

LAW ALWAYS HAS SAID PUBLIC OWNS TIDAL SHORE LAND

J. B. Ziegler Traces Development of the Right From the Great Justinian Code to the Present Day.

Portland, Oct. 24.—To the Editor of The Journal—I have now outlined the law of shore lands and the natural rights on which it rests. I have quoted the decisions of the great cases down to date dealing with the question. The opinions have been written by Justices Hughes, Gray, Fields, Lord and Brandeis. All have asserted the public ownership of these lands, private occupancy being only by permission and revocable by the state, which is vested with the title in trust, and the responsibility of administering this important public property and protecting it from alienation and encroachment. It is pointed out that this law, so well established, rests upon the natural rights of the people, which now are just as manifest and of as much force as when announced by England's greatest authority on the subject, Lord Hale, 400 years ago—when his acknowledgment was forced from King John 700 years ago—when first codified by Justinian 1400 years ago.

Be it remembered that Justinian is named by history The Lawgiver of Civilization and his "Corpus Juris Civilis" the most precious legacy of Rome to the world. Justinian's statement of the law of the foreshore is the clearest and most vigorous of all. "The air, the sea, the rivers and the shores of both are common to all men. The proprietors of adjacent lands may occupy them with a building, but when it is taken away the occupancy ends. They may reap the profits of the soil, but if they attempt to use these rights so as to hinder the public use of the shore, they shall be restrained by an interdiction of the praetor." "As far as the waves go at the farthest" was the limitation of the shore.

Law Is Ancient.

It is easy to trace the origin of this law to nature. The passage of centuries has not weakened it, nor ousted it. Modern codes and authorities are content to repeat it—Larcenous statutes, and the scanty decisions of myopic judges denying it, are of no avail. In Oregon such statutes have all been repealed and the adverse decisions are of only academic interest. Officers of the state may disregard the public trust and alienate the people's property under the "jus privatum" of the state, that having once granted them into private ownership, that the repeal is of no avail against the private title—thus putting the official above the state, the private interest above the public interest, and an invalid statute above the similar character was the decision of the Oregon supreme court rendered last February confirming to the Harriman railroads the grant of all the tidelands in Lincoln county, including Salmon river, Siletz, Yaquina and Alsea bays.

Decision Disregards Public.

Judge Bennett wrote the opinion in this decision. "It was so obviously contrary to the public interest in commerce and navigation—the 'jus publicum'—which he grants—the public completely turns over to the Harriman interests the commerce and navigation of those ports, which the 'jus publicum' was intended to conserve to the public, that discussion is hardly needed. The judge proceeds to interpret the trust title to those shores to mean only 'regulation' so as not to materially impede the public right of navigation," a thing that the federal government does fully already without any title to the shore lands at all. So that the judge, having divided an unqualified trust title into the "jus privatum" and "jus publicum," proceeds to eliminate by a definition—one of these definitions which after a moment's attention vanishes utterly—all value of the "jus publicum" as far as the public is concerned.

He substitutes for "commerce and navigation" his definition, which means the mere physical opportunity of ships to pass and repass in the channel, and creates by his decision a condition that in reality suppresses commerce and causes ships to pass and repass together. It is the old fault of the "judicial mind" to substitute for a thing its legal definition, and consider that instead of the thing itself.

A Greater Error.

The judge, however, shows a greater fault, when, in passing on the validity of the granting acts, he says: "With their wisdom or folly we have nothing to do. It may have been popular at that time for the legislature to engage in a project for promoting an outlet for the products of the state by which they might go unhindered to the sea. At this time it might be popular to declare the whole grant was properly confiscated, but popularity is not the rule when the law is to be declared."

If we go behind that word "popularity" and consider the commercial needs of the people hidden there, which the "jus publicum" was intended to protect, we would find a larger public need for those alienated shores, and the public trust of greater import than the judge has indicated. J. B. ZIEGLER.

General Carrigan Dies.

(United Press Special Wire.) Boston, Oct. 28.—Brigadier General Henry Beebe Carrington, famous Indian fighter and noted in literature and law, died at his home in Hyde Park Saturday. Death was due to old age. General Carrington was 88 years old. He was born in Wallingford, Conn.

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"IT'S WILSON," THEY ALL SAY

Outside Political Headquarters There Is No Doubt About the Outcome.

"Woodrow Wilson will be the next president. Every place I hear it. It is Wilson, Wilson, everywhere I go. Roosevelt has defeated President Taft." This from a former member of the Republican state central committee, and a close follower of political conditions.

"Why do I think it? Because the people tell me so," he continued. "Taft was not the logical nominee at Chicago, and Roosevelt blocked the convention. It was 'me or nobody' with him. Thousands of Republicans in this state are resenting that. He could have aided La Follette, but he didn't. La Follette's friends remembered that, Roosevelt acceded from the party, and everybody remembers that. He was given a big vote in Oregon because he was supposed to be a progressive Republican, but I want to tell you that there are thousands of men in Oregon who would rather bray than moo, and on November 5 they are going to bray."

"Well, on the quiet, I'm scared. Wilson has got us on the run." This time it was a delegate to the late Bull Moose convention at Salem, who opened up his heart. "And I can't see why it is," he mourned. "With a platform like that, and the primary vote we got—blamed if I know what's the matter, anyway."

That is the kind of talk you hear on every hand. It drifts in from eastern Oregon and central Oregon and southern Oregon, and eddies around the hotel lobbies and the streets.

A San Francisco policeman was at the Imperial yesterday, waiting until train time to escort a fugitive back to California.

"How does it look to me?" he said. "Well there are lots of Bull Moose around Sacramento, but you can hear the donkey's braying everywhere you go." If it were from Wilson headquarters that these reports come, they might not be so impressive. But they don't. They come from men who may vote the other way. They are original evidence of the trend of public opinion. They forecast the starting of the Wilson avalanche scheduled for the 5th day of November.

ELDER DETAMORE ENTERS CHINESE MISSION WORK

Spokane, Wash., Oct. 28.—Elder F. A. Detamore, now of Spokane, but pastor of a Portland church in 1910 and 1911, a member of the Upper Columbia river conference of the Seventh Day Adventist church, has accepted a call to the superintendency of the East Indian Mission with headquarters at Singapore. The appointment of Detamore to the new post came as the result of a decision of the foreign mission board of the church, with headquarters at Washington, D. C., to increase its missionary forces in the East Indies and Korea. Detamore's jurisdiction will include Java, Sumatra, Borneo and the Celebes. Detamore will sail November 2 from San Francisco for his new field.

HUDSON BAY RANCHER FALLS OFF WAGON; DIES

Milton, Or., Oct. 28.—Frank Turner, who has charge of the John Kelly ranch, in Hudson Bay, was killed Saturday night by falling from his wagon. He had been to Walla Walla and was returning home about 9 o'clock. It is supposed he had fallen asleep, and had fallen accidentally from the wagon, breaking his neck. The body was taken to Milton, and a coroner's jury summoned, which pronounced death accidental. Turner was unmarried.

Militant Suffragettes Destroy Mail. London, Oct. 28.—Police guards were placed over street mail boxes tonight to prevent militant suffragettes from dropping corrosive acids into them. This is the newest form of suffragette campaigning. It has resulted in the destruction of immense quantities of mail, some of it valuable.

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HORDE OF ASIATIC TURKS, SPLENDID FIGHTERS, ON WAY

Ottomans Have Not Yet Begun to Scrap, Says Observer in Constantinople; When They Do, Look Out.

(By the International News Service.) Constantinople, Oct. 28.—Turkey has not begun war. When she begins, momentous and terrible things will happen. That is the first impression of this city, the city of Constantinople, Justinian, and Solomon the Magnificent.

All tales of great battles, great victories and great defeats, circulated among hopelessly uninformed citizens do not shake the belief that the deciding clash is still far off; that the Ottomans have not yet extended their right arm.

Constantinople is at peace, but it is the peace of a sleepless arsenal. The slippery, sinuous lanes of Pera, Galata, and Stamboul imagine all factors in which Turkey, backward as she is, excels her adversaries. These factors are her hosts of strong fighters, her endurance, organization and pride of conquests, which no calamities have obliterated in this most martial of peoples.

Asiatics on Way.

Human material has no end. It is coming straight from Asia in the shape of the incomparable Anatolian peasant, who keeps unweakened today all the primitive virtues which once elevated a handful of Tartar hordes of tribesmen to mastery in three continents. Many volunteers are moved to the front by battle. They come in all garbs, all foot gear, in fezes, turbans, skull caps and bashlukes. They bring no baggage, but rough sacks. They are unwashed, uncombed, unbeautiful, but they are impressive by their imperturbability, by the ardent earnestness which beyond doubt is something higher than mere Moslem fanaticism.

This coming of farmers and peasants is the first stage of Turkey's preparations. Another stage is visible at Zarakas Rial, the plateau, opposite the war ministry, the place of drills. The Turk drills well without the violence and menaces civilized Europe invokes in the name of discipline.

Peasants Are Proud.

Many officers are plain by origin, all plain by instinct. Also the Turkish peasant has pride and demands that he be treated as a man. At Zarakas Rial, the second stage ends.

The third stage is at Stamboul railroad depot, whence the troops go to the front. By special permit of the war minister, your correspondent was yesterday allowed to watch the entraining.

Here the unlicked Anatolian appears in the final metamorphosis as a complete soldier. The Turks are artists in transport. Although the railway depot is small and the few sidings much crowded, still good battalions during peace maneuvers could not make an equal show with the men entrained almost without commands from officers or the gesticulations in unreserved war scenes.

This good order is surprising because the Angora regiment is largely manned by volunteers of greatly differing trades, some of whom got to know their comrades and officers in Constantinople. As the train pulled out, the soldiers sang Anatolian war songs with a convincing note of battle order and menace.

Today the same scene was reflected. The lanes leading to Zarakas Rial are thronged by the same ill-clad, impetuous bores. Tomorrow, these bores will be turned into soldiers and when men are next needed they will be at Stamboul depot entraining with the same inexplicable orderliness and chanting the same menacing songs that picture Constantinople in days of war.

The old unvarying Turk of Ottoman and Orthodox is returning in full force to the Europe he nearly conquered. Perhaps in their simple minds these rude warriors think they come to reconquer Europe. It is a new advent of Asia with Europe's new military cunning, but with its own passion, implacability and unshaken faith.

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