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LIQUOR CASES

DECIDED BY JUDGE HARRIS

CIRCUIT COURT REVERSES DECISION OF RECORDER'S COURT IN GAY AND GUE CASES

SETS ASIDE AND ANNULS VERDICT OF LOWER COURT—THESE WERE CASES WHEREIN GAY AND GUE WERE FINED FOR VIOLATING CITY LIQUOR LAW

Judge Harris, of the circuit court, this morning handed down his decision in the cases of W. C. Gay and W. R. Gue against the city of Eugene, writ of review from the recorder's court, in which he reverses the decision of the lower court and awards the plaintiffs their costs and disbursements. L. M. Travis was the attorney for Gay and Gue, and S. D. Allen for the city.

These were cases wherein Gay and Gue were arrested for selling liquor in violation of the city ordinance and were each fined \$200. The cases were taken to the circuit court on a writ of review and have been in Judge Harris' hands for several months, the recent holidays preventing him from handing down a decision sooner. The decision is based on the fact that the council did not have, at that time, the power to pass the section of the ordinance under which the arrests were made.

The opinion as handed down by the judge covers fifteen or twenty pages of typewritten matter, of which the following is given as the question at issue:

"Based upon this state of facts the legal question presented is: Can the City of Eugene, by virtue of the aforesaid power contained in the charter, declare that a sale of intoxicating liquor subjects the seller to a penalty for violating a city ordinance in addition to the penalty incurred by reason of a violation of the state law? That is, can the act of selling be made to constitute an offense against two jurisdictions? One jurisdiction being the City of Eugene and the other the State of Oregon. Or, on the other hand, did the local option law, when put into effect by the voters of Lane county, suspend the power of the city to 'prohibit,' and during the period of suspension become the exclusive law prohibiting sales of intoxicants?"

The decision of the judge is based upon the following argument:

In the case of Fouts vs. Hood River, 46 Or. 492, at page 502, the Supreme court says:

"The cities and incorporated towns are governed in the issuance of licenses of the kind by their several charters and ordinances. All these provisions remain operative and are unaffected by the local option act, now under consideration, unless the people, by a majority vote in the precinct, ward or district involved, determine the contingency upon which the sale of intoxicating liquors shall be absolutely prohibited in such district. *Sandys vs. Williams*, 46 Or. 327. If the vote be against prohibition, then the old law—both the general statute and the local acts and ordinances pertaining to towns and cities—remains operative; but, if for prohibition, then its operation is suspended within the district until the people again vote against prohibition."

As I read them, the cases of Fouts vs. Hood River, 46 Or. 492; *Sandys vs. Williams*, 46 Or. 327; *Baxter vs. State*, 88 Pac. 677-679; and *Renshaw vs. Lane county*, 89 Pac. 147, properly come within the rule announced in the third class of cases.

Since the case at bar is decided on the authority of *Renshaw vs. Lane county*, the whole of the opinion of the court in that case, so far as it appertains to the question for decision here, is given below; but, each sentence is numbered, and paragraphed the better to analyze the opinion in that case.

After quoting in full the aforesaid sub-div. 18 of sec. 48 of the charter which gives the city the power to prohibit the sales of intoxicants the opinion proceeds:

1. It is contended by plaintiffs' counsel that the passage of the local option law referred to so amended the old charter of Eugene as to take from the common council the power to prohibit the sale of intoxicating liquors, and vested the authority in the electors of the county or in the voters who resided in a part thereof, which might include the limits of the city; that when the new charter was passed in February, 1905, restoring to the council the power of which they had been divested in the manner indicated, the enactment was the latest expression of the legislative will, and necessarily repealed the local option law, so far as it had been applicable to Eugene, thereby depriving the electors of authority to prohibit the sale of intoxicating liquors within the city; and this being so, the vote in favor of prohibition as cast in the entire county, improperly including Eugene, was ineffectual for that purpose within the limits of the city, and for these reasons errors were committed in dismissing the suit, and in not granting the injunction invoked."

2. "An examination of the local option law convinces us that, though the enactment is general, and became operative in the entire state at the time of its passage, it did not affect any material change in the existing municipal charters which authorized the licensing or prohibiting of the sales of intoxicating liquors in an incorporated town or city, until its provisions were made

specifically applicable to a particular locality by a majority vote of the electors thereof in favor of prohibition.

3. "The law thus enacted by the people should be read in connection with the charters mentioned, and in effect, a declaration that an exercise of the powers granted by the legislative assembly, to incorporate towns and cities, as evidenced by the municipal charters, to issue or deny licenses for the sale of intoxicating liquors might be continued until changed in the manner prescribed."

4. "The law adverted to practically ingrafted upon the charter of every city or incorporated town in the state an amendment, limiting the powers granted, as indicated by the quoted words following: 'The common council (or other legislative body) shall have power, within the municipal limits, until deprived thereof in the manner prescribed by the local option law, enacted by the people June 6, 1904, to license, tax, regulate or prohibit, etc., the sale of liquors, and to issue or deny licenses for the sale of liquors.'"

5. "Such being the effect of the local option law, it did not take from the common council of Eugene the power which they acquired under the charter, until they were deprived thereof by a majority vote in favor of prohibition by the electors of Lane county, which territory included the limits of the city."

It will be observed that whenever allusion is made to the power granted the city the opinion has reference to the power to "prohibit."

Par. 1 states the contention of the parties, which is, in effect, that the charter enacted prior to the local option law gave the city the power to prohibit; that the passage of the local option law repealed the power so granted; and that the re-enacted charter granting the power to prohibit, and passed subsequent to the passage of the local option law, in turn repealed the local option law so far as it concerned the city of Eugene.

Par. 2 re-states concisely the law of the *Sandys* case, which is that the mere passage of the local option law does not affect city charters; and the law of the *Fouts* case, which is that when the local option law is in force as distinguished from a general law as distinguished from a local law, and when the court say in this paragraph that a charter granting power to prohibit is not materially affected "until" the local option law becomes operative by reason of the majority vote of the electors, it is the same thing as saying that a majority vote does materially affect such power.

Par. 4 says plainly that the city is deprived of its power to prohibit when the local option law is put into operation; and when the court say in Par. 5 that the local option law "did not take from the common council of Eugene the power, which they acquired under the charter, until they were deprived thereof by a majority in favor of prohibition," they say just as plainly as the English language can be made to say that the majority vote of the electors of Lane county does deprive the common council of the power to prohibit.

The word "power" used in paragraph 5 has reference to the power to prohibit mentioned in paragraph 1, and this is necessarily the reference made because it was the precise point of the controversy and the court so states in paragraph 1, and then proceeds to state the law applicable to the contention and the result of such application.

The *Renshaw* case is decisive of this case and under the law of that case the common council is deprived of the power to pass ordinances prohibiting sales of intoxicants during the time the local option law is operative within the corporate limits. To hold otherwise is to ignore not only the explicit language but the very clear reasoning and logic of the supreme court. When intoxicants are sold within the city limits of Eugene the seller violates the local option law and if the seller is tried for selling before the person elected recorder of Eugene the seller must be tried before the recorder as ex-officio justice of the peace and the offense charged must be that of violating the local option law and not the violation of section 3 of the ordinance in question.

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Early to Bed and early to rise makes one healthy, happy and wise—especially if you take Herbine before retiring. A positive cure for constipation, dyspepsia and all liver complaints. Mrs. S. Columbia, Tenn., writes: "I always keep a supply of Herbine on hand. Am so pleased with the relief it gives in constipation and all liver complaints that words can't express my appreciation." Sold by Linn Drug Company.

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If you are going to use coal this winter it will pay you to get a Wilson Coal Heater.

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Tinsel, cardies and big red Christmas bells at Barker's Gun Store. Open evenings.

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CLARKE WINS

SATURDAY'S GAME FOR MULTNOMAH

Portland, Or., Dec. 15.—Multnomah, 21; Seattle, 0.

Glorious revenge was taken by Multnomah yesterday afternoon on the Seattle team, which has beaten her for two successive years, and when the unequal contest closed three touchdowns and a field goal stared the visitors in the face.

Multnomah outplayed Seattle in every department of the game, although it must be admitted that the blue diamond players were handicapped by the soggy sawdust field. Seattle was woefully weak on handling punts, and two of Multnomah's touchdowns were directly due to the fumbles of "Dode" Brinker.

Multnomah, reinforced by Fullback Dudley Clarke, of the University of Oregon team, and "Weary" Chandler, former star end and captain of the lemon yellow, played like a new team. There was a unity of attack and defense seldom exhibited by a club team, and every advantage was taken of the forward pass, on-side kick and fake formations peculiar to the new game.

Seattle's offense was ragged, although at times the sound boys rallied and were able to make gains on the winged "M" players. These, however, were stopped after two or three downs and the visitors compelled to punt.

Clarke Best at Punting. After every exchange of punts Seattle lost ground. Clarke got away some remarkable kicks with the soft, slippery oval, one of them sailing through the air for 65 yards. He was 13 yards better at this kind of game than Kerns, Brinker and Grimm, who alternated for the visitors. After all it might be said that the score would have been much smaller, very much smaller, had Clarke not been on hand to boot the spheroid.

Multnomah adopted the same tactics that Oregon put into force against the clubmen on Thanksgiving day. Clarke's long punts would continually keep the ball in Seattle territory and at times dangerously near the Seattle goal line.

"PENNY WISE AND POUND FOOLISH" POLICY

Editor Guard:—That was a very fine illustration this morning of the penny wise and pound foolish management of the city council in taking the fire team for the street sweeper.

No one will dispute the statement that the first minutes at a fire are those that bring it quickly under control and with the least possible loss. Wait five or ten minutes to make the change from the street sweeper to the fire apparatus, in some instances they might as well not go at all.

A divorce between the fire and street departments of the city cannot be brought about too soon.

J. R. CAMPBELL.

COFFEE

Five degrees of excellence: ★ good; ★★ better; ★★★ fine; ★★★★ finer; ★★★★★ finest: all Schilling's Best.

Your grocer returns your money if you don't like it; we pay him.

A RARE CHANCE

I have a farm of 127 acres to sell; 70 acres in cultivation, 30 acres pasture; 11 acres timber; horses, cows, hogs, chickens, wagons, farm implements; orchard and good buildings. \$48 per acre. Four miles from depot; good schools and neighborhood. Enquire at the Springfield Hotel, Springfield, Or.

THAT'S IT!

Cough yourself into a fit of spasms and then wonder why you don't get well. If you will only try a bottle of Ballard's Horehound Syrup your cough will be a thing of the past. It is a positive cure for coughs, influenza, bronchitis and all pulmonary diseases. One bottle will convince you—at your druggist's, 25c, 50c, \$1. Sold by Linn Drug Company.

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Why not place a beautiful piano or organ in your home before Xmas? Call at the Eilers Piano House, 24 West Seventh street, and see their stock.

Silver novelties in great variety. Watts.

See Watts for best values in watches.

Use Rex Flintkote roofing. We can tell you why it is better. Chambers Hardware Co. 10-25

Skating at the Underwood rink to night. Come and enjoy yourself; a pleasant time assured.

Do not fail to attend the masquerade at the armory New Year's eve. If

Silver bonnet, clothes and hair brushes at Watts.

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With one gallon of our Jacob's Monogram Rye or Bourbon O. P. S. Whiskey, regular price \$5 per gallon, we will give away gratis four bottles of fine old California Wines, regular price 50 cents per bottle. Any brand that you might select. The price of the Whiskey is \$5; the Wine is \$2. You will get a \$7 purchase for \$5, freight and express charges prepaid.

With one gallon of our famous Standard AAA Rye, regular price \$4 per gallon, we will give away gratis three bottles of fine old California Sweet Wines, regular price 50 cents per bottle. You may select any brand you desire. The price of the Whiskey is \$4; the price of the Wine is \$1.50. You will get a \$5.50 purchase for \$4, freight and express charges prepaid.

With one gallon of our famous Ranier AAA Bourbon, regular price \$4 per gallon, we will give away gratis three bottles of fine old California Sweet Wines, regular price 50 cents per bottle. You may select any brand you desire. The price of the Whiskey is \$4; the price of the Wine is \$1.50. You will get a \$5.50 purchase for \$4, freight and express charges prepaid.

With one gallon of Tillamook Rye or Bourbon Whiskey, regular price \$3.25, we will give away free two bottles of fine old California Sweet Wines, regular price 50 cents per bottle. You may select any brand you desire. The price of the Whiskey is \$3.25; the price of the Wine is \$1. You will get a \$4.25 purchase for \$3.25, freight and express charges prepaid.

With one gallon of Sheehan's Private Stock Rye or Bourbon Whiskey, regular price \$3 per gallon, we will give away free two bottles of fine old California Sweet Wines, regular price 50 cents per bottle. You may select any brand you desire. The price of the Whiskey is \$3; the price of the Wine is \$1. You will get a \$4 purchase for \$3, freight and express charges prepaid.

The wines which we are giving away are guaranteed to conform with the pure food laws of the United States, and have the following brands: Pilsener Beer, Champagne, Muscatel, Sweet Catawba, Midway and Malaga. When ordered by mail, we will send you a full list of the names of the wines and the names of the first galleys.

Send your orders in for the holidays, and they will have our prompt attention. All goods packed in care. Send Wells Fargo or Post Office Money Orders with your order. We cannot ship C. O. D.

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