BARES "KINK" IN CITY'S SUIT OVER USE OF STREETS

Writer Gives New Light on Status of Case Against Inman & Poulsen; Case Up in Supreme Court Thursday.

By J. B. Ziegler.

The case of the city vs. Inman-Poulsen Lumber company over the possession of the streets through their 40-acre millsite on the east side, will be heard by the supreme court next Thursday.

It will be remembered this case was heard in the Multnomah county court before Judge McGinn about two years ago, the city being represented by Frank S. Grant, city attorney, the trial and case being conducted by W. C. Benbow, as deputy.

The result was a kind of a dog-fall, Judge McGinn's decree being that the streets were city easements and could not be vacated, but that the Inman-Poulsen company having been permitted to occupy them for a period of years with valuable improvements and an important industry, that as long as the present occupancy and use existed, it must not be interfered with, but upon vacation by said industry or transfer of the property, the streets should become subject to public use.

There appeared, however, in the decree, a declaration of the Inman-Poulsen title down to "low water mark."

The writer having just been engaged in a study of the subject of the city's progressive and continuous loss of its waterfront property and the streets giving access thereto personally appealed to Judge McGinn on this point.

Rehearing Is Suggested.

With characteristic frankness the judge declared he intended to make no such decree, that that point had not been discussed in the trial, was unnecessary in the decision of the case, and had been supererogatorily introduced into the decree without catching his attention. He asked me to request the city attorney, Mr. Mulkey, chairman of the dock commission, or anyone entitled to appear, to ask for a rehearing, so that he might enter an amended decree.

Some time had elapsed since the original hearing; there was a disagreement whether or not the legal time for a rehearing had elapsed. Messrs. Grant and Benbow were dissatisfied with the decree and wanted to appeal on the record as it stood, and Mr. Mulkey declined to interfere.

I take this opportunity of acquainting the public with this kink in the litigation over this important property, and the pertinent brief of Messrs. Mulkey and Crawford appearing as amici curiae in the case.

I would at the same time like to call the public's attention to Mr. Mulkey's faithful guard over the waterfront properties, the responsibilities of which fall so largely upon him as chairman of the dock commission. It is an onerous and unremunerated task, and the dock commission is opposed by a most powerful, influential and alert body of men, seeking to divert to their own proprietorship $60,000,000 worth of public foreshore.

Of course they can in such a contest afford to pay heavy retainers to the best legal talent of the city and their support is enormous, though their action is so damaging to the prosperity and development of the city, and really in the long run so damaging to themselves.

The essential part of the brief of Attorney General Crawford and Chairman Mulkey of the dock commission is here quoted:

"The reason for the filing of this brief is that the trial court in the decree in this cause adjudged, among other things, that the defendants were the owners of the property in dispute to the low water mark of the Willamette river, and that defendants had 'the right to erect and maintain docks, wharves and other structures between the harbor line of said Willamette river and the low water mark thereof, and all riparian rights and privileges incident and appurtenant to said real estate," the object of this brief being to call the court's attention to what we believe to be such error in the above two particulars as to justify a modification of the decree with reference to such errors, irrespective of the other questions involved in the case.

States His Position.

"Our position is (1) that the upland owner on the Willamette river only takes title to the ordinary high water mark; hence, the decree of the trial court should be modified to so adjudge: (2) That the upland owner, being within the corporate limits of an incorporated city or town, has only the right to construct a wharf between the harbor line and ordinary high water mark; hence, the decree of the trial court should be modified by striking out the words, 'and other structures.,

"It is only to these two points that the writers of this brief address themselves. Concerning the other points, they wish to be understood as taking no part whatsoever.

"Probably before this case is decided the court will have decided the case of Pacific Milling & Elevator company vs. The City of Portland, the decision of which case must of necessity require a careful consideration of the points under discussion here.

Two Cases Cited.

"Therefore, we cite but two cases, which we think lay down the rule of property as it now obtains with reference to the title of upland owners on the Willamette river at Portland, and we cite these cases with only the comment that to depart from the rule as laid down by them by holding that the title of the upland owner goes to ordinary low water mark, must be to overrule the cases just cited.

"In Montgomery vs. Shaver, 40 Ore. 244, at 247, this court says, 'It is suggested that the shore owner of uplands takes to low water instead of ordinary high water mark, but the rule to the contrary has been so firmly established in this jurisdiction that it is unnecessary to treat the question further than to cite the cases in which it was involved.'

Had Right to Construct Wharf.

"In Oregon vs. Portland General Electric company, 52 Ore. 502, at 533, the same doctrine is laid down and followed, and at page 530 of the last cited case this court says, 'The Willamette river is a public, navigable stream, a public highway, the title to the bed and banks of which is in the state for the benefit of the public.'

"It will be noticed in its decree that the trial court adjudged that the defendants had the right to construct a wharf or other structures between low water and the harbor line. This language, of course, would require judicial construction as to the meaning of the term 'other structures.' Probably the judicial construction of the words 'other structures' would be of 'a like kind.'

"Be that as it may, we think the decree should be so modified as to avoid the necessity for judicial construction. Certainly defendants should not be allowed to build a stable, a hotel, a lumber yard or a brick yard, between the line of ordinary high water and the harbor line. We contend that the franchise as contained in sections 5201 and 5202, Lord's Oregon Laws, gave defendants only the right to construct a wharf or wharves on the submerged lands between ordinary high water mark and the harbor line.

"In Bowlby vs. Shively, 22 Ore. 410, at 420, this court says, 'It is true the legislature of this state had made provision by which the upland owners within the corporate limits of any incorporated town might build wharves prior to the acts of 1872 and 1874, supra; but within the purview of our adjudication it would, as a matter of power, have been equally competent to have given this privilege to others.'

Decision Quoted.

"In Montgomery vs. Shaver, 40 Ore. 244, at 246, this court says, 'The right to wharf out to the navigable waters of a stream is given by statute to any owner of land within the corporate limits of any city or town bordering thereon; Hill's Annotated Laws, section 4227.'

"It thus appears that the right to wharf is a statutory right. This being so, and not being based on a valuable consideration moving from the upland owner to the state, it is elementary that the right given to the upland owner should be strictly construed against him.

"Even at common law the upland owner could not, as a riparian right, build a structure in front of his upland, into navigable water, that was not an aid to navigation. See the case of Atlee vs. Packett, 21 Wallace (U. S.) 389.

Area of Harbor Limited.

"In conclusion we desire to urge on the court that the harbor at Portland, composed as it is of the waters of the Willamette river, is not like the case of tide lands on a bay, arm of the sea, a sound, or the mouth of a great river emptying into the sea, having great water width. The area of the Portland harbor is limited. The river at that point is comparatively narrow. The volume of water commerce makes it necessary that the entire width of the river right up to ordinary high water mark be devoted to navigation and aids to navigation.

"The length of water carriers is continually increasing, thereby requiring greater water width for the maneuvering of vessels. Therefore, we contend that a wise public policy should obtain to the extent that upland owners upon the Portland harbor be allowed to construct nothing between ordinary high water mark and the harbor line other than wharves under the wharfing act of 1862, as set out in sections 5201 and 5202, Lord's Oregon Laws. Hence, we ask that the decree of the lower court be so modified."

CONGRESS ASKED TO INQUIRE INTO McNABB CHARGES

(Continued From Page One.)

paring a resolution which he will introduce in the house tomorrow, demanding that Attorney General McReynolds submit the correspondence covering the case.

Secretary of Labor Wilson refused to comment further on the matter. Commissioner General of Immigration Caminetti said:

"Under orders of the department of labor, I am prohibited from discussing any program of the department. Personally, I have nothing to say."

President Wilson said he was not informed as to the details of the Diggs-Caminetti case, but that on the surface it seemed to be a humane move to allow Caminetti's father to attend the trial. It is reported that Attorney General McReynolds and Secretary Bryan have conferred over the matter.

Assistant Attorney General William R. Harr, who is in charge of the Western Fuel anti-trust case, also conferred with McReynolds.

David Starr Jordan, chancellor of Stanford university, called at the White House today and discussed the McNab resignation with the president. Jordan called attention to the statement that W. H. T. Devlin, attorney for Caminetti, was called here about the time the cases were due for trial, to appear in a land office suit. C. C. Boynton, partner of Devlin, made a statement that District Attorney McNab had agreed to a postponement of the cases, provided that it would appear that it was the department of justice and not McNab who did it.

McNab Has Another Jolt.

(United Press Leased Wire.)

San Francisco, June 23.—That unless President Wilson accepts his resignation at once he will fire another jolt at Attorney General McReynolds, which will be entirely unexpected, was the threat of United States District Attorney McNab today.

McNab, who resigned Saturday, after making serious charges that the attorney general is hampering his office, especially in the Diggs and Caminetti, and the Western Fuel company cases, reached his office early and was evidently much disappointed that his resignation had not been accepted.

"I am also disappointed," said McNab, "that the Washington officials do not appreciate the seriousness of the situation. Unless my resignation is accepted at once, I shall fire another broadside at them which will be entirely unexpected and will leave much to explain."

McNab said he accepted the explanation regarding the postponement of Drew Caminetti's case, because Senator Caminetti could not be present at the trial, but said this had nothing to do with Maury I. Diggs, accused with Caminetti of violating the white slave act by taking two girls out of the state for immoral purposes.

The district attorney had little to say about the Western Fuel company, except in an ironical strain.

"I guess that Sydney V. Smith (one of the Western Fuel company men) proved his innocence at Washington," he said sarcastically, "or the attorney general would not have decided to postpone action indefinitely."

Investigators Support McNab.

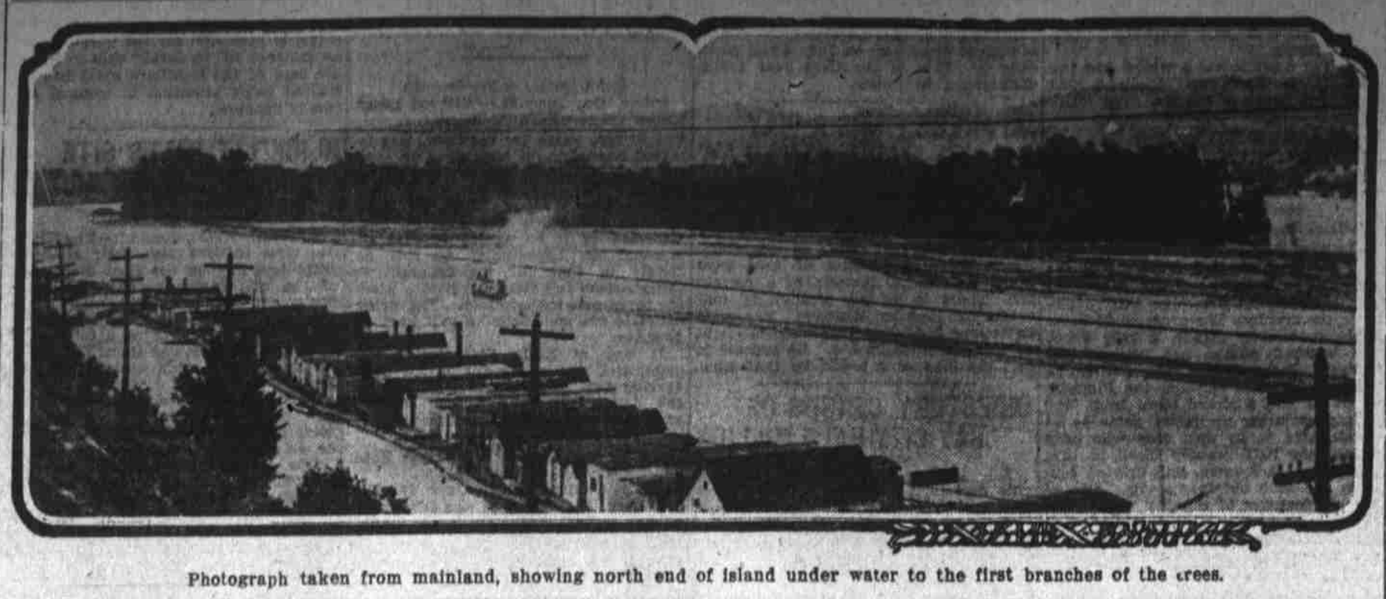
Clayton Herrington, federal investigator for the department of justice, who helped to prepare the evidence in the Diggs-Caminetti and Western Fuel cases, is strongly supporting the action of United States District Attorney John L. McNab in tendering his resignation to President Wilson because he had been ordered from Washington to postpone action in these cases.

Herrington sent a long telegram to President Wilson calling upon the chief executive to remove Attorney-General McReynolds. His telegram concludes:

"As a citizen of California, I appeal to you, on behalf of every mother, every father, every decent man and woman in our state, to remove this unworthy officer from the office which he has disgraced."

Herrington has been prominent in the prosecution of white slavery cases and in efforts to stamp out the social evil.

ROSS ISLAND IN THE WILLAMETTE PRACTICALLY SUBMERGED BY BACK WATER



Photograph taken from mainland, showing north end of island under water to the first branches of the trees.

The accompanying photograph shows the flooded condition of Ross Island last week before the river began to recede. When the picture was taken, the river was at its highest point, 24 feet above the low water mark. All of the islands with the exception of a comparatively high promontory on the south side was inundated with water.

DISCARDED KRAGS TO ARM THE MILITIAMEN

(United Press Leased Wire.)

Washington, June 23.—To stimulate rifle shooting among civilians, a bill authorizing the war department to distribute 300,000 Krag-Jorgensen rifles, discarded a few years ago by the regular infantry, will soon be introduced in the house by Representative Julius Kahn of California, chairman of the national defense league. The arms, which are in first class condition, will be issued to clubs already organized or to be formed by citizens, if the bill becomes a law.

Kahn declared that 300,000 civilian riflemen would be the best nucleus for a volunteer army to meet any sudden war emergency.

BITTEN BY MAD DOG, MAKES READY TO DIE

(United Press Leased Wire.)

Chicago, June 23.—Calmly anticipating death from rabies, John Haederkampf, a bookkeeper, has made his will, disposing of his property and gave orders as to his funeral.

Haederkampf was bitten five days ago by a dog which he had befriended. The dog was taken to a laboratory for an examination for rabies, but died from the disease before the examination could be made.

Haederkampf was bitten five days the pasteur treatment at the hospital and was told that there is no hope for his recovery. He is still rational.

Weston Reaches Sharon, Pa.

(United Press Leased Wire.)

Sharon, Pa., June 23.—Edward Payson Weston, the septuagenarian pedestrian, who is walking from New York to Minneapolis, arrived here today. He expects to reach Warren, Ohio, tonight.

Changed Their Costume.

(United Press Leased Wire.)

Washington, June 23.—Chang Ying Tang, the Chinese minister to the United States, his wife, daughters and son, are enroute today to San Francisco, whence they will sail for China. When the minister and his family arrived in Washington four years ago they wore the picturesque costumes of the orient; they depart in the latest, up-to-the-minute tailored American clothing.

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