

WHAT DEALS DEATH TO POOLROOMS

Judge George, in Overruling the Demurrer in the Case of M. G. Nease, Says that the Inherent Tendency of Gambling Houses is to Create a Nuisance.

ANNOY GOOD CITIZENS AND DISTURB PUBLIC PEACE

Anything that Outrages Decency and is Injurious to the People's Morals is a Crime, and Selling Pools on Horse Racing Plainly Does This.

The decision of Presiding Judge George of the state circuit court, yesterday, and the pleadings by counsel, in the poolroom case against M. G. Nease, may have the effect of putting a quietus on that form of gambling in the city of Portland. Judge George handed down an opinion in which he overruled the demurrer to the defense and held the indictment sufficient under the public nuisance statute of the state.

The contention of the defense had been that, whereas the act of conducting a poolroom might be injurious to public morals, it was not offensive to good citizens who were not in the habit of frequenting the place, and that it did not constitute a disturbance of the public peace. The statute under which the indictment was brought against Nease provides for the prohibition of any establishment and the punishment of any person guilty of performing an act that injures public morals, disturbs the peace and annoys good citizens. In arguing the demurrer, counsel for the defense, John M. Garin and E. B. Watson, set up that it was essential that all three things be characteristic of the poolroom in dispute in order that the indictment be under the statute. Judge George's opinion effectually disposes of such contention, and lays down broad ground whereupon to pursue the further prosecution of poolroom gamblers, as well as any other persons who conduct establishments where games of chance or betting on races is carried on.

Judge George's opinion follows: This indictment charges the defendant with the crime of willfully and wrongfully committing an act which grossly disturbs the public peace and openly outrages the public decency, and is injurious to public morals.

Sec. 1939 of Bell & C. Comp. provides for the punishment of any person who shall willfully and wrongfully commit any act which grossly disturbs the public peace, or openly outrages the public decency and is injurious to public morals.

The specific charge against the defendant is that he did "for gain habitually sell pools upon horse races and habitually procure idle and evil disposed persons to come to his house to buy pools and to bet upon horse races, to the common nuisance and annoyance of all good citizens." This is equivalent not only to charging the defendant with keeping a gaming house under the authorities but charges also resultant effects to the public peace of the act.

Generally criminal statutes mention certain specific acts, and give the offender a punishment therefor. When willfully committed, and also give the crime a name. This statute is an exception. It merely undertakes to provide that an act which grossly disturbs the public peace, and openly outrages the public decency and is injurious to public morals, is a crime leaving the particular acts to be described by the indictment, defined by the court and found by the jury. This statute does not give any name to the crime. In these respects it differs from criminal statutes generally.

To constitute a crime there must be some overt act or overt resulting act, and in which various ways and means in which such overt act, or acts, may be committed. The overt act alleged in this indictment, as the court reads it, is in effect that the defendant has maintained a public gaming house to the common nuisance and annoyance of all good citizens, or as the indictment puts it, the defendant for gain habitually sells pools upon horse races and habitually procures idle and evil disposed persons to come to his house to buy pools and to bet upon horse races.

What Sulphur Does

For the Human Body in Health and in Disease.

The mention of sulphur will recall to many of us the early days when our mothers and grandmothers gave us our daily dose of sulphur and molasses every spring and fall.

It was the universal spring and fall remedy for all ailments, and it was so effective that it was taken to get any effect.

Nowadays we get all the beneficial effects of sulphur in a palatable, concentrated form, so that a single grain is far more effective than the mass of sulphur of the crude sulphur.

In recent years, research and experiment have proved that the best sulphur for medicinal use is that obtained from Calcium (Calcium Sulphide) and sold in drug stores under the name of Stuart's Calcium Wafer.

They are the natural antidote for liver and kidney troubles and cure constipation and purify the blood. It is known that often surprises patient and physician alike.

Common gaming houses were at common law indictable as a nuisance, not so much because of any particular description of crime committed within their walls, but even "because they are temptation to idleness and because they are apt to draw together great numbers of disorderly persons."

Haw's Pl. Cr., Book 1, Chap. 75, Sec. 4.

And in this indictment it is alleged that such has occurred—the "actual disturbance" which defendant contends Sec. 1939 means.

It is conceded also that the act charged in the indictment was an indictable nuisance at common law. Gaming houses were indictable, not only when "actual disturbances" occurred, but also when "actual disturbances" did not really occur, simply because of the inherent tendency of such establishments to produce disorder, but goes on and alleges that idle and evil disposed persons habitually procure idle and evil disposed persons to come to his house to buy pools and to bet upon horse races and all to the common nuisance and annoyance of all good citizens, and a jury should find such alleged "actual disturbances" and "disorderly" conduct occurred in fact, then in law it was an act grossly disturbing the public peace, under a long line of decisions and authorities. No matter how quiet and orderly a gaming house was, it was still a public and indictable nuisance at common law, and even its evil tendencies alone were enough to establish its status.

Sec. State vs. Layman, 5 Har. 510, cited in defendant's brief.

Gaming Houses Indictable Nuisances.

It is claimed that in this indictment no actual disturbance of the public peace is charged, and that this is not true. The indictment plainly charges the defendant with maintaining a common gaming house, which act constituted a disorderly act at common law, and it is also charged that the defendant is procuring idle and evil disposed persons to come to his house to buy pools and to bet upon horse races.

This much of the common law on the subject of public nuisance, this court includes in its opinion in the indictment, in both its letter and its spirit. The courts of this state—though no common law crimes are here punishable unless made so by statute—do not construe our statutes as not unkindly of the changing forms, but not of substance of gaming and gaming houses and of the rapidly growing prevalence of the new form of "pool" or "race" gambling, not merely at race-tracks, but even thousands of miles distant, and in the very center of business and population and at the very door-steps of the homes of the people of this nation generally.

The maintenance of such public houses, in the nature of clearance houses for gaming, if resulting as the indictment charges, is certainly much more a disturbance of the public peace than any sending of challenges, or of going armed to the alarm of the public, or other acts of a similar character which repeatedly have been held by the authorities to constitute a breach or disturbance of the public peace and welfare.

A RAIN TREE.

A novelty in the vegetable kingdom has recently been reported as native to the United States of Colombia. In the woods adjacent to the city of Moya-bamba grows a tree which the natives call "rain tree." It is about 10 feet high when it reaches maturity and about three feet in diameter at its base, and has the property of absorbing an immense quantity of humidity from the atmosphere. This it concentrates and subsequently pours forth from its leaves and branches in a shower and in such abundance that in many cases the ground in its neighborhood is converted into a veritable bog. It possesses this curious property in the greatest degree in the summer, when the rivers are at the lowest point and water is scarce. It has been suggested that this tree be planted in the more arid parts of Peru for the benefit of the farmers.



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OREGON PIONEERS RECEIVE HONOR

At Meeting of State Historical Society Judge Boise Speaks in Their Praise.

SUCCESSFUL MEETING OF THE ORGANIZATION

State Proposed for L. B. Cox, Who Suggested Lewis and Clark Fair.

Professor F. C. Young of Eugene presented a proposition to the Oregon Historical society at the annual meeting held yesterday afternoon to place the documentary material of the society into coherent form so that students might be able to make use of the store of information in the archives. The president was empowered to appoint a committee to look into the suggestion and if found advisable to formulate plans to carry on the work.

It was suggested by F. J. Alex Mayer in a letter that as the late L. B. Cox was the first person to suggest a celebration of the 100th anniversary of the Lewis and Clark expedition in a resolution proposed to the society at the annual meeting in 1890, that the memory of the deceased be perpetuated by erecting a bronze or marble statue in a prominent place in the exposition grounds.

On motion of Mayor George H. Williams, Professor J. R. Wilson, F. J. Alex Mayer and W. L. Brewster were appointed with instructions to confer with the exposition management for the purpose of carrying out the suggestion.

The following officers were elected: President, C. B. Bellinger of Portland; vice-president, W. D. Fenton of Portland; secretary, F. G. Young of Eugene; treasurer, Charles Ladd of Portland; directors, Mrs. Harriett K. McArthur and George H. Himes, Mr. Himes succeeded H. W. Scott, who declined re-election. The other members of the executive board are: James B. Robertson of Forest Grove, Joseph R. Wilson of Portland, Mrs. M. L. Lyryck of Portland, W. D. Fenton of Portland, and C. B. Bellinger of Portland. Governor George E. Chamberlain and State Superintendent of Public Instruction J. H. Ackerman are ex-officio members of the board.

state of Massachusetts and came to Oregon in 1847; was an able and very painstaking lawyer, and when on the bench of either the circuit or supreme court he always examined minutely all important documents presented in every case that came before him for hearing.

Judge Page succeeded. "On the retirement of Judge Watt from the supreme bench, Judge W. W. Page was appointed by Governor Whitaker to fill the vacancy. Judge Page was then a prominent lawyer in Portland, a strong democratic partisan, and an eloquent advocate.

"Judge Stratton was a native of Pennsylvania; was afterwards a resident of Indiana and was a graduate of Marietta college in Ohio. He had started on his educational career with the intention of becoming a minister of the gospel in the Methodist Episcopal church, but afterwards chose the legal profession.

"The vacancy caused by the death of Judge Stratton was filled by the appointment by Governor Woods of A. A. Skinner, Judge Skinner was an immigrant of 1848, and had been a man of influence, and circuit judge, in the period of the provisional government.

"Judge Skinner was succeeded as judge of the second district by John Kelsey, who was elected at the general election in 1856, and continued in office until the end of the term for which Judge Stratton was elected.

"Judge Kelsey immigrated to Oregon about 1852 from Missouri, which was his native state, and settled in Corvallis, where he continued to reside until the time of his death. He soon acquired an extensive law practice, and was over the second and third judicial districts, and in the supreme court.

"Judge Kelsey was succeeded by A. J. Thayer, who was a native of New York. He immigrated to Oregon in 1852, settled in Corvallis, and was over the second and third judicial districts, and in the supreme court.

"Hon. John Bunker succeeded Judge Moshier as judge of the second district. He was a lawyer of distinction at the time of his election. He always acquitted himself with distinguished ability, and had the confidence and high regard of the court and bar.

"In 1852 the population east of the Cascade mountains had increased so much that it became necessary to create a new judicial district for that section of the state, and Joseph G. Wilson was appointed by Governor Gibbs to fill the position of judge of that district. His appointment made the supreme court to consist of five judges. Judge Wilson was a native of New Hampshire. He was settled in Jackson county. He was prosecuting attorney of the first judicial district during the territorial period; also a member of the constitutional convention. He had the habits, prejudices and peculiarities of a southern gentleman of the period prior to the civil war. He was a man of strict integrity and had a high sense of honor; was a good lawyer and an able judge.

"Judge W. W. Upton, who for a time succeeded Judge Shattuck as judge of the fourth district, was first appointed by the governor and afterwards elected from this district. He came to Portland from Sacramento, Cal., where he had been engaged in the practice of his profession.

Upton a Lawyer of Ability. "He was a man of pleasing address and a lawyer of ability. He retired from the bench after serving to the end of the term for which he was elected. "Judge Wilson was succeeded in the

Fifth district by B. Whitton, who was appointed by the governor to fill a vacancy, and served only a few months from June to September, 1870, when Judge L. L. McArthur was elected in the Fifth district.

"L. L. McArthur was a native of Virginia, born May 18, 1843, and came to Oregon in 1864. He was educated at York, Pa., and in Dickinson college, Carlisle, Pa. He was a good scholar and well read in his profession, of prepossessing appearance and a pleasant gentleman who knew well the ways of refined society.

McArthur Served on La Croix. "He served with ability on the circuit and supreme courts until the creation of a separate supreme court, and was then appointed by the governor as circuit judge of the Fifth district, where he afterwards served for several years. He was afterwards the United States district attorney and practiced his profession in this city, where he died on May 10, 1902.

"In 1878 a supreme court was created separate from the circuit court, consisting of three judges. The judges for this court were appointed by the governor and held their positions until the next general election after their appointment.

"The first judges of this new bench were James K. Kelly, chief justice; P. P. Prim and myself, associate justices. Judge Kelly was a native of Pennsylvania, was a graduate of Princeton college and of the Carlisle Law school.

"After practicing his profession for several years in his native state, he came to California in 1849 and to this state in 1851 and settled at Oregon City, where he soon became prominent as a lawyer. He was appointed one of the code commissioners in 1853 to prepare a code of laws for the territory. The systems of practice then adopted have remained in force ever since that time, practically unchanged in their main features.

Judge Kelly was often a member of the territorial legislature, and a member of the constitutional convention. At the election next after the creation of a separate supreme court William F. Lord, Edward B. Watson and John B. Waldo were elected as judges of that court.

The decisions of the original supreme court, which were handed down in writing, are contained in the first eight volumes of our supreme court reports, and are, I think, as a rule, clear, correct and just interpretations of the law.

Too Much Law Clouds Books. Reports of the United States courts and of the supreme courts of the sev-

eral states multiplied to such an extent and contain so many conflicting opinions, that in settling questions arising in a new state much embarrassment is often felt by judges as to which of the many conflicting rules should be adopted.

Other Celebrities. "During the period that I was a member of the supreme court, there were quite a number of lawyers in the district over which I had the honor to preside, some of whom had been my contemporaries and associates during the existence of the territorial government.

Among them was Hon. Delason Smith, a native of New York, and prominent in the political contests in that state. "His strong point was with the jury, and he was frequently employed as an attorney to argue cases, and was a very strong man in presenting cases on the evidence and facts.

Baker, the "Soldier-Orator." "Before the canvass for this legislature began Col. E. D. Baker, a noted Republican statesman and orator, came from California and took part in the canvass. After a deadlock in the legislature Baker and Nemith were chosen to the United States senate and served with distinction.

Columbia Got Highest Honors. The Columbia Photograph company, 28 Seventh street, is not a little elated at the victory of the Columbia over all competing photographers at the world's fair at St. Louis. The Columbia was awarded highest honors. This demonstrates the superiority of the Columbia over other photographers and will doubtless be a big factor in increased sales for some time to come. If you have not already been apprised of the fact, let it be known that The Journal is giving away Columbia photographs with subscription to the Daily and Sunday Journal. For an unsurpassed Xmas present a photograph is strong in the field. You can subscribe for the paper and give the photograph to a friend. It is something that cannot fail to delight the recipient and will prove a source of unending delight. For a rainy evening the photograph will demonstrate its entertaining qualities by proving amusement for all. Bands of increased sales, orchestras, whistling solos, minstrels, popular songs and negro shouts are but a few of thousands of records. If interested drop in The Journal office, or the Columbia Photograph company's office, 28 Seventh street, and have the plan explained to you whereby you can get one of these wonderful machines free of charge. Open evenings until Christmas.

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