

WILL TEST NEAR BEER ORDINANCE IN THE COURTS

Joe Mitchell, the Roseburg brewer, who has been doing a big business in Eugene with his near beer, arrived here last evening and after an interview with the several dealers who have been handling the beverage here he met them collectively during the evening. After a thorough discussion of the matter it was decided to employ attorneys and to keep on selling the drink so an arrest would be made with a view of testing the validity of the ordinance in the courts. It is said that two of the dealers here are selling the drink this morning, as usual, but others were willing that someone else should be the one to go into court.

STANDARD OIL CO. FILES ANSWER AGAINST REHEARING OF CASE

Chicago, Sept. 16.—Counsel for the Standard Oil Company of Indiana in an answer filed to the petition of the government authorities for a rehearing of the appeal from Judge Landis' judgment fining the company \$25,000 for violation of the anti-trust laws, filed today, upheld the decision of Judge Groscup, Baker and Seaman, of the United States circuit court of appeals, reversing the judgment and lifting the burden of the enormous fine, as good law, amply justified by the records of the case.

Point by point the answer, which was formally placed on record by Colonel R. W. Stewart, general attorney for the Standard Oil Company in Chicago, takes up the arguments of the petition for rehearing, which sets forth alleged errors and particularly suggested that the upper court erred in its understanding of what the judge had really said concerning previous offenses by the Standard Oil Company of Indiana of the Standard Oil Company of New Jersey.

The answer further alleges that Judge Landis referred to the New Jersey corporation as the "real defendant," and the Indiana Company as the "nominal defendant."

The answer of the company says: "It is urged by counsel that the court should give consideration again to the purpose which congress had in the passage of the act making it criminal for shippers in interstate commerce to accept or receive commissions from the lawful, published transportation rates, viz: to strengthen and make more effective the provisions and great purpose of the interstate commerce act, which was (as counsel quote from the rulings of the supreme court of the United States), 'wholly seeking to prevent unjust and unreasonable discriminations of equality of rates as to all and to destroy favoritism, these last being accomplished by requiring the publication of tariffs from such tariffs and forbidding rebates, preferences and all other forms of undue discrimination, and to compel the carrier as a public agent to give equal treatment to all shippers.'"

The answer further alleges that Judge Landis referred to the New Jersey corporation as the "real defendant," and the Indiana Company as the "nominal defendant."

competent proof of that fact, or attempt so to do. But nothing of the kind was done. The contrary is the fact: the defendant is prosecuted for receiving the same rate as was open to other shippers under substantially similar circumstances and conditions, and because it did not pay a rate three times as much as other shippers in the Chicago switching would have been compelled to pay.

Again, if the issue of discrimination of rates as between defendant and other shippers over the defendant's own line, it is in behalf of defendant which is offered to prove that contention and to show that the 6-cent rate given to defendant was open to all, was admissible, and could not properly be objected to by the government or excluded by the court. But such evidence presented by the defendant to the court and sought to have admitted to the jury was objected to by the government and excluded, and the door to such proof was kept tightly closed from the jury. For instance, Hollands, the Alton Company's rate quotation clerk, testified that the Alton



JOHN D. ROCKEFELLER

Head of the Standard Oil trust, which has successfully withstood all attempts toward legal restrictions upon its operations.

issued and had in force in 1903 35¢ commodity tariffs of the same kind and character as the 6-cent commodity tariffs under which the defendant's transportation in question took place, and that in 1904 there were 35¢ such commodity tariffs, and in 1905 there were 42¢, and that rates were quoted under these tariffs (Record, 448). Defendant offered those tariffs in evidence to the jury so that the jury might see how other shippers were treated; but objection of counsel for the government to them was sustained and they were excluded. Defendant then sought to have admitted to the jury further testimony of Hollands (which was given to the court on his voir dire but out of the hearing of the jury), to the effect that during the period in question he regarded this rate of 6 cents as the lawful rate from Whiting to East St. Louis, and so would have quoted the rate to any one applying. It is clear that the Alton's traffic department regarded the filing with the Interstate commerce commission of the tariff which in terms applied Chicago-East St. Louis rates to Whiting-East St. Louis shipments as in legal effect the filing of the rates so applied; and such offered testimony was that the Alton, so thinking, had numbers of tariffs naming rates from Chicago, which were not filed with the interstate commerce commission, but which under these filed application tariffs were applied from Whiting, Indiana; and as Hollands informed the court, they "did it on every occasion" (Record, 462-66). And every occasion sought by other testimony of Hollands to show that the Alton so dealt with these tariffs in question (Record, 397-8). But all this evidence was objected to by the government and excluded from the jury by the court. So, again, defendant sought to prove the testimony of Wann (who was the Alton's general agent during all the period of 2 1/2 years in question except the last three months thereof, and was a witness for the government), that the rate on petroleum and its products from Whiting to East St. Louis during the period and over the route in question, was not 18 cents. But this was also objected to by the government and excluded by the trial court (Record, 357-8).

Now obviously, this evidence, if admitted, would have tended to disprove any contention that the Alton practiced any discrimination or inequality as between the shipping public, or showed any favoritism to the defendant over others, in applying the 6-cent tariff and not the alleged 18-cent rate to the defendant's shipments in question—because if the Alton rate department regarded the 6-cent rate, and not an 18-cent rate, as the lawful rate, any shipper who might apply would have received the same 6-cent rate which was given to this defendant."

Then follows that part of Judge Landis' opinion quoted in the petitioner's brief.

Following, on page 1050 of the record, the trial court again said: "The nominal defendant is the Standard Oil Company of Indiana, a million dollar corporation. The Standard Oil Company of New Jersey, whose capital is one hundred million dollars, is the real defendant. This is so for the reason that if a body of men organize a large corporation under the laws of one state for the purpose of business of carrying on business throughout the United States, and for the accomplishment of that purpose absorb the stock of other corporations, such corporations so absorbed have thenceforward but a nominal existence. They cannot initiate or execute any independent business policy, their elimination in this respect being a prime consideration for their absorption. So when after this process has taken place a crime is committed in the name of such smaller corporation, in fixing punishment the law

will consider that the larger corporation is the real offender. And where the only possible motive of the crime is the enhancement of dividends, and the only punishment authorized is a fine, great caution must be exercised by the court lest the fixing of a small amount encourage the defendant to future violations by esteeming the penalty to be in the nature of a license. The defendant argues that to hold it for 1452 offenses would be a violation of the constitutional prohibition against the imposition of excessive fines, and it is urged that congress could never have intended to confer upon the court such power. It is the view of the court that for the law to take from one of its corporate creatures as a penalty for the commission of a dividend producing crime less than one-third of its net revenue accrued during the period of violation falls far short of the imposition of an excessive fine, and surely to do this would not be the exercise of as much real power as is employed when a sentence is imposed taking from a human being one day of his liberty. In this connection it may be observed that the figures exhibiting the net earnings of the Standard Oil Company of New Jersey during the period covered by this indictment are exceedingly instructive because of the peculiarly intimate relation between the character of the crime and the revenues of the offender."

It is readily seen, therefore, that the criticism of the extract taken from this court's opinion is in the highest degree hypercritical. Properly, the aggregating circumstances or matters which may be looked into should be in some way connected with, or the immediate consequence of, the offense for which the defendant is on trial (1 Bishop, Criminal Law, Section 848 and notes). The trial court observed no such limitation.

Counsel can find no authority to support that which the trial court did and this court condemns in fixing their unheard-of fine. The provision of the bill of rights in the eighth amendment to the federal constitution forbidding the imposition of excessive fines enacts a cherished principle of the Magna Charta, which is the foundation of American and Anglo-Saxon laws and jurisprudence, and which required that fines imposed for faults or crimes should be "after the manner of the fault," or "according to the heinousness of it," and forbade fines so large as to deprive a defendant of that which was necessary to his vocation or livelihood.

The petition to extend the water main south of the alley through the alley, was handed back to the council by Chairman Harbaugh, who stated that the plan had not yet been turned over to the city.

ATTEMPT LIFT OF GOVERNOR FORT.

Seagirt, N. J., Sept. 12.—An attempt to assassinate Governor Fort, of New Jersey, was thwarted by the vigilance of a postoffice employe, who discovered a cleverly contrived infernal machine in the mails. Had the governor opened it in the usual way there is little doubt but what it would have killed him. The governor's mail has been carefully watched since the recent crusade against the violators of the law at Atlantic City.

That the would-be assassin had a grim sense of humor was evidenced by the following message written on a bit of paper to the governor: "Please notify us promptly of any change in your address," while another read, "You will know me better after we are acquainted."

Another line by which it is believed the sender sought to give the impression that the machine was sent by a foe of constitutional government instead of a personal enemy of the governor, read: "Any gun against this rotten government."

Governor Fort would not discuss the matter in any way, but it is said today that officials of the postoffice at Philadelphia will hereafter officially scrutinize all packages of mail matter reaching the Philadelphia office before posting to the governor.

Near Dexter, Sept. 14, 1908, to Asa E. Tilton and wife, a son.

I will be at the Bangs Livestock Company's stables in Eugene Friday and Saturday to buy one or two cars of horses, ranging in weight from 1100 pounds up.

TOM WATSON, Seattle, Wash.

SUBSCRIBE FOR THE GUARD

EIGHT MORE BLOCKS OF STREET PAVING ORDERED

At an adjourned session of the city council last evening contracts for the pavement of West Eighth street from Charnelton street to Monroe street, six blocks; East Seventh street from Oak to High, two blocks, and 164 feet of the alley between East Sixth and East Seventh streets from Willamette street east were let to the Warren Construction Co., at the same figure for which the company is doing all of its paving in this city.

The contract for building the curbing on West Eighth street and the East Seventh street contracts was let to T. H. Ellis at 35 cents for straight and 40 cents for curved curbing, his bid being three cents less for each kind than that of the Warren Construction Co. E. R. Mumme was awarded the contract for the drainage on West Eighth street. The Warren Construction Co. will do the drainage work on East Seventh street.

The ordinance assessing the cost to each property owner on several different stretches of pavement were read and passed.

The ordinance licensing vendors of ice cream, etc., on the streets at 120 per quarter was passed.

Four sewer ordinances were passed providing for the construction of sewers in the alley between Willamette and Oak near Fremont, in the alley between Oak and Pearl from Fifteenth to Sixteenth, in the alley between Ninth and Tenth from Jefferson west one block, and in the alley between Eleventh and Twelfth from Jefferson street—two blocks west.

The petition to extend the water main south of the alley through the alley, was handed back to the council by Chairman Harbaugh, who stated that the plan had not yet been turned over to the city.

City Attorney Bean reported that there were no obstacles in the way of opening the alley through the Oso large as to deprive a defendant of that which was necessary to his vocation or livelihood.

WEEKLY REPORT OF EUGENE MARKET

Mohair—12. Chittim bark—4c. Wool—15c. Poultry, Eggs, etc. Onions—Per cwt., \$2.50. Creamery Butter—Per roll 63c. Hens—Per lb., 16c. Fry—Per lb., 12c. Dairy butter—Per roll, 50¢@60c. Geese—Per lb., 6c. Ducks—Per lb., 11c. Turkeys—Per lb., 15c. Fruits, Vegetables, Etc. Potatoes—New, 60¢ per hundred. Lemons—Per case, \$4.00. Oranges—\$3.25. Livestock Market. Good cows—2¢@2 1/4c. Steers—Per lb., 2 1/2¢@3c. Good prime dressed veal—5¢@6c. Mutton on foot—2 1/2-3c. Fat hogs on foot—5 1/2¢@6c. Fat hogs—dressed—7c. Grain and Feed. Flour—\$4.40. New hay—\$3. Baled hay—\$10 and \$12. Timothy Hay—Per ton, \$16. Oats—Per bushel, 35¢@40c. Bran—Per ton \$25.50. Mixed feed—Per ton \$30. Shorts, per ton—42c. Wheat—Per bushel, 55c. Rye—Per bushel, 35c. Clopped corn—Per ton, \$30. Cracked feed—Not in market.

HOP OUTLOOK DISCUSSED.

Portland, Sept. 17.—Interesting times are promised in the Pacific Coast hop market this fall. From the way the hops have been gobbled up by the buyers at this early stage of the year, it looks as if it will be more of a dealer's market than anything else. Growers' sales are likely to play but a small part in the transactions, as when the crop is all harvested it will very likely be found that but a small part of it remains in the possession of producers. The percentage of the Oregon crop sold to dealers' control now is from 60 to 75 per cent, based on the maximum estimated output of 100,000 bales. If the crop comes down to 80,000 or 90,000 bales, as it is likely, it will be seen that but a small quantity of independent hops will be marketed. The California crop is closely sold up, not to exceed 15,000 bales, it is said, remaining in grower's control. The Washington crop is for all purposes, entirely off the market already.

No one denies that the bulk of the Pacific Coast growth in 1908 is in dealers' control, but what object the buyers have in view concerning the deduction cannot, of course, be stated. Whether it is the carrying out of the programme of a combination of influential merchants, or whether it is the beginning of a battle royal between speculative buyers and short sellers remains to be seen. At any rate, the hops have passed into strong hands, and this should preclude the possibility of low prices, for a time at least.

There is abundant proof of the fact that buying operations, before the hops were picked, were on an enormous scale. Every hop man who has been in the country in the last few weeks has found this out. H. C. Wahlberg, who returned yesterday from a trip on both sides of the river, and who estimates the crop at 80,000 bales and no more, says that from 65,000 to 70,000 bales are already out of the hands of growers. "The dealers are keep-

THE PEER OF CHILDREN'S COMBINATION SUITS.

INCLUDES TWO PAIR PANTS ONE KNICKERBOCKER, ONE PLAIN. THIS stylish Combination suit, with two pairs of knee pants, is guaranteed to stand the hardest wear without ripping or tearing.



The Pants are taped and sewed twice. The Plain Pants are made with Double Seat and Knees from seam to seam.

Riveted buttons that can't pull off. All edges are double stitched; cloth scientifically shrunk—and sanitarily camphorated to protect it from moths and germs. Wearbetter Combination suits give the best value for the least money—\$5.00 for the suit with extra pants.

STANLEYS 612 Willamette St. EUGENE, OREGON

Kodol Guaranteed To Give Satisfaction or Your Money Back

FOR INDIGESTION AND DYSPEPSIA. RELIEVES SOUR STOMACH, BELCHING, ETC. E. C. SWITT & COMPANY, CHICAGO, ILL.

ing this quiet," said Mr. Wahlberg. "but it is a fact, nevertheless." Klaber, Wolf & Nutter report that hops are coming down very light in Washington. "It is not possible," said Herman Klaber, "that Western Washington can have over 5,000 bales. The Yakima crop is figured there at 4000 to 5000, but I place it at 6,000 to 7,000 bales. Our California estimate is 75,000 bales, and for New York 25,000 bales is now the accepted estimate of Eastern dealers. We have not changed our estimate.

"This will easily be the best crop in point of quality Oregon has ever seen. There are practically no reports at all of diseases in the yards," Klaber, Wolf & Nutter's London cable, received yesterday, said: "There is no change in the crop market. Demand is only for choice, Barth & Sons, of Nuremberg, called that their estimate for the continent remains at 1,100,000 cwt. Heller, of Prague, called: "Crop is coming down over our estimates."

Outlook for Oregon Potatoes. The recent report that there would be no demand at all for Oregon potatoes at profitable prices is slightly in error, for the report really meant to say that there would not likely be much of a market until after the turn of the year. Sam Broadus, who gave the interview, and who is accredited with being well up in the market, states that the interview did not go quite far enough.

"The potato business," he says, "will be dull, very dull here for the next two or three months. The California river crops are almost as heavy as a year ago, while the quality is among the best I have ever known for that growth. Last year while the rivers produced heavy yields of potatoes, the quality was unusually bad. A year ago the river crops of California were somewhat badly hurt in the region of their pocketbooks by holding their potatoes for higher prices. This year they are going to sell almost everything as soon as possible—in fact, they have already started. They will sell freely until the bulk of the crop is moved.

Outside of the river section there are but few potatoes in California this year. When the river growers clean up—and that will occur late in January or February at the present rate of selling—there is going to be a heavy demand for Oregon. Select Oregon will find a demand all the time.

Outlook for Oregon Onions. While some interests may not agree with Mr. Broadus in all his forecasts of the market, the trade in general is of the opinion, like Mr. Broadus, that Oregon onions will not sell at a high figure. Mr. Broadus told the Journal today: "Seventy five cents will be a good price for five cents will be a good price for Oregon onions to growers this year, and if I was a grower I would take that sum. California, Colorado, and Nevada all have record crops of onions this season, and at the present time they are selling in California around 50c.

Poultry Generally is Dull. Poultry continues dull, receipts being slightly heavier than usual for the first of the week and the demand far from active. For the time hens move most readily, offerings of chickens being too heavy for the demand. For ducks, young geese and turkeys there is a limited call. Prices even of continued heavy receipts the outlook is for a slow market and low price level at the end of the week. Eggs were firm at yesterday's quotations.

Too Much Course Veal Coming. Dealers in country dressed meat complain of the quality of much of the veal now being sent to this market. Some of the stuff sent in as veal is so large and coarse that it comes nearer being beef than veal, and for the meat of this kind there is small demand. Fancy veal moves readily at top figures, which were

not changed today. Pork was steady today with a price range of 6 to 7 1/2 cents a pound. Receipts were moderate. Butter Firm and Unchanged. Strength prevails in the city creamery butter market, and with the leading brands of country make the situation is the same. In some quarters the supply is short of requirements and orders are filled with difficulty. But for conditions in other markets prices here would probably be advanced. As it is there is little likelihood of any change in the immediate future. Receipts from the outside today were 165 cases. Egg Market is Higher. Receipts of eggs along Front street are generally quoting a higher price today. While some are still offering supplies at 27 1/2c, others are obtaining 28c and in few instances at 28 1/2c. The tendency of the market is higher, because of the smaller arrivals.

Brief Notes of the Trade. Union Oil Company today announced an advance of 1/2c a gallon on coal oil in bulk and cases and 1c a gallon on gasoline, following the recent rise of Standard Oil. Bean market is somewhat easier because of the nearness of the season's opening for the new crop. Grape prices are demoralized somewhat owing to the liberal supplies of light-colored Tokays. Price ranges from 75c to \$1.25. There is a wide range in tomato prices owing to the difference in the size of pack and quality. Some loose-packed stuff is not bringing over 25c a box while select quality and tight pack is selling at 40¢@50c. Portland Livestock Market. Portland Union Stockyards, Sept. 16.—The livestock market is in good shape with the exception of sheep, the latter being rather dull and slow although no change in prices is shown at the moment. The cattle market is extremely firm for select stuff and an advance of 25c is shown in the price. One lot of steers sold today at \$4.25, this being the extreme top figure for the present season thus far. The market is excellent for calves and if car lots of fat stuff, not too heavy, arrive a still better price is likely, according to commission men. Hogs—Best east of mountains, \$7.00 ordinary, \$6.75@7.00; blockers and China fats, \$6.00; stockers feeders, \$5.00. Cattle—Select east of mountains, steers, \$4@4.25; medium steers \$3.50@3.75; ordinary, \$3.25@3.50; best cows and heifers, \$2.75@3.00; medium cows, \$2.00@2.25; stags, \$2.50@3.00; bulls, \$2.00. Sheep—Best wethers, \$2.50; ordinary wethers, \$2.00@2.25; lambs \$4.00, straight ewes, \$2.50; mixed lots, \$2.50@2.75. Veal—Choice young calves, \$4.50; heavy and rought, \$3.50@4.00. Portland Quotations. Wheat—Track prices, Club, 88c per bushel; forty-fold, 90c; Turkey red 90c; five, 88c; bluestem, 92c; Valley, 88c. Barley—Feed, \$25 per ton; rolled, \$27.50@28; brewing, \$25.50. Oats—No. 1, white, \$18.50@19 per ton; gray, \$27.50@28. Flour—Patents, \$4.85 per barrel; straight, \$4.05@4.55; exports 3.70; Valley, \$4.45; sack graham, \$4.40; whole wheat, \$4.65; rye, \$5.50. Millstuffs—Bran, \$26.50 per ton; middlings, \$32; shorts, country, \$30 per ton; city, \$29; U. S. mill chop, \$24. Hay—Timothy, Willamette Valley, ordinary, \$11; Eastern Oregon, \$16.50 per ton; mixed, \$13; clover, \$9; alfalfa, \$11; alfalfa meal, \$20. Vegetables. Potatoes—Buying price 80¢@81 per hundred; sweet potatoes, 2c per pound. Melons—Cantaloupes, 75¢@81.00 per crate; watermelons, 3/4¢@1c per pound; casabas, \$2.00@2.50 per dozen.

MAYOR MATLOCK BECOMES AN EAGLE

Mayor J. D. Matlock became a full fledged Eagle last night, having been given his pinions by Eugene Aerie No. 275. It is said His Honor performed the stunts of initiation to the great satisfaction and glee of the members of the Aerie. This order is strong in Eugene and is growing rapidly. The city aerie owns a business lot on Willamette street near Fifth and will probably erect a home of its own on the lot some time in the near future.

MEXICO'S HOLIDAY CELEBRATED.

City of Mexico, Sept. 16.—Today's celebration of the ninety-eighth anniversary of the independence of Mexico, has been unusually brilliant and enthusiastic. The day's programme included the customary civic ceremonies at Chapultepec in the morning, a military parade reviewed by President Diaz in the afternoon, and the formal opening of Congress this evening. The streets were elaborately decorated with foreign flags, the American colors being very much in evidence. Many visiting Americans witnessed the festivities and ceremonies of the day.

HAWKING MACHINES.

Catarrh Sufferers are Nothing But Hawking, Spitting and Blowing Machines, Says an Authority. Is it possible that in these days when cleanliness and sanitary reform is being preached in the churches, schools and at public gatherings, that thousands of people will continue to suffer from catarrh, when there is an absolutely certain remedy always at hand. Hyomei (pronounced High-oh-mey) is a pleasant, medicated and antiseptic air. Breathe it and it will cure catarrh. It will stop foul breath, watery eyes, and crusts in the nose, in a few days. It is guaranteed by the Hull Drug Co. to do it or money back, and such a guarantee ought to be strong enough for anybody. Entirely Cured by Hyomei. Having suffered from catarrh for about two years, and having tried numerous remedies without any satisfactory results, I finally tried Hyomei, and am glad to state that after using about one and one-half bottles I am entirely cured. I have recommended it to others with satisfactory results.—C. N. Lindsay, 407 East First Ave., Mitchell, S. D. A Complete Hyomei outfit, consisting of a strong hard rubber pocket inhaler and a bottle of Hyomei, costs only \$1, and extra bottles, if afterward needed, cost only 50 cents each at Hull's Drug Store or direct, by mail, charges prepaid, from Booth's Hyomei Co., Buffalo, N. Y. Hyomei also cures Asthma, Bronchitis, Coughs and Colds, Croup of infants and any inflammatory disease of the respiratory tract.