

OPINION SAYS PORT LACKS AUTHORITY

City Attorney Kavanaugh Rules That the Broadway Bridge Can Be Constructed in Spite of Government—Makes Long Report.

If the Port of Portland commission imagined it had power to prevent the building of the Broadway bridge City Attorney Kavanaugh's opinion made public today will prove disconcerting. The city attorney's closing words in the opinion are:

"From these and other considerations equally patent the conclusion appears irresistible that the Port of Portland is absolutely without power to prevent the construction of the Broadway bridge."

Mr. Kavanaugh compares the charter of the city of Portland and the Port of Portland and points out the fact that the latter gives the members of the port power to remove obstructions from the river, etc., but that the city's charter is a subsequent act of the people and that it is therefore superior and where there might be a conflict in either, the latter act repeals the other. The Broadway bridge, however, could not be deemed an obstruction. It is said, inasmuch as the federal government has approved of it. The Port of Portland, could therefore not have the right to interfere on this ground, even if the charter of the city were not paramount.

City Attorney Surprised.
Mr. Kavanaugh expresses wonder that the Port of Portland should permit the O. R. & N. company to span the channel with a viaduct, whose clearance above the level is less than that of the proposed bridge at Broadway, and then should try to interfere with the building of the higher bridge. This expression of a public official, is only the echo of many thousands of similar ones that have floated over from the other side since the bridge question began.

Following is a pertinent extract from the city attorney's opinion:
The act of the legislature grants to the Port of Portland the full control of the Willamette river in the harbor at the city of Portland, with full power and authority to make, change or abolish such rules and regulations for the use and navigation of such harbor, or the placing of obstructions therein, or the removal of obstructions therefrom, as it may deem convenient, requisite or necessary. It is provided that nothing contained in the act shall be construed to authorize the removal of bridges or obstructions existing by virtue of a grant of express authority from the state, or to interfere with or detract from the general rights and powers of any city within the district embraced by the Port of Portland, but only so as to give said corporation full power to carry out and fulfill the purpose and object of its creation.

By this act of 1901 the state delegated certain limited and defined powers to this corporation, but in this the state did not denude itself of such powers, nor was the delegation placed beyond recall. The state could recall these powers at its pleasure, or it could exercise them directly, or it could virtually annul the grant by delegating the same powers, by subsequent act, to another municipal corporation.

In virtue of this power by subsequent acts, the legislature proposed acts authorizing the city of Portland to construct the Morrison street bridge and the Sellwood ferry and an additional ferry at Albina, which acts were adopted by the electors. The Port of Portland is

not mentioned in these acts, but it acquiesced in the construction and operation of these public utilities. Pursuing the same course, the legislature of 1903 enacted the present charter of the city of Portland.

It would not be contended that the Portland charter is an enactment inferior in dignity to the charter of the Port of Portland. It proceeded from the same source, is a later enactment, and if it conflicts with the prior law, it repeals it to the extent of such conflict.

Charter Empowers City.
The Portland charter delegates to the city power to remove obstructions from the Willamette river within its limits; to regulate the construction of wharves and to establish wharf lines; to deepen, widen or change the channel; to construct, maintain and regulate public docks and wharves; to acquire, construct and maintain bridges and ferries across the river or that it could prevent the city from extending such highways.

These and other provisions of the Portland charter clearly indicate that the legislature did not intend that the Port of Portland should control the construction of highways of commerce across the river or that it could prevent the city from extending such highways.

By recent constitutional amendments the power to enact or amend municipal charters was withdrawn from the legislature and vested in the voters of the municipality. Discussing these amendments Chief Justice Bean said: "The manifest purpose, so far as now concerns the question under consideration, was to take from the legislature and vest in the people, the power to amend municipal charters and rights governing and defining the powers and duties of all municipal corporations." (Farrell vs. Port of Portland.)

The legislature under the old charter, could have amended the Portland charter so as to authorize the construction of a high bridge at Broadway with a clearance of 65 feet above high water and 56.13 feet above the city datum, or low water mark. Any provision of the Port of Portland act that conflicted with said legislation would have been repealed by the amendment.

Now, the voters, vested with the same power in this respect that was previously vested in the legislature, adopted this amendment. The power conferred by the amendment was germane to the power already vested in the city by its charter. No provision of the Port of Portland act can annul a legally adopted amendment of this nature. But the courts will probably hold that there is no essential conflict between the amendment and the Port of Portland act. The Broadway bridge will not interfere with navigation in any material way. The amendments show that the demands of navigation were considered and that reasonable provision was made to that end. The bridge will not constitute any obstruction to the harbor within the intent of the Port of Portland act.

The legislature made no provision for clearance in the act for the construction of the Morrison street bridge. The Port of Portland has authorized, or attempted to authorize, the construction of the Oregon Railroad & Navigation bridge with a much lower deck than the Broadway bridge. It would be strange if the city were not accorded equal privileges with the Oregon Railroad & Navigation company. The commerce across the river is as important, or perhaps more important, than the navigation of the harbor, and it should receive at least equal consideration.

The supreme court of the United States announces this principle in the Escanaba case. No objection is ever interposed by the government unless it bears a real relation to the public interest. The attitude of the government should be a guide to subordinate corporations in this respect. From these and other considerations, equally potent, the conclusion appears irresistible that the Port of Portland is absolutely without power to prevent the construction of the Broadway bridge.

INDIAN BUREAU IN CLASH WITH PINCHOT
(United Press Leased Wire.)
Banning, Cal., Dec. 14.—A clash between the officials of the federal Indian service and the officials of the forest service, over lands claimed by both in the Cleveland forest reserve, two miles from here, is believed to be imminent.

The tract in question has been claimed by the forest service since the time when the boundaries of the reserve were fixed, during Cleveland's administration. A deputy ranger has been in charge for several years and has had general supervision over the premises. Last summer the forest service caused to be built a permanent home for the rangers on the reserve.

Great Railway Builder Dead.
(United Press Leased Wire.)
Painesville, Ohio, Dec. 14.—General J. S. Casement, a famous railroad builder, died of pneumonia at his home here yesterday afternoon. He built the original lines of the Big Four, the Lake Shore, the Nickel Plate from Cleveland to Buffalo, and the Union Pacific. He was 89 years old.

Phone Company Elects.
(Special Dispatch to The Journal.)
Dayton, O., Dec. 14.—At the annual meeting of the Dayton Mutual Telephone company here J. C. Nichols was elected president, W. T. H. Tucker secretary, and Mrs. Westerfield switch tender.

WARNING ISSUED TO ASSASSINS
Japan Will Tolerate No Interference With Korean Union Progress.
(United Press Leased Wire.)
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Resident General Sone, immediately upon receipt of the report, issued an official warning to the malecontents, declaring that Japan would not hesitate to take drastic steps to put an end to lawlessness unless the recent peace order, issued from Tokyo, was respected.

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G. W. Morrow of the Morrow Land company came to Seattle yesterday to establish his permanent headquarters, having been appointed general townsite and land agent for the road. He thereby becomes the operating head of the land company, succeeding J. Q. Adams, resigned.

A NARROW ESCAPE.
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—Jointed body, celluloid and bisque, values to 45c. Special 25c

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EXTRAORDINARY SUIT SALE
We find that we have greatly overstocked on Ladies' High-Priced Suits, and rather than have them left on our hands have determined to cut the price so low that no one in need of a new Winter Suit can afford to pass them by.

\$37 to \$40 Suit Values at Only \$17.45

Pay \$5.00 Cash and \$1.00 a Week

There are just 140 of these elegant garments in this lot and every one of them is of the best materials, and positively of this Fall's styles, colors, etc. Only because our buyer overestimated the Fall demand for this class of goods do we make such an extraordinary price reduction.

\$5 Will Secure One of These ELEGANT Garments
—then you may pay \$1.00 per week on the remainder of the cost. Really \$37 and \$40 Suits for only \$17.45
Suits of the very best quality and up to date in style. Take them; wear them while you

Pay Only \$1 a Week

Vancouver, St. Johns, Alberta, Woodlawn, Russell, Shaver, East Burnside, Montaville and East Ankeny can stop in front of this store. All other lines issue transfers.

STORE OPEN EVENINGS TILL 8 O'CLOCK.

IN THE LOW RENT DISTRICT
GEVURTZ BROTHERS
LOW PRICES
EASY TERMS
EAST BURNSIDE & UNION AVENUE

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Lipman-Wolfe & Co. Paper

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—A delayed shipment occasioned by the recent switchmen's strike on the Northern Pacific brought a large stock of pyrography to a Seattle firm. This shipment they refused, notifying the manufacturers. Not wishing to have this great stock returned to the factory, the manufacturers asked us to dispose of this shipment for them.

—We dictated the terms of sale—You get all the benefit.

—Tomorrow we offer 10,000 pieces of Pyrography—all at factory prices. As examples of the saving, we quote the following:

\$5.00 Burning Outfits, special... \$2.95
\$4.00 Burning Outfits, special... \$2.68
\$3.00 Burning Outfits, special... \$1.98
1000 assorted 15c Panels, special... 9c
1000 assorted 20c Panels, special... 12c
2000 assorted 50c-65c Panels, special 38c
New 40c Pipe Racks, special... 19c
New 40c Glove Boxes, special... 19c
New 40c Handkerchief Boxes, spec'l 19c
New \$1.50 Tabourettes, special... 69c
New \$1.00 Paper Racks, special... 49c
New 69c Pipe Racks, special... 29c
New 35c Match Racks, special... 14c
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—On a big table in our Picture Department Pretty, dainty, refined pictures in a variety of very pretty frames.

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