals. Those who take particular pains to be on time to secure their seats before the curtain rises certainly deserve some consideration, and none is shown them. Instead, the voices of the people on the stage are strictly observed and then fails to keep its promise. This has existed for several years, and I hope that this publicity concerning the subject will bring about the desired result.

This is an evil for which the management is entirely to blame. They have the rule and why is it not enforced? Why are we compelled to continually experience such a condition, when attention has been called to the subject time and time again? I do not want to be classed as a sore-head, but I pay to see a play, not to hear a lot of noise that makes most of the first act unintelligible.

Theatrical standard of the Marquam Grand has become demoralized. We never know when to expect a good show any more, and the consequence is an actor of national fame, like Henry Miller, Charles B. Hanford or Ward and James. One night we will see a good show at \$1.50 and the next night another at the same price that would be dear at any other theatre. The Polard-Juveniles opened this season at popular prices. Then came "Where is Cobb?" at the same scale of prices, and it turned out to be the cheapest kind of performance. Your paper had the manliness to expose it in some particulars, but even that was not enough to make it a play, not to hear a lot of noise that makes most of the first act unintelligible.

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(Journal Special Service.)

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Seattle, Wash., Oct. 1.—The streetcar men frozen out in the recent strike have formed a co-operative company with a capital of \$50,000, and operate a grocery business.

SHOOT TO KILL IS MILITARY ORDER

Cripple Creek, Colo., Oct. 1.—Warrants were issued this afternoon for the arrest of Generals Bell and Chase of the National Guard for false arrest and imprisonment of four men whom the court recently released. The military has given orders to permit no civil officers to pass the lines, and if an attempt is made, to shoot to kill.

ARCHBISHOP KATH IMPROVES.

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Baltimore, Oct. 1.—Archbishop Kath had a sudden unexpected improvement today and his physicians have now hope of his recovery.

DR. GUNN'S BLOOD AND NERVE TONIC.

There is not a woman in this land but at some time in her life would have been the better for the use of this Tonic. For diseases peculiar to women a better medicine was never made. It is composed of the ingredients from which the most potent and effective medicine is made, and makes it most nutritious. For sale at all grocers.

THE FISCHER PIANO

Is playing a prominent part in our Removal Sale

Special sales are ordinary things, but special sales of a high-grade piano like the FISCHER are rarely heard of. Now piano buyers, if you could put a FISCHER piano into your home by paying for it the price of a medium grade and on just as easy terms, would the proposition not tempt you? Well, YOU CAN DO IT RIGHT NOW during our REMOVAL SALE. Will you call in now and see the beautiful new line of FISCHER just unloaded? We are open every evening.

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JUDGE GROSSCUP IS ASKED BUT REFUSES

(Journal Special Service.)

Chicago, Oct. 1.—Judge Grosscup in an interview today admitted that an offer had been made for him to argue the case of the Northern Securities company in the supreme court this fall but he had declined. He said personally he had a great desire to enter into active practice again but his conscience would prevent him to resign his office after its acceptance merely to further his private gain. He would like to argue the merger cases as it will be historical and the greatest of the consequence and interest since the insular cases. "Another reason which influenced me is that I believe in the combination of capital and if properly controlled it will help the public interest. But the time has come to insist that corporations be honestly organized, managed and controlled and I believe I have done something toward creating public sentiment in that direction."

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THE HAIR NEEDS CARE As much attention should be given to the cleansing of the hair and scalp as to the nails and teeth. Many do not realize the importance of regularly washing the hair. Once a week is not too often. One trial of Werner's Medicated Shampoo Used instead of soap, will convince you of its wonderful cleansing properties. It will leave the hair in such fine condition you'll never use any soap in its place. USE IT. PROVE IT. 50c a Bottle—at Druggists.

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WASCO MILLING COMPANY White River Flour (Hard Wheat) Used by housewives because of its goodness and economy. Makes the most bread, and makes it most nutritious. For sale at all grocers. THE DALES, ORE. ALLEN & LEWIS Sole Agents.

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