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# SUPREME COURT DECIDES MAROUAM CASE IN FAVOR OF THE TITLE COMPANY

Tract of Land Is Lost---Decision of Lower Court Is Reversed.

# Court Holds Company Had Right to Buy in the Property.

(Special Dispatch to The Journal.)

Salem. Or., Dec. 4.—The supreme court this morning decided the famous case brought by P. A. Marquam against the United States Mortgage & Trust company, the Title Guarantee & Trust company and J. Thorburn Ross in favor of the defendants, reversing the lower courts and giving possession of the Marquam block in Portland to the defendants.

dants.

The records in the case comprise several volumes and are the most voluminous in Oregon courts. Property valued at more than \$1,500,000 is involved. The opinion was rendered by Justice Bean. The question to be decided was whether the Trust company had the right to purchase the property. Following are extracts from the opinion:

"The Title company's relation to the property under the law and facts, was that of a mortgages in possession, with certain added duties and obligations arising out of a special contract, rather than as trustee of the title. A mortgage in possession is not a trustee, which would prevent him from purchasing the mortgaged property at public sale.

"The trust created by the agreement was confined to mere possession of property, and was limited to its management, for the purpose of collecting and disposing of rents and profits. It was simply a part of a scheme to secure the payment of loans from the mortgage company.

The affect of the so-called trusterment was to create a trust condi-

The rule which disqualifies the trustee from purchasing the trust prop-erty can have no application to t.e litle company under the facts and the

law case.
"The claim that the foreclosure suft "The claim that the foreclosure suit was commenced by the mortgage company at the request and instigation of the Title company, with the design of securing the property, was contradicted by the officers of both companies, and the circumstances of the case, There is no evidence to show, or to tend to show, that the company was anxious to have the mortgage foreclosed. Indeed, the action and the conduct of the officers indicated the contrary purpose."

will Improve Property.

The victors in the long legal struggle will at an early date begin the improvement of the property.

"We have held eyerything in abeyance pending the outcome of this suit." said J. Thorburn Ross this afternoon, "but now that it has been decided we will get together and outline our plans of improvement as soon as practicable. We will do a large amount of work there. The wiring is one important thing to be looked after. I've no doubt the Marquam will be rewired throughout. At any rate, there will be no more patchwork of any kind. We will spend a large sum of money on the property, but arge sum of money on the property, but



P. A. Marquam.

Grand theatre and its present policy. Those who have the interest of the house at heart have long deplored the fact that it cannot be opened on Sundays for theatrical entertainment. Mr. Marquam, it is understood, was favorable to Sunday opening, but the trust company is opposed and the house will be open only six days of the week.

The affect of the so-called trus.

Agreement was to create a trust conditioned on the life of the mortgage, with the purpose to provide a fund for the payment of operating expenses, repairs, interest charges, etc. in order to averiforeclosure. When the default occurred, the mortgage was foreclosed and the trust agreement no longer served the purpose of its creation and was necessarily at an end.

Purchaser Not a Trustee.

The summer and autumn of 1894

Agrquam was the owner of the sent, Morrison and Alder, being block 178 of the city of Portland, was subject to a mortgage in the sum of mechanic's lien for repairs effected on the Marquam building, for which Marquam was unable to make payment.

quam was unable to make payrient.

Under these circumstances he applied to the United States Mortgage & Trust company for a loan of \$400,000. The application was made through the Title Guarantee & Trust company, the Portland correspondent of the United States Morgage & Trust company. The latter corporation refused to make a loan in the sum desired by Marquam, and, after much persuasion, consented to loan him \$300,000 on block 178 in the city of Portland and the \$0-acre tract on the Sandy road. This amount was insufficient to pay Marquam's pressing indebtedness and in order to meet the additional claims which had to be paid at that time the Title Guarantee & Trust company advanced from its own funds some \$18,000, and took a deed to the property as security for its advances. This deed covered also four lots in South Portland, which were described in the papers as collateral security.

Agreement as to Income.

Agreement as to Income.

The United States Mortgage & Trust company, before moking its loan, had exacted a condition that the rentals of tt will require a little time to fully de-cide what is needed."

The decision in the Marquam case does not materially affect the Marquam to meet this condition an agreement was

# Defendant Not Guilty of Violating Any Implied Trust.

therefore entered into, described by the parties as an agreement of trust, under which the property was committed to the care of the Title company, which company was to collect all rents, to disburse them in a manner defined by the agreement and to be protected in any advances which it might make, Marquam agreeing to repay the same, with

advances which it might make, Marquam agreeing to repay the same, with 10 per cent interest.

The revenues proved wholly inadequate to the payment of interest and fixed charges and the Title company made additional advances from its own funds for the purpose of meeting these charges. In this manner its debt grew from \$18,000 to upward of \$40,000.

Notwithstanding the advances which were made by the Title company, a default was made in the payment of interest to the United States Mortgage & Trust company. Finally, on the 30th of October, 1899, the United States Mortgage & Trust company brought a suit to foreclose its mortgage, joining

suit to foreclose its mortgage, joining the Title Guarantee & Trust company as a party defendant.

marquam's Reply.

The Title company filed a cross-bill, setting up its claim to a lien on the property in the sum of \$40,000, and Marquam made his defense to both claims. He charged the Title Guarantee & Trust company with misappropriating the rentals of the property and with gross freud and negligence in various particulars.

The case was tried out and the issues determined against Marquam, both

with the Title Guarantee & Trust company and with the Title Guarantee & Trust company. The findings were that the Title company had been careful and most honest and had discharged its duties in the premises. The lien of the Title company was fixed as a recond mortgage. passed on the 27th of October, 1909.

The property was sold at sheriff's sale on the 10th of December, 1909, and was purchased by J. Thorburn Ross of the United States Mortgage & Trust company and the Title Guarantee & convictions on both sides, and a large Trust company. The Title company number of women were present to hear subsequently paid the United States the results of an interesting debate, Morigage & Trust company about \$100, among whom were Miss Gall Laughlin, 600 and the United States Morigage & the attorney for the state association. Trust company accepted a mortgage for \$200,000 for the remainder of its

claim.

The Title company being unwilling to execute a mortgage on the property, the title was transferred to the Oregon company, a subsidiary corporation, centrolled by the Title company, which, according to the contention of the defendant the speeches be limited to 10 minutes, and then added, with a sparkle of company, a subsidiary corporation, con-trolled by the Title company, which, ac-cording to the contention of the defend-ants in the present litigation, has been the owner of the property ever since.

Tour Appeals Taken.

Marquam appealed from the decree of October 27, 1900, and also from three subsequent decrees settling the accounts of the Title Guarantee & Trust company, discharging it from all of its obligations and confirming the purchase made by J. Thorburn Ross. All of these matters were litigated in the supreme court and the decrees of the lower court, passed by Judge Cleland, were in all cases affirmed.

Notwithstanding these proceedings, on the 11th of November, 1902, Marquam brought the present suit, in which he contended that the relations of the Title Guarantee & Trust company to the

Guarantee & Trust company to the property and to himself were such that

(Continued on Page Two.)

# Suit to Recover the Marquam Block and LIE IS PASSED RUSSIA FACES CONGRESS OPENS W

isterial Association by Bitter Words Directed Against Dr. C. T. Wilson.

HISSES AND CRIES OF "SHAME" FOLLOW WORD

Then Preacher Apologizes for Bitter Word, But Maintains That There Was No Truth in Statement of Dr. Wilson That There Was a Plot to Run Suffrage Indorsement Through

that there was a plot to run this matter of woman's suffrage through, I say he is a liar!"

is a liar!"

The Portland Ministerial association was electrified by this statement this morning from Dr. E. L. House, pastor of the First Congregational church, after two hours of heated discussion, teeming with caustic personalities, following the attempt of the Suffrage association to secure the indorsement of its cause. A moment of silent amazement followed, and then came cries of "shame" and hisses, and Dr. House angrily repeated the statement, though the "strong word" was drowned in the sounds of disapproval.

"I spologize for the strong language," he said as callmer eccond thought came to him. "I was aroused; but I want to

to him. "I was aroused; but I want to put myself right in the eyes of the as-

The words followed a bitter discussion by the members of the Ministerial as-sociation of the relative merits and de-merits of woman's suffrage which came up after a resolution had been offered indorsing the movement. The body of ministers was made up of men with firm convictions on both sides, and a large

Dr. Clarence True Wilson, who is conspicuously against women in politics,

(Continued on Page Two.)

**VANCOUVER FRANCHISE TO MILWAU** 

REFUSED BY THE ROAD

Unless Town Council Grants Some Less Restrictive Permit the

Lady's Island Bridge.

Line Will Run Direct From Portland to Sound Via

Dr. E. L. House Electrifies Min- Mutinies of Troops Occur at Warsaw and Many Other Stations Throughout the Empire.

## MOSCOW REPORTED TO BE IN HANDS OF MOB

Telegraphers Strike in Finland to Assist Brethren, Tying Up All Wires-Many Mutineers at Sevastopol Courtmartialed and Shot as Traitors to the Czar.

Gournal Special Service.)

Berlin, Dec. 4.—Dispatches received today state that mutinies of troops have occurred at Warsaw, Kursminik, Saratoff, Kherson, Novgorod, Grodno and Kharkoff The imperial guard at St. Petersburg is also reported to be in open revolt. General disorder prevails throughout the cities and the government is powerless to quell disturbances. Many regiments of artillery have been concentrated about the capital, but the soldiers have refused to fire.

mobs, who have butchered the police and Coseacks and pillaged the imperial granaries. No word has been heard di-

o such plot as Dr. Wilson imputes to ne."

And the hisses were followed by cries of approval.

Discussion Bitter.

The words followed a bitter discussion after having refused to obey orders,

The mutineers at Sevastopol were lined up against the walls of the barracks and shot to death after a drumhead courtmartial, including the leader, Lieutenant Smith. Aroused by the fate of the mutineers, workmen throughout outhern Russia are arming ther and the situation is desperate.

The telegraphers of Finland have gone out to assist their brethren in Russia The strike of the telegraphers is absoute. No news is being received at the capital from outside towns.

Eighteen Still in Mine. Cheyenne, Wyo., Dec. 4.—Only one body has been recovered from the Diamondville coal mine. Relief workers are nearing the twelfth level and expect to reach the 18 dead some time today.

Vice-President Fairbanks.

No Mitchell and Burton Are Called.

BINGER HERMANN AND WILLIAMSON ABSENT

Some Adverse Feeling Against Oregon Senator Among Members-Representatives Are Not in the Capital City.

(Washington Bureau of The Journal.)
Washington, Dec. 4.—There was a noticeable stillness in the senate when the names of Burton of Kansas and Mitchell of Oregon were reached in the morning roll call and when no responses were returned. Conversation with a number of senators on the subject indicates there is much advance feeling. cates there is much adverse feeling against Mitchell on account of his ef-forts to retsin the chairmanship of the isthmian canal committee.

In the case of Burton this feeling is absent, for his committee, forest reser-

Speaker Joseph Cannon Reslected by Strict Party Vote Over John Sharp Williams of Mississippi.

### SENATE ADJOURNS OUT OF RESPECT TO PLATT

President's Message to Be Delivered Tomorrow a Most Comprehensive Document-Railroad Rate Measure Most Prominent Feature-Senator Fulton Introduces Bills.

Washington, Dec. 4.—The Fifty-ninth ongress was opened today with a brief presentation of the president's message having been deferred until tomorrow

having been deferred until tomorrow there was practically no business outside the usual first day routine. The time of both bodies was devoted to the usual formalities of opening day.

There was the usual exchange of greetings among members, the introduction of newcomers, the great floral display and the hundreds of visitors with beautifully gowned women predominating. Corridors, committee rooms and cloak rooms were thronged and the hustle extended even to the floors of the chambers.

chambers.

Vice-President Fairbanks called the senate to order on the stroke of 12 and dimultaneously the house was rapped to order by Speaker Cannon. The opening prayers were made by the chaplains, Rev. Dr. Edward Everett Hale in the senate and Rev. H. N. Couden in the louse. In both the senate and the hou

Response When Names of Response of respect to the ate resolutions of respect to the memory of the late Senator Platt of Connecticut were adopted and the ad-journment was in further tribute to his

The house at I o'clock, by a party vote, elected Joe Cannon speaker. His Democratic opponent was John Sharp Williams of Mississippi.

Prosident's Message The president's message to be sub-mitted tomorrow is awaited with keen interest, though its salient features are already known to the members of congress. Those who have been privileged



to look over the document may that It is

gressmen were summoned by states to take the oath today, but neither Oregon man appeared. If Hermann and Williamson had been present they could probably have been possible for any member to object. Their absence occasioned no surprise, for there is a prevailing opinion that under the circumstances the Oregon men should not attempt to participate in the proceedings of the house.

Representatives Hermann and Williamson, however, failed to respond when their names were called by the clerk of the house. They are not in Washington.

KANSAS SCHOOL MARMS WORK IN CORN FIELDS

Miss Cushman, a teacher in Brown country, closed her school for 10 days and told her 40 boys and girls to go home and help their parents save the great corn crop. Miss Cushman herself donned husking gloves and made a hand in the corn field. Other young women also helped.

The president speaks is a forceful the proposes that its is to look over the document say that it is the most comprehensive most congress. It covers a large variety of subjects. Internal and external, and pays particular attention to the subjects internal and external, and pays

## ATTENDS SWELL WEDDING IN CRAZED WOMAN HOLDS FORT MANY DELAYS IN PAYMENTS IN SIDETRACKED CAR **GLARING PINK SHIRT**

English Army Captain and Mil- Mrs. Anna Berry Is Still in Poslionaire Horrifies Pittsburg's Exclusive Smart Set.

Pitteburg, Pa., Dec. 4.—Pitteburg so-ciety is horrified over the fact that Captain Edward Harbord, grandson of Mrs. May E. Schenley, formerly of this city, who died leaving an estate of more than \$20,000,000, attended a swell wedding here wearing a glaring pink shirt.

Captain Harbord is here in company with his aunt, Miss Mermoine Schenley, who is being feted and dined by Pittaburg's most exclusive set, and the captain accompanies her everywhere. burg's most exclusive set, and the cap-tain accompanies her everywhere. When at home in England he cuts a wide swath, for his commission in the Royal Guairds entitles him to do so. Therefore it was supposed that everything that he did was all right. At the Kay-Ebbert wedding last week, which was the social event of the year, the captain were the shirt that is caus-

he captain wore the shirt that is caus-ng so much comment. It looked like the kind that hangs in windows marked

Balfour Visits King.

(Journal Special Service.)
London, Dec. 4.—Bulfour visited the ing this afternoon and remained 45 inutes. It is reported Bulfour has re-

session of Car-Woman Not Widow of Officer.

(Journal Special Service.)
Girard, Kan., Dec. 4.—Becoming suddenly crazed, a passenger supposed to be Mrs. Anna Berry, en route to Tulsa, I. T., yesterday drove all her fellow passengers from the car at the point of a pistol and barricaded herself in the tollet-room. The car was sidetracked here, and although there is no fire and the woman has had nothing to eat, she still refuses to allow any one to enter

here, and although there is no fire and the woman has had nothing to eat, she still refuses to allow any one to enter the car, threatening to sheot.

Mrs. Berry is still in possession of the car this morning. Sheriff Walsh and Deputy Meriwether entered the car this morning, but could not approach the mon neared the door of the chamber in which she is harricaded. The only concession she made was to allow the officers to stuff pillows into the broken windows. She refused to accept their offers to build a fire. The woman looks weary and worn. Officers are unwilling to use force and have settled down to a game of froexeout the closest clue to the woman's identity is a photograph taken in Spokane.

The rumor that the woman was the widow of Captain A. P. Berry, who committed suicide at Vancouver barracks last week, proved false.

but the committee would if necessary continue after January I without a new continue of the legislature.

George D. Eldridge, vice-president and actuary of the Mutual Reserve Life Insurance company, this morning resumed his testimony concerning delayed payments of policies. He said that his company usually paid their policies five of six months after January I without a new for time of the degislature.

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# BY MUTUAL RESERVE

Insurance Investigation Shows Liens and Assessments Taken From the Face Value.

strong, chairman of the insurance investigation committee, said this morning that he hoped there would be five sessions this week and that the work

would be ended by the end of the month, but the committee would if necessary continue after January 1 without a new

Financial powers behind the Vancouver very Suburban railway, have refused the franchise granted by the Vancouver sulf, if not remedied by the Vancouver sulf, if not remedied by the passive of another franchise, will be to send that the Lady's island of the trains of the Chicago, Milwaukee & St. Paul railroad direct from Portland, in the Columbia river, and the Cream of the Chicago, Milwaukee & St. Paul railroad direct from Portland, in the Columbia river, and the Cream of the Chicago, Milwaukee & St. Paul railroad direct from Portland, in the Columbia river, and the Cream of the Chicago, Milwaukee & St. Paul railroad direct from Portland, in the Columbia river, and the Cream of the Chicago, Milwaukee & St. Paul railroad direct from Portland, in the Columbia river, and the Cream of the Chicago, Milwaukee & St. Paul railroad direct from Portland, and the standard of the company for the sound was a standard to the company for the vancous of the continuous standard of the Chicago of the Vancous of the Cream of the principal objectionable features by practically cancels all privileges granted in the Columbia river from the principal objectionable features by the construct its main line and branches, but leave a single block of expraches, but leave a single block of expressions in the County of the Columbia river from the process of construct its main line and branches, but leave a single block of expressions in the Vancouver franchise. He replied:

Will Ask New Franchise.

Mr. Forbes of the firm of Forbes & Goudy was asked to confirm the responsible for a province of the principal objectionable features of the principal confirm the responsible for a province of the principal confirm the responsible for a province of the principal confirm the responsible for a province of the principal confirm the responsible for a province of the principal confirm the responsible for a province of the principal confirm the responsible for a province of the principal confirm the responsible for a province of the principal confirm of