

The February term of the circuit court for this county began yesterday morning, Judge F. J. Taylor on the bench. During the interim since the last session the court room has been handsomely renovated and refurnished.

The sawdust and fleas have disappeared, the old semi-circular table, the legacy from a former generation, has gone, and the chairs with raw hide strips in the seats thereof have also gone glimmering through the dreams of things that were.

Handsome paper covers the wall; there is a decorated ceiling, cedar wainscoting, comfortable chairs for the jury, an elevated position for the witness, better accommodation for the comfort and convenience of the judge, the clerk and the lawyers, and ample room for the spectators.

The session began at 10 a. m.: T. G. Boelling and W. C. Logan were appointed bailiffs; jury list called: absent, R. A. Abbott, E. D. O'Neil, F. N. Byrd, W. J. Loomis, J. N. Heckard, Jas. McCann. Following were excused for the term: E. D. O'Neil, Jas. McMullen, W. F. McGregor, Jno. Emberg; excused till Wednesday: J. W. Makers; till Thursday, J. H. Langworthy.

Eva Wallman vs. Joseph Brown, continued; vs. George Smith, continued; J. H. Beddington vs. J. E. Thomas, et al., continued; C. H. Page vs. Astoria Coast T. Co., dismissed; W. E. Warren vs. F. H. Worsley, continued; Fleckenstein & Mayor vs. Hanson, continued; John Douglas vs. Abbie A. Douglas; order re-referred; Thompson & Ross vs. Wm. Beasley; set for trial: I. W. Case vs. Wm. Kyle, continued; G. W. Nutter vs. B. Gallagher; demurrer overruled by consent; Clatsop Mill Co. vs. W. E. Warren; settled and dismissed; Chas. Korpela, et al., vs. Bell, et al.; demurrer overruled by consent; till to-morrow to answer; A. C. Fisher vs. John Kopp; same; City of Astoria vs. J. W. Babbage; for trial; Klosterman & Co. vs. L. Dragovitch; State vs. Thomas Scothler; demurrer sustained and referred to the grand jury.

(This case attracts considerable attention and applies to the cases of Thos. Scothler, George & Barker and M. Herrick.)

Following is the full text of JUDGE TAYLOR'S OPINION.

In the Circuit court of the state of Oregon for the county of Clatsop. The State of Oregon, plaintiff, vs. Thomas Scothler, defendant.

On the 26th day of September, 1887, the defendant was indicted by the grand jury of this county, charged with the crime of purchasing salmon, knowing the same to have been unlawfully caught in the Columbia river. The specific acts by which the defendant is charged in the indictment are set forth in the indictment in the following language:

"The said Thomas Scothler on the 23d day of September, A. D. 1887, in the county of Clatsop and state of Oregon, did wilfully, knowingly and unlawfully, purchase and have in his possession eighty salmon, he then and there well knowing that said salmon had been unlawfully caught and taken in the Columbia river, in said state and county in the month of September, 1887, the price paid for said salmon, and the party from whom the same were purchased, being to this grand jury unknown, contrary to the statutes, &c."

To this indictment the defendant interposed a general demurrer, that the indictment does not state facts sufficient to constitute a crime, and, upon the argument, counsel for defendant urged the following objections to the indictment, to-wit:

First—That the subjects of the act under which this indictment is found are not clearly set forth and expressed in the title, and that therefore, the act does not conform to the requirements of Section 20 of Article IV of the State Constitution.

Second—That the act is in conflict with Section 16 of the Bill of Rights, in this, that the fines provided for in the act are excessive.

Third—That the act is in violation of Section 23 of Article IV of the Constitution, for the reason that it is a local law, passed for the punishment of misdemeanors, and

dollars, to which may be added, at the discretion of the court, imprisonment in the county jail for a term not exceeding one year.

The second section regulates the size of meshes for gill nets and seines and the manner of constructing weir or fish traps, and provides a penalty for the violation of such regulations.

Section three provides that the informer against violators of the provisions of this act shall receive one-half the fine recovered, and makes it a misdemeanor for any prosecuting attorney to fail to prosecute the party accused, upon complaint being made to him of the violation of the act.

Section four provides that the act shall not be construed as to interfere with any establishment or enterprise for the propagation of salmon.

Section five makes it unlawful for the proprietor of any saw mill on the Columbia river or any of its tributaries, or any employe therein to cast, or permit to be cast, the sawdust from said mill into said river or its tributaries, below the cascades of the Columbia river, and the falls of the Willamette river, and provides a penalty for a violation of the provisions of that section.

Section six provides for the imprisonment of a party convicted of a violation of any of the provisions of the act, in default of his paying the fine imposed, and further that all fines and penalties collected for violations of the act shall constitute a fund for the maintenance of hatcheries, for the propagation of salmon, and be disbursed in accordance with the provisions of an act entitled "An act to encourage the establishment of hatcheries for the propagation of salmon in the waters of the Columbia river," and

Section seven provides that all fines imposed by the act shall be enforced and collected as other fines and for jurisdiction of courts to enforce the fines.

Section 20 of Article 4 of the State Constitution under which the first objection to the indictment is urged reads as follows:

Section 20. "Every act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title. But if any act shall embrace more than one subject, it shall not be expressed in the title, such act shall be void, only, as to so much thereof as shall not be expressed in the title."

Defendant contends that the subject matter of prohibiting the purchasing of salmon caught contrary to the provisions of the act of 1878 is not expressed in the title thereof and that, therefore, the act, so far as it relates to that subject matter is void, and further that section six of the act undertakes to provide for the disposal of fines collected for violation of the act in accordance with the provisions of an act entitled "An act to encourage the establishment of hatcheries for the propagation of salmon in the waters of the Columbia river," which latter act is claimed to be void, and that consequently the act under consideration is void, as a whole.

The rule that a portion only of an act being void will not invalidate the remaining portions, provided they can be construed and given effect without reference to that portion which is void, is too well established to admit of argument at this time, whatever disposition might be made of the fines, could it not affect the other provisions of the act.

The title of the act in question is very broad in its terms, being "An act regulating salmon fisheries in the waters of the Columbia river and its tributaries," which in its general import includes every regulation which might be necessary to protect those fisheries from injury or destruction. The object of the constitutional provision, is to prevent matter wholly foreign, and disconnected from the subject expressed in the title from being inserted in the act, and it is sufficient if the subject matter of the act be expressed in the title in very general terms.

Simpson vs. Bailey, 3 Oregon, 515. Washburn vs. County of Shavannee, (Kan.) 15 Pacific Reporter. Ex parte Kohler, on Habeas Corpus, (Cal.) 15 Pacific Reporter, 436. Dallas vs. Redman, (Col.) 15 Pacific Reporter, 367.

State ex rel Coffin vs. County Court, (Nev.) 10 Pacific Rep., 332. If the construction contended for by defendant were to prevail, it would necessitate the title being nearly as long as the act itself and the purpose of the provision of the constitution defeated by its rule. The second objection urged against the indictment is that the fines provided therein are excessive, and might at first thought seem to have some merit in it. It was argued that if a person be convicted of violating the provisions of this law by catching or purchasing one salmon of a value not to exceed one dollar he will be subjected to a fine of not less than two hundred dollars, which it is claimed is excessive for the commission of so slight an offense. But if we take into consideration the magnitude of the fishing industry on the Columbia river, the great danger of its total destruction, unless properly regulated and protected; the ease with which laws for its protection may be violated, and the offender go undetected, of which are matters of common notoriety, and the fact that an offender against these laws commits the offense, not through ignorance, but wilfully and knowingly for the purpose of gain, all these justify the imposition of a severe penalty.

The third objection urged against the indictment, is that the act is unconstitutional in that it is a local law for the punishment of a misdemeanor. Section 23 of Article 4 of the State Constitution, which is claimed the act violates reads as follows:

Section 23. The Legislative assembly shall not pass special or local laws in any of the following cases, that is to say: 1. Regulating the jurisdiction and duties of justices of the peace and of constables. 2. For the punishment of crimes and misdemeanors.

It is contended that as this act applies only to the waters of the Columbia river and its tributaries it is local, and consequently in conflict with the above provisions of the Constitution. And in support of their position counsel have cited a number of authorities which I propose to review briefly.

And it is not of such public notoriety, as to be generally known to the people of the state, and hence, the courts can take no more notice of its character and existence than of the character, location and usefulness of the ordinary highways of the state. In this respect, it is unlike the great rivers and lakes of the state, and the matters relating to them, which are matters of general history and public notoriety.

The court further says: "This is unlike any of the improvements of the Hudson river. That is a river not over one hundred and fifty miles, forming a link in the chain of water communication between the ocean and the great lakes. It acts an important part in the commerce of the whole state, and the citizens of the state, generally, are interested in its navigation. An improvement made in its navigation at any point would not be merely or mainly, for the benefit of the people living or near that point, but would be for the benefit of the entire commerce of that great river, and of the commerce of the whole state."

In the case of The People vs. Supervisors of Chautauque, 43 N. Y., 10, where a clause in the general act of the legislature, "making appropriations for certain expenses of government, and for supplying districts with drainage appropriations," appropriating from the state treasury the sum of \$10,000 for the construction of a bridge over the Cattaraugus creek at a particular locality under the direction of certain commissioners named, and, further providing that the supervisors of the counties of Erie and Chautauque should assess upon their respective counties a moiety of such further sum, not exceeding \$10,000 as the said commissioners should certify to be necessary for the completion of the bridge, the court held that the latter provision was unconstitutional and void, for the reason among others that it was local. The court say, "the provision bears upon the taxable property of a certain marked out locality, the separate taxpayers of that locality and no other, and is outside the lines of those counties."

In the case of Earle vs. the Board of Education of San Francisco, 55 Cal., 489, the court held that an act entitled "An act to amend section 110 of the political code to be known as section 110B, relating to salaries of school teachers in cities having 100,000 inhabitants or more," which established the salaries to be paid to the teachers in the public schools "in all consolidated cities and counties containing more than 100,000 inhabitants," was a local law providing for the management of the common schools, and in conflict with the State Constitution, which prohibits the passage of local laws for the management of the common schools.

It will be observed that in each of the above cases, the law which was adjudged local, applied only to a certain locality, and was of no interest to the people of the state at large. No locality, other than that mentioned in the act, was interested to any extent in the subject matter of the act. The law affected only the inhabitants of particular districts.

The law under consideration in this case undertakes to regulate public fisheries, and while it makes it unlawful to catch or fish for salmon, only in the waters of the Columbia river and its tributaries, in its operation it affects the inhabitants of the whole state.

To say that those people only who are inhabitants of the counties in the immediate vicinity of, or bordering upon those waters, are interested in the regulation and protection of the fishing industry carried on upon the Columbia river, an industry which produces and distributes each year among the people of this state, not only a few hundred, but hundreds of thousands of dollars, would be, to say the least, taking a very narrow view of the subject.

In the case of Allen vs. Hirsch, 3 Oregon, 412, was a case involving the same principal under consideration here. The Supreme court held in that case that "An act to provide for the construction of a road in Grant and Baker counties, to be known as the Eastern Oregon and Winnemucca Road," "An act to provide for the construction of a wagon road up the south bank of the Columbia river from near the mouth of Sandy, in Multnomah county, to the Dalles in Wasco county," was not in conflict with that clause of the Constitution which forbids the legislative assembly passing special or local laws, for laying out, opening and working on light-ways, that is, for laying out, in all special or local laws, within the meaning of the Constitution, because, while the roads in question were built in certain local localities, and might be more convenient to those who inhabit them, nevertheless they were built for the use and convenience of the public, to facilitate travel between different sections of the State, separated by extensive mountain ranges, and therefore, in their nature, general. So far as I have been able to ascertain, wherever a question involving this principle has arisen in the courts of the different States, it has received an interpretation in accord with that given by our own Supreme court in the above case.

In the case of Hayes et al. vs. Territory, 5 Pacific Reporter, 237, the Supreme court of Washington Territory held that a law which placed restrictions upon hunting in certain specified portions of the territory was not a local law, but general, for they say, "its provisions fall without distinction upon all inhabitants of the territory." As early as the year 1809 the courts of Massachusetts rendered upon a statute identical in its nature with the one under consideration, and held it to be a public statute. The act in that case was entitled "An act for the preservation of fish called bass in Dunbar river in Scotland, and in the county of Cumberland," and which court in passing upon the question say: "We are of opinion that the statute referred to is a public statute. It is obligatory on all the citizens, and they must notice it at their peril. We must therefore, ex-officio, take notice of it. Indeed all the laws regulating the taking of fish are made for the public benefit, to preserve the fish, and are public statutes."

Burham vs. Webster, 5 Mass. 265. In the case of Pierce vs. Kimball, 23 Amer. Decis., 537, the Supreme court of Maine held that an act entitled "An act to regulate the survey of lumber in the county of Penobscot," and which act made it unlawful for any person to sell lumber manufactured in said county, unless the same had been taken account of, or surveyed by the Surveyor General, or one of his deputies; or for any person other than the Surveyor General or his deputies to survey lumber therein, was not a special or local law, but a general law, and cities and towns coming or being within the particular locality.

The fourth objection made by counsel for defendant raises the question of the extent of jurisdiction of this state and county over the waters of the Columbia river, where the same forms a common boundary between this state and the territory of Washington.

The act of congress admitting the state into the Union provides (Bill's Code, page 121, Sec. 1) that its northern boundary shall commence at a point one marine

league "due west and opposite the middle of the north ship channel of the Columbia river; thence east to and along the middle channel of said river, including jurisdiction in civil and criminal cases upon the Columbia river

concurrently with states and territories of which those rivers form a boundary in common with this state," and again in section 2 of the same act, "The said State of Oregon shall have concurrent jurisdiction on the Columbia and all other rivers and waters bordering on said State of Oregon so far as the same shall form a common boundary to said state, and any other state or states now, or hereafter to be formed or bounded by the same."

In support of the objection it is urged that the middle of the Columbia river is the northern boundary of the state, and that the giving of concurrent jurisdiction over said river, to the state, is carried with it the right to make arrests in criminal cases, or to serve summons and other process in civil cases, where the crime or cause of action is committed, the cause of action sued upon, arose south of that line.

In giving this state concurrent jurisdiction with Washington territory, over the Columbia river, congress so manifestly had some purpose in view, and it seems to me the purpose was to prevent the question of jurisdiction arising between the two sovereignties, and in the courts thereof of the defendant contained for by counsel for the defendant were to prevail, and a crime was committed, or a civil cause of action arose, at a point very near the middle of the Columbia river, it would be almost impossible to determine whether jurisdiction of the case, belonged to this state or to Washington territory. By giving this state concurrent jurisdiction with Washington territory over the waters of the Columbia river, congress, for all purposes in civil and criminal cases, made the northern boundary of said river the northern boundary of the state. Under this view of the case it is unnecessary to determine the question of the boundary, or extent of jurisdiction of this county. If the salmon caught to have been purchased were caught in the Columbia river, where the same is a common boundary between this state and Washington territory, they were unlawfully caught, and the indictment charges that they were purchased in this county and state. This disposes of all the objections urged upon the argument, but there is another objection to the indictment, one which I consider a valid objection, and which is covered by the general demurrer. The indictment charges that the salmon were purchased by defendant, he "well knowing that said salmon had been caught and taken in the Columbia river."

It will be observed that there is nowhere any allegation that they were so caught and taken. This I consider a material and necessary allegation, and the leaving of it out, was evidently an oversight on the part of the district attorney, in preparing the indictment, and may in all probability be avoided in a new indictment. I think the demurrer should be sustained upon this proposition and the case re-submitted to the grand jury.

P. A. McBeide, District Attorney for the state.

Stott, Waldo, Smith, Stott & Boise and Fulton Bros., for defendant.

Geo. W. Hume vs. A. M. Johnson: order for confirmation of sale; Wiley Holman, et al., vs. Thos. Monteith, et al.: order for confirmation of sale, and order, *quæ pro tunc*, to allow sheriff to file his return.

Adjourned to 1:30 p. m. Upon reassembling for the afternoon session the following grand jury were drawn: B. Gallagher, P. F. Bower, Wm. E. Joplin, H. E. Nelson, W. J. Loomis, J. C. Davis, E. L. Mitchell; sworn, B. Gallagher, foreman.

Anton Huber, Alex. Ohls, Lenard Anderson, Chas. Korpela and John Tenhara admitted to citizenship; jury excused till 9:30 a. m. to day.

Wm. Loeb vs. Fire Ins. Association, limited: argued and submitted; adjourned.

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Yours respectfully, MOSES GRAY, Proprietor Grist Mill. A. F. and A. H. Special Notice.

Stated communication of Temple lodge No. 7 this evening at Masonic hall. Every member and every sojourning brother master mason is requested to attend. The R. W. Grand lecturer, Bro. G. W. Stroud will be present to exemplify the work. By order of the W. M. E. C. HOLDEN Secy.

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