

RELATION OF PUBLIC TO PRIVATE INTEREST ON THE WATERFRONT

Legislature Has No Right to Dispose of River Bank, As-sets' Writer.

By J. B. Ziegler.

It has been suggested that the public dock suit is now a "closed incident," that the foreshore of the harbor of Portland is now hopelessly lost to the public and that the subject is of no more interest to the people.

Therefore, discussion is useless. Before the decision, discussion was deplored as discourteous to the court, and the people are held to be estopped from discussing the disposition of their property at all. "Mum is the word."

In reply, it may be said that though the people should despair and cease to think of a remedy, and the port be improved by public expenditure (and that is the only way any adequate improvements will be made), every dollar of bonds issued to buy back the \$50,000,000 worth of foreshore will be a reminder of the incident, not closed, but revived with every acquisition of a site for an additional unit to the public dock system.

The law of the foreshore always has been, is now, and always will be that it is public—as long as there is a public. It is in the nature of things. The present decision, at its most, is only an aberration in legal procedure. It means that it can accomplish, and that is bad enough, is to give the upland claimants an opportunity to fill in the foreshore down to low water and thus change it into upland and free it from the public right attaching to the bed of navigable waters up to ordinary high water line.

Work for Dredges.

True, the law does not recognize divestitures by artificial accretions, but what can we expect, when dead laws are revived to annul existing ones?

We may now look for a very busy season in this process. The port's dredges will doubtless be kept very busily engaged in filling in this foreshore.

Every full day's work of the small dredge, "the Portland," means the conversion of \$10,000 worth of public harbor into private upland. We may expect them to make hay while the sun shines. The dock commission desires and has attempted to assert the public right in this territory. Although all law on the subject acknowledges this public right, and the title of the sovereign state to protect said right as paramount to all private rights, and this court has been compelled to acknowledge it, and its character as an inalienable trust, "theoretically, at least," (language of the court); yet the trust has been, by the courts' decree, set at naught, and the public right in \$50,000,000 worth of foreshore, more valuable for the exercise of that public right than for any other purpose, been passed over as a thing unworthy of consideration.

This public right has been slighted, ignored and relegated to the discard, while the private right has absorbed all the attention of the court.

A permit to build a wharf over the state land has been construed into an exclusive ownership against the state itself, while the burden of building the wharf for which the permit was granted has been treated as non-essential.

Public Right Eliminated.

Of course, this eliminates, in practice, the public right of wharfage to satisfy which the permit was granted, and subverts the foreshore instead, into a private speculative property. From the point of view of the general welfare, the public use was the most benign to which it could be put; private speculation is the most malignant.

That under the latter use, the upland claimant should be able to abstract, for the small Mays parcel, 355 feet frontage, \$85,250 more than the owner a short time ago was willing to take, is in keeping with the attitude of the court and the tenor of the whole proceeding.

The court has in this decision shown that it is obsessed with the idea that the constitutional rights of the people are only "theoretical," and cannot extend to the protection of the people's right to the use of public properties. Doubtless every constitutional provision the people to elect officials to administer public properties would be protected; but the constitutional limitations forbidding the divestiture from the state of these properties, by the said officials are ignored.

The court constantly alludes to the extra legal acts of the state's officials as acts of the state, and confuses the issue by calling such acts acts of the people, even when they are obviously leveled against the interests and properties of the people.

Purpose of the Law Human.

This suggests another misconception, which may be a popular one; that is, that the sacredness and supremacy of the law attaches to the court as the direct exponent of the law, even should it prove recalcitrant to its trust, and defeat the purpose of the law.

The purpose of the law is human. "The law was made for man, not man for the law." Natural law created man and human necessity created civil and statute law.

A law that defeats this human usefulness and subjects man to waste his strength instead of conserving it, is not a true law; it is called into existence only to satisfy some ephemeral interest, usually malign, and soon disappears.

But this decision, if it ever enjoys at all the dignity of law, is of that class. That no law exists upon which it can claim a basis, I have already shown; to show its method of construing the rules of law, I will cite its language upholding the ambiguous act of

FIREMEN'S BAND GETS NUMEROUS INVITATIONS

Musicians Promised Fine Time on Their Trip to New York.

When it became known to the fire departments in the eastern cities that the Portland fire department band would make the trip to New York to attend the International Convention of Fire Chiefs, invitations to visit along the line began to arrive in large numbers.

Chicago, St. Paul, Minneapolis, Milwaukee, Detroit, Buffalo, Boston, Philadelphia, Baltimore, Washington, D. C., Pittsburgh, Kansas City and many other big cities urged that they be given an opportunity to show the band members their city.

"We will be proud to meet you," said the fire chiefs of many of the cities. "We will look forward to a very pleasant visit with you," wrote others.

The 32 firemen who are to take this trip are looking forward to it as one of the greatest events of their life. The trip is to be made at their own expense and on their vacation time. The fire department will not be hampered in any way, as substitutes selected from the eligible list will take the place of the firemen whose vacations cannot be arranged for the time the men will be away.

The funds for the trip are to be derived from a concert to be given by the combined police and firemen's band of 64 pieces, at the Armory on August 14, one of the features of the concert will be the appearance of Virginia Hutchinson, the noted contralto, who will render several selections including a medley of old fashioned songs.

Plans for the trip and the concert are under the direction of Battalion Chief Jay W. Stevens, who was recently elected as the representative from the ranks of the firemen on the relief and pension commission.

1874, repealed in 1878 and until now held inoperative.

Meant to Cover Banks.

The objection to that law by former rulings of the court, and which doubtless caused its repeal was that as an amendment to the acts for sale of tide lands (agricultural) and without specifying how it was to be applied, it stated the Willamette not to be a tidal stream, and that any tide lands which might exist were "confirmed to adjacent owner." If it was meant to cover the banks of the river, it was held to be unconstitutional, at least it hoped to be construed as a reclamation with the foreshore subject to public wharfage, and from this confusion this court was unable to extricate itself.

There are wharf properties in Portland harbor, but no tide lands subject to reclamation, under the tide and swamp land legislation. This error of the court merits a concentrated attention, for it threatens to dwarf the development of the port, and cost the people many millions of dollars. It was not attained by a single false step, but between such opposing positions as the paramount public title for commerce and navigation, and private ownership for speculation, many retrograde steps were necessary. The court says of the act of 1874:

"It is well settled that every presumption will be indulged in to hold a statute valid, and it is only where an act is purely repugnant to the constitution that the courts will hold it void. This is especially true where the act in question has been enacted for many years and acted upon by the officers of the state and the people as valid so that it has become a rule of property." Not one word is said by the court about the repeal of the act in 1878; not one word about the refusal of other courts to recognize it.

Not one word is said about the rule of law, excepting from this general rule quoted as to legislative grants, which are construed thus:

A legislative grant is, indeed, like any other grant, to be construed if possible so as to effect the intent of the grantors; if that intent is doubtful under the statute making it the rule of construction recognized as applicable requires the doubt to be resolved against the grantee in favor of the public; or, in analogy to another familiar principle of statutory interpretation, the construction is to be such as will make it accord with subsequent legislation." (Endlich on Interpretation.)

Subsequent legislation repealed the act, and the courts followed the decision in Johnson vs. Thayer: "It is unreasonable to suppose the legislature intended to grant away the banks of the river, they could not more do that than they could grant away the entire river."

Shin Transposition Successful.

(United Press Leased Wire.) Los Angeles, Cal., July 23.—With a section of her shin grafted to her spine in one of the most delicate surgical operations ever performed in California, 7-year-old Margaret Ebberger is rapidly gaining strength today at the Good Samaritan hospital. The doctors say that, barring unforeseen complications, she soon will be as strong as other little girls. She was a victim of tuberculosis of the spine.

Pardon One Day Late for Publisher.

Bridgewater, Mass., July 23.—Cardenio F. King, formerly a Boston newspaper publisher, is dead at the state prison farm here today, where he was sentenced to 14 years imprisonment for obtaining \$22,000 under false pretenses. Aware of King's approaching death, friends were making desperate efforts to obtain his pardon and were assured by Governor Foss that it would be granted today. King died late yesterday.

RAID ON COLONY AT MILWAUKIE FAILURE; SOMEONE GIVES TIP

Raiders Find Evidence of a Hasty Departure by Men and Women Inmates.

(Special to The Journal.)

Oregon City, Or., July 23.—The raid on the French colony at Milwaukie last night, where it was reported 24 Portland macquereaux and their women live, made by Tom Kay, Governor West's special officer, Sheriff Mass and deputies of Clackamas county and two Multnomah county deputies, did not prove a success. It is evident that someone, with inside information, had tipped off the raid. The first house raided plainly showed signs of the hurried exit of a number of people, as the dinner table was left with empty and half-filled bottles of claret, half-filled glasses, etc. The other houses were in the same condition and only four of the twenty-four men were arrested, and two women.

Cook Is Arrested.

According to appointment, Sheriff Mass and deputy met Tom Kay and started for the houses. A Frenchman who gave his name as L. Lane was met on his way to the car and arrested. He said he was employed at the French bakery, 407 Sixth street, but this was later denied by the proprietor of the bakery.

The party of officers divided, part of them, under the direction of Sheriff Mass, going to a house well up in the residence district of Milwaukie and the rest, under Tom Kay, going to two cottages down near the river. The party under Sheriff Mass found the house, which turned out to be the abode of about ten of the Portland macquereaux, according to neighbors, deserted except for two cooks. The fact had not been cleared after the evening meal and was strewn with empty wine bottles, glasses, etc. The house was well stocked with liquors, men's clothing, etc., and showed that a large number of men lived there. One of the cooks, Adrian Labau, was arrested.

Man Chews Fight.

The party of deputies under Tom Kay fared better. The two cottages were found on the river bank as reported, and, as in the case of the other house, were found well supplied with liquid refreshments, etc. Just below the cottages, on the river bank, were found two men and two women fishing. One of the men, who gave his name as Andre Gabot, but who carried a fishing license bearing the name of G. Masset, showed fight, and was only saved from a stable Frost had collared him and disarmed him of a murderous looking knife. The other man, Julius Pelmas, and the two women, Almonde Selance and Jeanie Dupain, were taken to Island Station where Sheriff Mass and his deputies and their two prisoners were, and the entire bunch was taken to Oregon City and lodged in jail on a vagrancy charge.

Friends of the prisoners supplied \$300 cash bail for the six and they were turned loose about midnight to reappear in court at 2 o'clock today.

Watched for Some Time.

Special State Deputy Kay and the Multnomah county deputies have had Milwaukie under surveillance for some time. "They are only waiting for the existence of this colony of undesirable, but these officials would not give their cooperation. They claimed the Frenchmen were not molesting Milwaukie people and bought their supplies in Milwaukie, and they did not see why they should drive them out. It is thought this raid and the subsequent raids will scare the macquereaux and subsequently break up the colony.

IRISHMEN WARNED NOT TO JOIN ARMY OR NAVY

Dublin Flooded With Leaflets Attacking British, Predicting Defeat by Germans.

(United Press Leased Wire.)

Dublin, July 23.—The police as yet have been unable to find the slightest clue to the authors of a leaflet warning young Irishmen against joining the British army and navy, with copies of which Dublin has been flooded in the past few days. A copy has been found in the private letter box of nearly every residence in town.

After declaring that war between England and Germany is inevitable; that England's cowardice and degenerate population will not fight, and "that she depends on the services of fools from Ireland," the leaflet, which is signed "Vigilance Committee," says:

"Stand aside and have your revenge. Without Ireland's help, England will go down before Germany, she would have gone down before the Boers had the Irish not fought her battles in South Africa. The English know this and they have offered us a bribe called home rule. It is not a law, but, believing us to be a nation of fools, she wants payment in advance, and has sent her warships to our coasts to entrap young Irishmen. Generations yet unborn will curse you who now join England's army or navy, and not alone the dupes who join but also the time-wasting neglect to aid in the crusade against the most immoral army and navy in the world."

PERMIT GRANTED TO INCREASE SURPLUS

(Salem Bureau of The Journal.)

Salem, Or., July 23.—The corporation department has issued a permit to the Union Pacific Life Insurance company to sell \$1,000 of treasury stock, which will enable the company to bring its paid up capital to the \$100,000 requirement under the laws of the state.

This was the point over which there was much litigation between the company and the state insurance department. Insurance Commissioner Ferguson refused to give the company a permit until it had a paid up capital of \$100,000, and finally the stockholders met the legal objection by converting by resolution enough surplus into paid up capital to meet the requirement. When the case was finally decided by the supreme court the permit was issued.

It is the company's intention now to sell this additional capital stock and then return the surplus converted into capital back to the surplus fund.

The stock is to be sold at 200 per cent above par, and the promotion expenses must be limited to 10 per cent of the selling price.

INQUEST IN DROWNING CASE TO DISCLOSE CAUSE OF TRAGEDY

Questions May Be Asked to Throw Light on Fatal Canoe Accident.

Following the arrival from Pendleton last night of Mrs. Fannie Lee, mother of Miss Rita and Miss Carrie Lee, who were drowned in the Willamette river early Tuesday morning, plans for an inquest were begun, and the hearing has been set for 4:30 this afternoon.

After 12 hours of work, unaided by the harbor patrol and given only such assistance as volunteer canoeists and boatmen from adjacent clubs gave him, C. A. Lee, brother of the drowned girls, succeeded in finding the bodies late yesterday afternoon about 150 feet from where they sank near Bundy's landing. A. C. Mitchell, one of the young men in the canoeing party which ended so disastrously, was at the scene part of the time. Arthur Hergt had not recovered from his attack of hysteria and did not go near the river all day.

At the inquest today, these questions will be definitely inquired into: Were either of the two young men intoxicated when they entered the canoe at the Oaks with the young women? Was the capacity of the canoe exceeded when four persons attempted to ride in a boat built for two? Did Miss Rita Lee stand up in the canoe, or was there a scuffle or struggle which led to the capsizing? It was admitted at the coroner's office this morning that such queries would be put to what witnesses may be examined at an inquest.

Among the witnesses to be examined this afternoon will be several waiters employed at the Oaks pavilion, who will be asked concerning the conduct of the party before it started on the fatal canoe trip.

The inquest was called at the instance of the brother of the girls, C. A. Lee, who was not satisfied with the story of the accident as related by Hergt and Mitchell.

Minor questions looking into C. A. Lee's declaration that the harbor patrol made no effort to help him find the bodies may be touched up, though this would not be made a main issue in investigation of the drowning itself.

A. C. Mitchell, who owned the canoe, declared last night that neither girl appeared at the surface after the boat had tipped. He said his craft was an improved style, built with air chambers, which minimized the likelihood of capsizing or of sinking when once tipped over. He said he could swim, but knew the others of the party could not, and his first thought was, after he had helped Hergt to a log raft, to watch for the girls, that he might rescue at least one. The moon, he said, passed under a cloud, making the river so dark little could be seen.

Those who assisted Lee in dragging the bodies of the girls from the river were Ed Ryan, Ray Jamieson, B. E. Humphrey and his brother, Harold Humphrey. Ryan and Jamieson were in a boat which Lee was rowing up and down the river near the spot, and the Humphreys paddled along in their canoes, dragging such hooks as they could find. It was one of the hooks snatching from Lee's boat that caught the body of Rita Lee, and later that of her sister.

The bodies will be taken for burial to Pendleton, where the mother resides. The father, who is at Eugene, Or., has been notified and may arrive today.

EAGLE ATTACKS BABE ON BOAT, GIRL SAVES IT

(United Press Leased Wire.)

Los Angeles, July 23.—For saving the life of a debilitated child, a passenger aboard the steamer Merced from an attack by an enormous eagle, Miss Leona Perkins of St. Helena, Or., is regarded as a heroine. Miss Perkins was pacing on the deck with the child shortly before the steamer reached San Pedro from San Francisco yesterday, when the eagle made its attack. She fought the bird furiously with her fists, seized the child and fled to her stateroom. A member of the crew killed the bird with a shotgun.

If Mrs. Pankhurst has any sense of humor, which is improbable, she ought to be having quite a bit of fun fooling the bobbies these days.

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