

ABOUT THE CITY.

There were no new cases of any description tried in the Justice Court yesterday.

Raser's Extract Root Beer, the purest.

Raser's Root Beer Superior to all others.

The Chataqua Circle meets this evening at 8 o'clock at the residence of Mrs. C. J. Curtis.

If you want some extra fine photos, Mooers' is the place to get them.

The original Root Beer Extract is Raser's.

Frank Barnes yesterday proved up on a pre-emption entry for 160 acres of land in section 35, township 5, range 8.

For fine wines and liquors call at August Danielson's Sample Rooms.

Remember the Austin House at the Seaside is open the year around.

There will be a bible hour in the Norwegian Evangelical Lutheran church, Uppertown, at 7:30 o'clock this evening.

The Belmont cigar can be had at Chas. Olsen's.

Meany is the leading tailor and pays the highest cash price for furs.

A pre-emption entry for 160 acres of land in sections 29, 30, and 31, township 6, range 8, was yesterday proved up on by A. F. Stoner.

The street cars will not be operated today until the latter part of the afternoon. F. W. Newell, Supt.

For all kinds of job printing, go to Del. Ferguson, upstairs, Astorian building.

The plat of the First Addition to Gearhart Park was filed with the recorder yesterday afternoon. The property contains but fifty-eight lots, but all are choice.

You can get the best 10-cent or two-for-a-quarter cigars in Astoria at Chas. Olsen's.

Fresh fish received at the Albatross Fish market daily. Salmon 10 cents per pound.

The steamer Thompson arrived at this city yesterday at 2 o'clock, and brought the mail which usually arrives here by the morning boat, the connection between train and boat having been missed in the morning.

Don't fail to see and read the World's Columbian Exhibition Illustrated. B. F. Coe, agent.

Buy Raser's Root Extract to make a healthful, refreshing beverage. Sold everywhere.

The Seaside House will be in charge of Charles Ole during the summer season just about to open. Mr. Ole was at one time in charge of Ophir Farm, then the property of Ben Holladay, but now belonging to Whitelaw Reid, of New York.

Parties visiting in Portland can get The Daily Astorian at Handley & Haas' news stand, 150 First street.

Free at Crow's gallery, a life-size crayon with every dozen cabinets ordered. Offer good for 30 days.

A handsome display of dress materials in zephyrs and wash goods can be seen at the store of Shannah Bros. The tasteful manner in which the goods are arranged makes the display one of the best that has been seen in Astoria for a long time.

All our coast exchanges are loud in their praise of the Big Bonanza Co. Liberty Hall, May 29th. Reserved chairs at New York Novelty store.

Del. Ferguson, general job printer, Astorian building, upstairs. First-class work at reasonable rates.

See the programme in another column, for the entertainment at the Methodist church Friday evening May 26th, at 8 p. m. Admission free. Basket collection taken in aid of the piano fund. All numbers on the program by the boys and girls of Astoria.

The chance of a life-time to see Minnie Marden, the little Georgia wonder, Liberty Hall, May 29th. Reserved chairs at New York Novelty store.

Wing Lee has just received a full line of Japanese curiosities and fancy goods. Will sell at cost. 529 Third street.

The owners of the Netarts Beach Hotel, in Tillamook county, are making preparations for a lively summer business. This in one of the most beautiful summer resorts on the Pacific Coast, and one that invariably commends itself to the continued patronage of those who visit it.

A gilt net with 415 corks; no marks on leads or corks has been found. Owner can recover by calling at A. Booth Packing Co., and paying expenses.

Ryan & Co. 527, Third street, have just received a full line of 1893 patterns in wall paper, and comprising all the latest designs and shades, at the lowest prices. Call and see them.

A challenge for a football match under Rugby rules has been received by Mr. F. W. Gunn, secretary of the Astoria Football club, from the Fort Canby club, the game to be played at the convenience of the local players. All who can find time to play are requested to send their names in to Mr. Gunn at the Occident Hotel. The present weather will doubtless put the ground in excellent shape for play in the course of a few days.

The public are cordially invited to attend the entertainment given by Class No. 5, Mrs. Samuel Kimore, teacher, at the Methodist church on Friday evening, May 26th, at 8 p. m. It promises to be very interesting. All the numbers will be of scenes and incidents of importance to all Americans. The views are of much merit and beauty. The program is varied and not too long. Be sure not to miss it and help the young people to buy the piano by dropping your mite in the collection basket.

J. W. Thompson, organist at the M. E. church, wishes to take a few more pupils in music, piano or organ. Advertis, 589, Astor street.

Buy "Pride of Japan" tea. Our own importation; rich, pure, fragrant, and at no higher price than you usually pay for an inferior one. Ross, Higgins & Company.

Decision in the Court Street Cases.

Continued from First Page.

and until their successors were elected and qualified, so that they stood, as far as their right to resign was concerned, just in the position that Crosby was in when his resignation was accepted by the council. In deciding on the validity of their resignation, the Supreme Court of the United States said: "It would seem plain that the office of a supervisor or town clerk could not be terminated until his successor subscribed and filed his oath of office, and that, when the supervisor and town clerk before us supposed their offices were at an end by their resignations, they were in error."

The resignations may be made to and accepted by the officers named, but, to become perfect, they depend upon, and must be followed by an additional fact; to wit, the appointment of a successor and his qualification. "When it is said in the statute that his resignation may be thus accepted, it is like the expiration of a term of office." "In form, the office is thereby ended, but, to make it effectual, it must be followed by the qualification of a successor." Following this case, I am inclined to hold that Crosby continued to be mayor until his successor was elected and qualified. This being the case, Mr. Bergman, in his absence or inability to act, had the right to sign ordinances, and the presumption is that official duty is regularly performed, and that when his signature appears upon one of the contingencies named in the Charter. But, if Crosby absolutely ceased to be mayor upon the acceptance of his resignation, I do not think that this fact would prevent the president of the council from acting as mayor or render his signature to an ordinance a void act. In addition to the section of the charter already quoted, I find this additional provision which seems to indicate an intention on the part of the legislature to provide for any possible contingency that might arise by reason of the absence of a mayor. Section 34 provides: "That in the absence or inability of the mayor, the president of the council shall perform all the duties of mayor, approve all ordinances, etc., requiring the approval of the mayor."

By this section he is not required to sign as "mayor," but to perform the duties of mayor. The law-maker evidently meant something more than is expressed in sections 43 and 47 of the charter; and while the language chosen is not the best or most expressive, I think a fair construction of it, according to its spirit, would cover a case of either death or resignation of a mayor. Statutes of this kind should not be construed in a narrow and technical spirit, but with a view to give effect to the intent of the law-making power. Thus, courts frequently disregard the strict letter of the statute to give effect to its evident intent. This, in *Nell vs. Wilson*, 14th Oregon, page 412, where the laws of the United States gave certain privileges to pilots upon waters forming the common boundary between two states, our Supreme Court, following the spirit of the law, held that the word "state" should be construed to mean and include a territory of the United States. The courts also have frequently construed the word "may" to mean must and shall, and the word "the" to mean a, when the whole act taken together seemed to indicate such an intent, so that in any event, I think that Bergman was not only de facto but de jure entitled to sign the ordinances in question. Every presumption is in favor of the act of a public officer.

Code, page 556. *Dolby vs. Barnes*, 5th Oregon, 192. *Farr vs. Simms*, 24th Amer. Dec. 396. *Hartwell vs. Root*, 10 Amer. Dec. 232. I do not think the claim that Court street was improved in 1872 is borne out by the evidence. I think when the charter speaks of "improvement" it means a substantial improvement of the kind commonly seen in city streets. A single plank laid across a mud-hole might improve the travel on the street, but it would not be a "street improvement" within the meaning of the law. The evidence in this case shows that in 1872 a dirt road was built on some portion of the street, but nowhere its entire width, and a side-walk, more or less substantial, was built on trustles along one side of the street for quite a distance; but this does not come within the terms of the charter which provides that "any street or part thereof, which has heretofore been or shall hereafter be improved by order of the Common Council and the cost thereof assessed upon the adjacent property, and which has been, or may hereafter be accepted by the common council, shall thereafter be improved and kept in repair at the city's expense." In order to be exempt, therefore, from special assessment for street improvement, the party claiming such exemption must prove the concurrent existence of three facts, first, the street must have been previously improved by order of the common council; second, the cost thereof must have been assessed upon the adjacent property; and third, the improvement must have been accepted by the council. Granting the first proposition, for the sake of argument, there is no proof whatever that the cost of the improvement was ever assessed upon the adjacent property; in fact, it clearly appears that it never was so assessed; neither is there any sufficient proof that it was ever accepted by the council. The suggestion that the work was done pursuant to an ordinance,

and that this fact is an equivalent to an assessment on the adjoining property, is unsound. The plaintiffs claim under an exception in the statute, "an exception is to be construed strictly, and not to be extended beyond the plain import of its terms." The plaintiffs have not brought themselves within the exception.

It was also objected that the entries made in the docket of city liens were insufficient to create a lien because there were no marks to indicate whether the amounts were intended to designate dollars and cents or mere abstract numbers. The columns are ruled for dollars and cents, and nobody would be actually misled by the mark of the usual dollar (\$) mark. Our supreme court has held that such an entry as this sufficiently indicated the amount claimed.

DeLashmuth vs. Selwood, 14th Oregon, 319. The objection that there was no levy on plaintiffs' lots is answered by the fact that no levy is necessary; at the moment the assessment was entered in the docket of city liens it became a lien upon the property and no other levy was required.

Freeman on Execution, 282. *Bank of British Columbia vs. Page*, 7th Oregon, 454. A sale without levy transfers the title.

Freeman on Executions, 281, 282. *Bagley vs. Ward*, 37 Cal., 131. *Blood vs. Light*, 33 Cal., 649.

The objection that the date of sale was fixed for a time subsequent to the return day of the warrant is not a vital one; the right of the chief of police to sell the lots by virtue of the city's lien and the warrants held by him before the return day and he could sell the property after that day.

Remington vs. Linticum, 14 Peters, 84. *Freeman on Executions*, section 106. *Wharton vs. Sexton*, 4th Wheaton, 503.

Pettingill vs. Moss, 74 American Dec., 747.

It appeared on the trial that lot 1 in block 70 was assessed to Bowly and Thomson, when in fact it was owned by the Clatsop Mill Co. The law provides that the auditor shall make up his entry from a certificate furnished by the county recorder. An entry so made is sufficient. *City Charter*, page 32, section 85. *Hawthorne vs. East Portland*, 13th Oregon, page 410.

Plaintiffs also object that the notices contain nothing to show that the city intended to improve this street at the expense of the adjacent property holders. As already shown, there was no other way that it could be lawfully improved. The city had no right to make this improvement at the expense of the general public and the plaintiffs being presumed to know the law, must be presumed to have known this, and it was not necessary to set out matters of law in the notice.

While some of the proceedings in this matter were not as should be used as precedents for regularity, and are, in some respects, defective, I do not believe there are any such vital defects as would render them void. It is not the business of the court to quibble or seek for faults in order to set aside proceedings of this kind, but rather to disregard technicalities and irregularities in form, so long as the law is carried out in substance. In the case at bar, the city council had jurisdiction over the subject matter. In the exercise of such jurisdiction it gave notice, sufficient, in my judgment, to give it jurisdiction over the parties and the property assessed. The plaintiffs all reside in Astoria; all knew of the proceedings, and knew that the city was making this improvement with the intention and under the belief that the adjacent property was liable for the cost of it, and that such cost had been properly assessed against said property; and, knowing all these facts, they made no objection whatever to such improvement. Some of them went so far as to contract with private parties to fill the street to the grade in front of their lots; others negotiated with the city about doing the work in front of their lots. They did not then complain of the alleged irregularities that they now urge, and, so far as the testimony shows, never apprised the city of their objections until the work was completed. By this course of conduct they are completely estopped to complain now.

Elliot on Roads and Streets, page 418, 419. *In re Cooper*, N. Y., 507. *Hawthorne vs. East Portland*, 13th Oregon, 410.

Curtis vs. Water Co., 20th Oregon, 34. *Wright vs. Tacoma*, 19th Pacific Rep., 42.

State vs. Morrilstown, 34 N. J. Law, 445. *State vs. Mayor*, 40th N. J. Law, 244.

Other objections were ably urged by counsel for the plaintiffs; in fact nearly every objection that could possibly be suggested in a case of this kind has been made by the able counsel in this case, and while the case is not free from difficulties, I am of the opinion, for the reasons herein stated, that the defendants are entitled to a decree dismissing plaintiffs' bill.

And it is so ordered.

For sale by J. W. Conn, Druggist.

DR. GUNN'S IMPROVED LIVER PILLS ONLY ONE FOR A DOSE

A WORD TO LADIES. These pills are so different in taste, smell and action from others, that they might be called a medicated confiture. Some suffering from headach and those with hollow complexion who cannot take ordinary pills are delighted with them. They make the skin beautiful, free from blotches and pimples. See Rosanko Med. Co. Philadelphia, Pa.

DR. PRICE'S Cream Baking Powder The only Pure Cream of Tartar. No Ammonia; No Alum. Used in Millions of Homes; Years the Standard.

WANTED. GIRL FOR GENERAL HOUSEWORK CALL in the evening at 107 Jackson street.

EMPLOYMENT FOR MAN AND WIFE. Work of any kind. Address "Work" P. O. Box 541 city.

FOR SALE. THE STEAMER DISPATCH—FOR FURTHER particulars apply to Aberdeen Packing Co. Ilwaco, Washington.

50 ACRES @ \$25.00 PER ACRE IMPROVED farming land with fruit trees, 20 acres cleared, 20 acres pasture. Dwelling house, ware house and other buildings. Half mile from Steamboat landing at Brookfield, by boat or road. Inquire of owner on premises MRS. H. E. STECKLER.

CHEAP A FEW CHOICE LOTS IN ADAIR'S Astoria-Easy terms. See Frank Spittle attorney at law 175 Cass street.

ROOMS TO RENT. THE MAIN STREET HOUSE HAS BEEN newly furnished throughout; nice rooms for rent by day, week, or month, by proprietor and manager, MRS. H. SPELLMOR.

COTTAGE NEXT DOOR TO E. C. HOLDEN'S. Seven rooms and basement for wood. Inquire next door.

ROOMS IN A GOOD LOCATION FOR a housekeeper, No. 275 Main Street.

NICELY FURNISHED ROOMS BY DAY, week or month, terms very reasonable at the Ortel, 716 Third Street.

LOST. ABOUT 200 FATHOMS WRB. MARSH L.L.S. 15 ply twine, on the night of May 16th, off Ft. Stevens. Finder will be rewarded by applying to Kinross' cannery.

MISCELLANEOUS. CALL ON P. BAKER, 43 THIRD STREET and have your clothes dyed and cleaned.

CEO. McLEAN, CORNER OLNEY AND A- for streets, does a general business in blacksmithing and repairing.

Seaside Saw Mill. A complete stock of lumber on hand in the rough or dressed. Flooring, Rustic, Ceiling, and all kinds of finish, Moldings and Shingles; also Bracket Work done to order. Terms reasonable and prices at bed rock. All orders promptly attended to. Office and yard at mill. H. E. L. LOGAN, Prop'r. Seaside, Oregon.

NOTICE. I will be glad to receive any items concerning social events that residents of Astoria desire to have published in the society columns of the Sunday Oregonian. Such notices must reach me not later than Thursday evening of each week. JOHN R. RATHOM, Oregonian Correspondent, P. O. box 589

ROSS, HIGGIN & CO., Butchers - and - Grocers, Astoria and Upper Astoria.

Fine Teas and Coffees, Table Deli cases, Domestic and Tropical Fruits, Vegetables, sugar cured hams, bacon, etc.

CHOICE FRESH & SALT MEATS

CAMPBELL BROS. (Successors to Warren & Campbell), WARENTON, OREGON, Dealers in

DRY GOODS, GENTS' FURNISHING GOODS, Hats, Caps, Boots, Shoes

STAPLE GROCERIES FANCY Hardware, Iron and Steel, Crockery, Glassware, Woodenware, Notions, etc., Hay, Grain, Flour and Feed.

NOTO: "Small Profits on Cash Sales."

HUNTER & Mergens, Proprietors of the Portland Butchering Co.'s Markets

Corner Second and Benton streets, Corner Third and West Eighth streets.

Foard & Stokes GROCERS Dealers in Glassware, Crockery, Ship Supplies, Tobacco, Wines and Fine Whiskies, Fine Teas and Coffee a Specialty. The Finest Display of Fruits in the City, Fresh on Every Steamer.

Corner Third and West Eighth streets.

MACHINE SHOP JAS. DALGITY, Prop'r. (Successor to Arndt & Ferchen.)

Boiler Repairing and Cannery Work. Repairing of River Craft a Specialty. Machine Work of all kinds done. Shop, foot of Lafayette St.

ASTORIA IRON WORKS, Concomly street, foot Jackson, Astoria, Oregon.

General Machinists & Boiler Makers Land and Marine Engines, Boiler work, Steamboat and Cannery Work a Specialty.

Castings of All Descriptions Made to Order at Short Notice.

JOHN L. FOX, President and Sup'r. L. FOX, Vice President

DR. GUNN'S IMPROVED LIVER PILLS ONLY ONE FOR A DOSE

A WORD TO LADIES. These pills are so different in taste, smell and action from others, that they might be called a medicated confiture. Some suffering from headach and those with hollow complexion who cannot take ordinary pills are delighted with them. They make the skin beautiful, free from blotches and pimples. See Rosanko Med. Co. Philadelphia, Pa.

For sale by J. W. Conn, Druggist.

SEND FOR SAMPLES

Our Stock Represents Over 1900 Styles. Trouserings, Overcoatings, Suitings.

PRICES \$5 TO \$50.

SAMPLES, SELF-MEASUREMENT RULES, AND TAPE-LINE MAILED FREE.

Nicoll TAILOR 126 FIRST STREET, PORTLAND, OREGON.

Money for St...

Worth more than standard value—worth two for one for the World's Fair—and more than that to you.

We are selling half-dollars for a dollar a-piece. You get a

Original in Design. World's Fair Souvenir Coin for a Dollar Beautiful in Execution.

A Work of Art in Itself.

We devote the entire amount towards developing and ennobling the People's Great Fair.

Souvenir and Rare Coins as an Investment.

Face Market value.

U. S. \$5 Goldpiece 1822 5.00 900.00

U. S. 1804 Silver Dollar 1.00 900.00

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U. S. 1793 Copper Cent (Ameri) .01 50.00

Queen's Jubilee 5-Sovereign, Eng. 24-33 32.00

Napoleon's 100-day 5fr., French. 1.00 4.00

King William Coronation, Ger. 1861 .66 1.25

German "Peace" Coins 1871 .66 1.25

This will be the best investment you ever made— A World's Fair Souvenir Coin— A National Heirloom for only \$1.00.

Under Act of Congress we have 5,000,000 Souvenir Coins, of the denomination of 50 cents each. That the money may go as far as possible, and that all the people may have a chance to procure these artistic and patriotic souvenirs of their own Exposition, we have resolved to offer the whole issue for sale—at \$1.00 each.

Apply to any Bank, or send Post Office or Express Money Order, Bank Draft, or Registered Letter for as many coins as you wish, with instructions how to send them to you, to

Treasurer World's Columbian Exposition, CHICAGO, ILL.

J. G. NIEMI, North Pacific Brewery

Has just received a fine line of WEDDING PRESENTS

Consisting of Silver Bon Bon Dishes, Fruit Dishes, Berry Dishes, Nut Bowls, Mustard, Forks, Biscuit Jars, Celerly Glasses, Hair Pin Trays, Pin Cushions, Picture Frames, Mirrors, etc., all new goods and latest designs.

Apply to any Bank, or send Post Office or Express Money Order, Bank Draft, or Registered Letter for as many coins as you wish, with instructions how to send them to you, to

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