

PUBLIC INTEREST ALONE INSPIRED FORESHORE SUIT

**Jaw-Breaking Words Cannot
Obscure Fact That Supreme
Court Misconstrued Law, Is
Assertion of Writer.**

By J. B. Ziegler.

The Oregonian in its Sunday editorial says that "although the dock suit is now a closed incident, in common justice to the supreme court, a reply should be made to the continued attacks upon that tribunal by the men and interests which encouraged the passing of legislation in which the commission has been defeated."

The dock commission was in honor bound, when it found the state holding a trust title to the site selected for the purpose to which it designed to put the land, and found itself enjoined by an adverse claimant, under a wharf right unused for 50 years and dead, to assert and protect the public title. No interest has "encouraged them" except solely the public interest in an endeavor to use the dock fund for dock construction, instead of paying it out to the hungry rabble of lawyers and bachelors upon any public property as valuable as this, which falls in their power. Portland has been particularly unfortunate in this respect.

Deadly Work of Lawyers.
In her very infancy, shattering lawyers fastened upon the people of the town the adverse contentions of squatter claimants. Some of those who then lost title to their property were in possession before the successful squatter claimant, and some had paid him thousands of dollars for quit claims, but through the weaknesses of courts and legal procedure the injustice was fastened upon them, just as the city lost its public squares and levees in the same way.

It is only in quite recent years and without the shadow of a claim that riparian owners have been plating and selling the river down to the navigation line. A "privilege to wharf out to deep water" over the state's submerged land does not constitute a real property with bounds which can be sold in fee any more than a street franchise constitutes a right to sell the street.

Latin Used to Cause Fear.
The Oregonian says the repeated and open charges that the supreme court has reversed several former rulings is based on chance phrases or collateral opinions found among the great number of supreme court decisions on the subject. These it says are called "obiter dicta" and are universally considered not binding.

The Oregonian wields that jawbreaker of the dead Latin, to excite the same superstitious fear that Samson doubted, when he weighed the jawbone of the dead ass, and, doubtless, it expects to strew the field with dead Philistines, just as Samson did.

"Obiter dicta" is the legal jargon for an opinion incidentally stated in a decision, not necessary to the case and is held not binding.
The sentence referred to in the case of Montgomery vs. Shaver, and quoted and affirmed as late as the case of Oregon vs. Portland General Electric, probably the last Willamette case on this issue is as follows:

"It is suggested that the shore owner of upland 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."

Real Issue in Case.
So far from its being only incidental and "obiter dicta" in that case, the issue in that case was the boundary between the wharf rights of Mrs. Montgomery and Shaver. That as stated by the court, was established by a line extending from the ordinary high water mark at right angles with the thread of the stream to the wharf line. The thread of the stream is the line between the dividing lines are projected to the shore termini in the ordinary high water line, which determine the area of the wharfing privilege. Thus it became "essential" to establish the high water line. The land down to low water mark alleged to be granted by the act of 1874 was not bounded in this way, and the whole dispute in this case was over the difference in the boundary lines, as formed by the upland lines extended, or run at right angles to the thread of the stream.

This decision not only indisputably establishes, as stated in this case and the later P. O. E. case, but decides that the wharf right extends to the high water mark and hence all below that line is subject to the jurisdiction of the state or its subject municipalities for public commerce and navigation.
Not only does this apply to these cases and others already quoted, but to all other cases arising on this question on the Willamette. If this is not true, let the one to the contrary be produced.

Right Always Existed.
In this case, the court also says: "Section 4227 (the wharf act of 1862) is only declarative of a right which already existed at common law and is a permissive statute which allows to certain things that may be done, but does not vest any right until exercised." This also the present anarchical decision and the Oregonian denies.

The Oregonian, does the court, again quotes the dead act of 1874, and inoperative by every prior case considering it, and repeated in 1878 (L. O. L. 1878, p. 84).
I cannot understand why this repeat is persistently ignored except it be that they hold an error, well backed up, as good as the truth.

In the case of Lewis vs. Portland the court says of the act: "But even if the legislature granted to plaintiff every right the state had, still a subsequent legislature could repeal the grant, for no right can be acquired by private parties which can prevent the state from changing the use to which the soil under water shall in the public interest be devoted, so long as such change is made necessary, right by navigation, commerce or fishery."

And this is the common law descended from the English and civil law, and with the same estate of this state, or court decision has interfered until this one.
The acts, authorities and decisions on which this statement is based are not "obiter dicta," incidental or garbled, but contain and preserve all the law prior to the present anarchical decision.

Now Is Plain.
Section 265 of Dillon plainly announces the law that the beds of navigable waters up to ordinary high water mark are held in trust, for the people by the sovereignty of the state, and that the state can not divest them in such way or to such extent as to impair the purpose of the trust, the public use of the water and its shores. Yet, the court in this case reads that long section through and only selects the paragraph stating that as yet no fixed rule has been established exactly defining the relative riparian and public rights, and seeks upon that to interpret a law for Oregon which does not exist except in the unjudicious mind of the court.

The Oregonian says "It should be remembered that wharf rights attach to upland, not to overflowed lands." This is its explanation of the language of the court when it says the shore owner only takes to ordinary high water and not to low water.

Both Cannot Own It.
In that case, then, below high water is only wharf right, and there is no title effected by the act of 1874. If the title, however, does run down to low water, the wharf right must stop there, because the shore owner and the state cannot both enjoy an exclusive title to the strip between high and low water.

Unless, indeed, we agree with Nietzsche, when he says: "That we can not predicate of a statement that it is both true and untrue is only a sign of our own weakness."

Further, it is claimed the court in the present case, instead of reversing itself, specifically reaffirms that "on upland owner of land bordering on a navigable stream owns only to the high water line and the stream and the river and its banks and its bed belong to the state." But as in the Montgomery vs. Shaver case one cannot rely on an isolated sentence or paragraph to ascertain the court's meaning. What has been said before and what comes after must also be read. In the later opinion the court says: "The case at issue, the alleged overflowed lands, has been conveyed by the state to the upland owner."

Right Is Continuous.
But the former part of the statement is a statement of the fundamental rights of society and riparian rights expressed in common constitutional law, the power to abrogate which has not been conferred upon the legislature. The right is a constant, continuous and inalienable one. Prior to the present case on the Willamette, at least, it has been so held by the courts. Public and private acts and investments have been made all these years on the law as thus expressed and "firmly established," and it will work to the hardship and injustice upon the people to disturb it now.

The latter part of the statement quoted is contradictory of the first part, the alleged grant being a general one covering all the shore of the Willamette. If the state has conveyed it away by valid conveyance, then it does not own it. But the beds of streams up to ordinary high water mark are permanent state public property. The state's right to sell only extends to swamp and tide flats, not useful for commerce and navigation.

The relative rights of riparian and public have not been better expressed than by the court in the Oregon case of Parker vs. West Coast Packing company:

Private Rights Subordinate.
"That an owner of land bounded by navigable waters possesses important riparian rights by virtue of such ownership is not open to question. He has a wharf right, which he may reserve or convey away with upland; but in subordination to the public rights of navigation. Such rights, however, are mere incorporeal hereditaments. The land below high water mark upon a navigable river and which constitutes a part of its bed, belongs to the state in its sovereign capacity, subject to the riparian rights of the owner of the land above and adjacent thereto."
"The state, however, cannot sell it, nor can the state control its use except to increase the facilities for navigation and commerce. Nor can the riparian proprietor grant such land, or any right thereto, except such right as he himself is entitled to enjoy."
This was the "different view" of Justice Thayer, departed from by the Oregon court only to deny that the riparian right for private use was in violation except in behalf of public commerce and navigation. The Oregon court has declared against the upland owner having any right whatever as against the state. Judge Dillon, who has written the common law on the subject, agreed, apparently, with Judge Thayer, but he, Thayer, and the rest of the Oregon court all agreed that when it came to the use of any part of a stream up to the ordinary high water mark for navigation or its improvement, including wharfage, that the public right for such purpose was paramount and inalienable.
All of which the present decision, and it alone, has denied, confessedly in behalf of private interests.
That is the law "firmly established." The court has reversed it and its own former decisions. It and the Oregonian either can not see the public right thus so clearly stated, or they will not. The question is not settled, but will come up again, with a whole swarm of other less benign but more dire demands, stated out by the future course of these riparian adventures.

The chauffeur of a powerful steam roller in the north Berlin suburb, uses the machine to crease his trousers.

PRESERVATION OF BIRD LIFE IS AIM

**Game Warden Finley Working
Along National Lines;
Conferences.**

State Game Warden William L. Finley, as agent of the National Association of Audubon Societies, is working with other men interested in the preservation of Pacific coast bird life in

bringing about conferences with other countries for the conservation of wild creatures, both game and non-game.
Senator George F. McLean recently secured the passage by congress of a resolution calling for such a convention, believing that by cooperation, birds which breed in the north and spend the winters in the south may be protected at all points along their line of flight. Mr. Finley stated this morning that he expects to make a trip to the east this fall to confer on this point with representatives of the American Game Protective and Propagation association and the Audubon societies, and possibly with agents of other countries interested.

Many of the robins and meadow larks which winter in Oregon are hatched in Alaska and northern British Columbia. The same is true of such water fowl as ducks, geese and waders. By some plan of cooperation to be devised, the Canadian government would look out for the safety of these birds during their flight over that territory, the United States watching their interests after they cross to the United States.

John B. Burnham, president of the American Game Protective and Propagation association, recently said in New York that the senate's action in the present instances furnishes an effective complement to the good results assured by the Weeks-McLean law, which placed control of migratory birds in the hands of the federal government. The principal countries with which negotiations will have to be opened are England; France, because of her holdings in the West Indies and Guiana; Mexico, Brazil, Argentina, Colombia, Ecuador, and Japan, because of the activities of the Japanese feather hunters in Hawaii. With some basis of understanding among the various countries, the later treaties or other international

agreements in regard to birds will be the more easily reached, it is believed.

WOMEN ARE TO ATTEND AD CLUB LUNCHEON

The Ad club will hear about "The Power of Advertising and Optimism" at the meeting for luncheon at noon in the Hotel Portland Wednesday. E. G. Lewis, founder of the American Woman's Republic and the People's university of St. Louis, will be the speaker. He will be accompanied by Mrs. Lewis, national president of the American Woman's Republic. As a courtesy to Mrs. Lewis, President Moore of the Ad club issued a request this morning that the admen bring their wives to the luncheon Wednesday. Mr. Lewis will be introduced by C. C. Chapman.

BAND MUSIC TONIGHT AT HOLLADAY PARK

The Portland Park band will play this evening at Holladay Park. The concert begins at 8 o'clock. Director W. B. McElroy has prepared the following program:
Grand march—"Die Folkinger"
Overture—"Orpheus"
Waltz—"L'Estudiantina"
Trombone solo
Grand selection—"Excelsior"
Comic opera—"Amorita"
Dance—"In the Shadows"
Paraphrase—"Melody in B"
Grand fantasia—"Faust"
Incidental solos by Messrs. Driscoll and Clorff.
National airs
Tomorrow evening the band will play at South Park, Jefferson and Park streets.

Semi-Annual Clearance Sale "Lowest in the City Prices"

The Trunk of a Hundred Conveniences

INNOVATION

Wardrobe Trunks

—Imagine the joy of arriving at the end of a long journey across the continent, down its length or across the Big Pond—with your clothing in PERFECT CONDITION. No wrinkled clothing or browns—no ruffled feathers or temper—but clothing and disposition in perfect serenity. It is all possible with

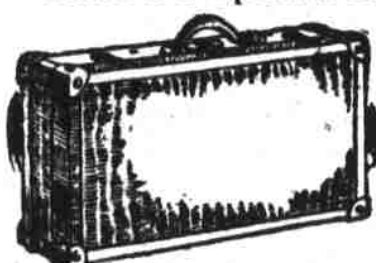
Innovation Wardrobe Trunks

—The trunks that are equipped with the clever hanging arrangements for garments of men or women, and a series of drawers for the countless necessities of a journey. The trunks with the rounded end, defying the efforts of the most accomplished "baggage smasher."

—In three sizes, styles and outside construction—the Petite, the Demi and the Regular. Iron bound, canvas covered; fiber bound, canvas covered and extra heavy, fiber covered and bound; containing five, six and ten arms, with drawer arrangement the same except necessary variation according to depth.

Prices—\$25.00, \$30.00, \$50.00, \$65.00 and \$75.00
Sold exclusively at this store

Apropos of Vacation Trips Here's a Special Clearance of Suitcases



Clearance \$1.25

—Genuine matting and Kato cane suitcases, over box frames, leather corners, 24 inches.

Cane Suitcases, Clearance \$2.75

—Suitcases made of genuine cane, over wooden frame, with inside pocket, cloth lined, 24-inch size.

Cane Suitcases, Clearance \$5.00

—Genuine closely-woven cane case over wooden frame, with leather straps and corners, inside and end pockets, cloth lined, 24 inches in size.

\$7 Genuine Cowhide Suitcases \$4.95

—These genuine cowhide suitcases are lined lined, with inside shirt fold. Have double riveted corners, umbrella strap and brass lock and catches. Made from excellent selected stock.

Clearance Summer Wash Fabrics

15c White Linen, Clearance 10c

—This is the best linen substitute in the market—after being laundered it looks exactly like linen and is specially adapted for dresses, middie blouses, children's dresses, and, in fact, for any purpose where linen is used—32 inches wide.

25c Japanese Crepe, Clearance 18c

—Fancy stripes, staple stripes and plain colors in pink, red, yellow, lavender, brown, rose, tan and mustard. A material that makes ideal house dresses, children's rompers and kimono.

40c Balkan Crepe, Clearance 25c

Full 32 inches wide—in white with neat floral effects in such colors as blue, green, lavender and tan.

35c and 25c Wash Fabrics, Clearance 15c

—This lot consists of stripe tissue, Windsor crepe, check voiles and Normandy sulking. New material in excellent colors.

Imported Wash Materials Now Half Price
Selling at 50c a Yard; Clearance 25c

—About 2000 yards of the finest imported silk mixed wash materials—woven in dots and figures in self colors—printed mulls and jacquard weaves. A wonderful assortment of weaves in a variety of colors.

\$2.25 Colored Liberty Crepe \$1.59 Yard

—Just a few pieces left of this beautifully soft imported crepe, suitable for evening or dinner gowns. Comes in mottled and striped effects, in the most pleasing color combinations, with satiny flecked stripe running through.

35c, 40c and 50c Fancy
Ribbons, Clearance 27c

Warp prints in light and dark colorings, Dresden ribbons with picot edge in contrasting colors. Ribbons appropriate for millinery trimmings, hair bows and sashes.

Lipman Wolfe & Co.
"Merchandise of Merit Only"

The Lipman-Wolfe Clearance of Lingerie Blouses
Is the Most Talked of Sale in Town

A Myriad of Exclusive Styles
A Wide Range of Special Prices

—It will well repay any woman to attend this sale and fill her wants for present-day and future Fall needs. Quality considered, this blouse sale offers unmatched worth at these sale prices.

—Every dictate, whim and turn of fashion has been followed. Every embellishment that could add distinction or novelty to these waists has been employed. Waists for all occasions, for travel, work or play.

—Blouses of fine white voile—of Persian Lawns—of Batiste—and of Soft Mulls—trimmings of Cluny laces, Baby Irish laces and soft shadow laces—dainty Swiss embroideries, fine tucking and hand embroidery. Many happily trimmed with touches of contrasting colors.
—Made with high or low necks—Dutch, square or round cut—some with turndown collars, Robespierre collars and Byron collars; three-quarter length and short sleeves.
The opportunity of the year for the woman who wishes to be daintily and tastefully dressed at smallest outlay.

\$2.00 Blouses clearance \$1.28
\$2.50 Blouses clearance \$1.73
\$3.00 Blouses clearance \$1.95
\$3.25 Blouses clearance \$2.38
\$3.50 Blouses clearance \$2.50
\$3.75 Blouses clearance \$2.63

\$4.00 Blouses clearance \$2.75
\$4.50 Blouses clearance \$3.00
\$5.00 Blouses clearance \$3.25
\$5.25 Blouses clearance \$3.50
\$5.50 Blouses clearance \$3.75
\$6.50 Blouses clearance \$5.00
Third Floor



STAR CLEARANCE SPECIALS

CHILDREN'S COATS, HALF PRICE
Sizes 2 to 6 Years

—Made of serge, eponge, fancy mixtures and diagonals in the most attractive of the season's styles—box, Bulgarian and pleated styles—some with large fancy collars or notch collars of soft silk, velvet or other contrasting material.
Regular Prices \$4.00 to \$19.50; Clearance \$2.00 to \$9.75

CHILDREN'S \$1.25 AND \$1.75 OUTING HATS, 89c

—Smart little hats of flannel, Bedford and linen cord in pretty striped effects, trimmed with silk band and feather stickups; some in ratine in pretty mixtures.

85c APRONS—ONE-DAY CLEARANCE, 59c

—Made of percale in dots, checks, stripes and plain pattern. These are trimmed with pipings and bandings of contrasting color and material; some have yokes, others belted backs.

\$1.50 BRASSIERES, CLEARANCE 98c

—In three models, one with embroidery yoke, another with inset veining and a third open-hook front. The models are W. B. Reduso and De Bevoise.

\$1.00 CORSETS, CLEARANCE 75c

—In W. B. Nu Form and C. B. a la Spirit, made of batiste and coutil in low and medium bust, long over back and hips, two pairs of hose supporters attached.

WOMEN'S DRESSES, CLEARANCE \$12.85

—Dresses that sell regularly up to \$27.50, of all-wool serge, and a few crepe de chine, in blue shades, light and dark browns, wine, grey and black, and some in hairline stripes. Trimmings of satin, braid, and fancy collars of lace or embroidery. Straight or draped skirts.

Women's Sweater Clearance One-Third to Half Underprice

\$3.00 Sweater Coats, Clearance \$1.49

—The finest Angora wool is used in these sweaters, and they are just the right weight for beach or mountain wear. They have the popular and comfortable ruffneck collar—two good-sized pockets and self-colored buttons. In pure white, light grey or a pretty shade of cardinal.

\$7.50 Norfolk Sweaters, Clearance \$4.75

—The fashionable Norfolk coat sweater of pure worsted, making an ideal garment for golfing and walking. In cardinal, new tan, navy blue or white with cardinal collar and belt; also heavy plain stitch effects in cardinal, light grey or white. All made with the ruffneck collar and double pockets.

DOMESTIC SEWING MACHINES

A \$58.50 Rotary Model.
Clearance \$38.50

—Sold with a lifetime guarantee on the easy payment plan.
\$1.00 Down, \$1.00 Week

—Fifth Floor



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THE BEER THAT BUILDS YOU UP
Nourishing because nutritious, refreshing
because ripe, thirst-quenching because of
its coolness and flavor. It's the last word
in master brewing.

ORDER A CASE

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Columbia Records for Summer Entertainment

I'm San Francisco Bound (Peerless Quartet).
Keep on Walking (Ada Jones and Walter Van Brunt).
You Can't Stop Me From Loving You (Burr and Stoddard).