

PORT OF TILLAMOOK CASE.

Submitted by Attorney T. Botts for the Port.

Plaintiffs are charged with... The Legislature passed an act... The Port was to be... The County Court... The Governor appointed the... The plaintiffs are charged with... The Legislature passed an act... The Port was to be... The County Court... The Governor appointed the... The plaintiffs are charged with... The Legislature passed an act... The Port was to be... The County Court... The Governor appointed the...

responsible to the people." State v. Mayor, etc., of Des Moines, 103 Iowa, 76; 64 Am. Rep. 157. If the defendants are right in this contention, the only question there is for consideration is whether the provisions of sec. 6114-6125 L.O.L. were followed. Otherwise it will require a consideration of the provisions of those sections to determine whether the course followed in this case was authorized by the law. Sec. 6125 provides that "Nothing in this act contained shall be construed as in any way altering or abridging powers now exercised or enjoyed or by law authorized to be exercised or enjoyed or reserved to any such port or corporation heretofore created by and now existing under the laws of this state, but providing that any such port may reincorporate under the provisions of that act. This provision seems to simply negate the idea of a repeal of former port charters by implication. The intent is declared that nothing in the act shall be held to alter or abridge the powers of such ports, but that any such port may reorganize under this act. There is nothing in the statute which may be reasonably construed as prohibiting the formation of a new port which may include within its boundaries the entire area of an old port, nor is there any provision in the statute as to how such reincorporation shall be accomplished. At the time of the passage of this act there was no provision for the enlargement of the boundaries of ports then existing, or for changing their existing organization except by reincorporating under the sections mentioned, which would be in effect an abandonment of their former charter and an acceptance of the provisions of this new law. A reasonable construction of the several provisions of this act of 1909 would permit the formation of a new port which would include within its boundaries the entire area of a port such as the original port in this case. It is a well established rule that the legislature prior to the amendments of the constitution in 1906 had the right to provide for the organization of municipal corporations in its discretion, and it might have extended the boundaries of an existing corporation or curtail the same. It might annex, or cause to be annexed outlying territory, or unite a number of corporations into a single one. It might provide for the annexation of territory without the consent of the inhabitants of any part of the territory affected, or it might make the change of the corporations' boundaries dependent solely upon a vote of the inhabitants of the corporation. The consolidation of two corporations might have been affected by the legislature and left to be determined by the vote of the two corporations as a whole, and there would not have needed to have been a majority in favor of the proposition in each of the municipalities. These are matters of general principles of law established by decisions of the various states, and not open to controversy, but as covering the application of the various principles we would cite the following: State vs. Cincinnati, 52 Ohio St., 413; 27 L.R.A. 737. State vs. Westport, 22 Southwestern, 888. Taggart vs. Claypole, 145 Ind., 599; 32 L.R.A. 586. Forsyth vs. Hammond, 142 Ind., 403; 30 L.R.A. 578. Dillon on Municipal Corporations, 5th Ed., Sec. 355. The Act of 1909, Sec. 6114, L.O.L. provides that municipal corporations designated as ports may be incorporated in counties bordering upon bays and rivers navigable from the sea, etc. The only limitations in this section are that such corporations must be in counties bordering upon bays and rivers, or containing such, navigable from the sea. The next section provides for a petition which shall specify the boundaries of the proposed port, and provides that where such a petition is filed for the incorporation of a port the territorial limits of which do not include the county as a whole, the limits shall not extend beyond the natural water shed of any drainage basin whose waters flow into another bay, etc., situated within such county. Nothing in this limitation would exclude an existing port. It is then provided, after the election is held, that if it appears from a canvass of the votes that a majority of the votes cast at such special election were in favor of incorporation, the court shall make proclamation as set out in the act. The form of the proclamation prescribed clearly contemplates an order by the court fixing the boundaries as described in the petition and not otherwise, and the next section provides that after such proclamation the inhabitants of territory shall be a corporation, etc. There is no where in the statute any provision that can be reasonably construed as intended that the act shall be so administered as to exclude entirely the territory within another port, and, as suggested, it seems very clear that the first paragraph of Section 6125 L.O.L. was intended merely to negate the idea of an implied repeal of existing laws and not to limit the application of the act. The statute does not expressly provide any manner for reincorporation under the act of 1909, and it would seem that the intention was that the proceedings should be taken therefor in exactly the same manner as prescribed for an original incorporation. If, then, the original port might have reincorporated by such proceedings, there seems to be no reason why it would not be proper for the petition therefor to include territory in addition to that included in the original port if the additional territory was within the limitations prescribed in the act, that is that the same should not extend beyond the natural water shed of any drainage basin whose waters flow into another bay, etc. If this could not be done within the territory lying outside the origi-

nal port, then the same drainage basin, which would benefit possibly more than the territory within the old port, could do nothing except to organize another port for the purpose of making substantially the same improvements. In such case neither could operate within one boundary of the other; would be required to work independently, and the conditions would be necessarily embarrassing. Whereas, by organizing the whole territory into one port the results desired would be secured by cooperation, but taxation of all upon equal basis as contemplated by the law. As to reincorporation provided for in the act, it might be suggested that the old port, if a valid organization, could have reincorporated in the manner which was followed in this case if the additional territory had not been attempted to be included, but that they, including the original port as shown by the pleadings, voted to come under the provisions of the act of 1909. The object of an election on the proposition would be to show the desire of the people affected as to whether the incorporation should be made, and no valid reason has been suggested why the people within the limits of the original port could not as well signify their assent to the reincorporation by voting upon the proposition which included additional territory as if they had voted upon the reorganization as to their original territory standing alone. In either case the will and desire of the people affected has been ascertained by the vote taken. If any one has been protesting, that person in any manner not contemplated by the law it would be the original port, and the complaint, if any were to be made, would properly come from that source, but no such complaint appears in the record. On the contrary it appears that the people of that territory were practically unanimous in favor of the change which has been made. If there were any question as to the technical validity of the incorporation, the defendants contend that the subsequent events have created an estoppel even against the state to insist upon invalidity of the proceedings. That the state must be estopped to question the validity of the establishment of a municipality, or the enlargement of a municipality by proceeding absolutely applied by themselves, but which have been recognized by the public authority, we cite the cases of State, ex rel. vs. De Moines, 93 Iowa, 521; 31 L.R.A. 183. People vs. City of Long Beach, 102 Pac. 664. (Note 10) See 66 Dillon Mun. Corp 5th ed. In this case the people affected did acquiesce in the proceedings. There was a general participation in the election, and a vote for incorporation was affected, which was recognized by the county clerk, the governor and secretary of the State, and by the assessor, county clerk and sheriff of the county. The taxpayers paid the taxes levied in most instances, without even a formal protest, and we insist that these circumstances are sufficient to aid, at any rate, the contention that the port should be upheld if there is any room for holding the proceedings unequivocally void in the first instance, while the time was allowed to elapse before suit was brought to contest the validity of the corporation was not as great as in some cases, and the resulting confusion might not be so great as in the case referred to. That to give substantial weight to the contention of the defendants in this case. That the acceptance by the people of a municipal corporation of the provisions of a new charter operates to repeal a former charter, we cite the case of Patterson vs. Society, etc., 24 N.J. Law, 385. Also, that the annexation of one corporation to another operates as a repeal of the charter of the corporation so annexed. See Sanitary Board of East Fruitvale, Sanitary District 111 Pacific, 308. Where the court quoted with approval from a decision holding that a limited corporation being annexed to a city was thereby dissolved, and holding that the corporation with limited powers might have incorporated as a city without first dissolving, and this was a case involving territory of more than one corporation existing in the first instance. See also Sections 355 to 357 Dillon Municipal Corporations, 5th Ed. We would further call the court's attention to the condition of the constitution of the State as to the nature of the power in the formation of a municipal corporation: Section 2 Article XI, prohibiting the enactment by the legislature of any municipal charter, but providing that they may be framed under general laws. The only restriction placed upon the power of the legislature by this amendment being that the enactment by it in reference to such matters shall be general in their nature, and it would accordingly appear that if the legislature could formerly have provided by special act for the formation of a new port which would include territory of an existing port with additional territory, it might have provided for the incorporation to take effect not only upon a vote of the whole locality interested, but even by a vote of the people alone of the original corporation, and with the constitution standing as it did in 1909 the same result might have been, and we think was worked out by the legislature as to this case by providing by general law applied to all similar cases for the incorporation which would include additional territory by a favorable vote of all the people of the territory affected. As to the matter of procedure followed in this proceeding and alleged defects which are claimed to exist in it, we wish to offer the following: First, as to the matter of the filing of the petition and the order of the court thereon, it appears that petition was filed on July 7th prior to the convening of the court on that day; that the petition was presented to the court on the same day, and it

appears that this was a regular session and that the order was made on the 15th of July. This provision of the law as to this is, that the petition should be filed with the county clerk and that it shall be presented to the county court on the first day of its next regular term and a hearing by the Supreme Court in the case of State vs. Edmunds, 55 Ore. 236, session does not mean term but means any time when the court is actually sitting. Again it is manifest that the provision requiring the presentation at the first day of the next regular session is intended to expedite the proceeding. There is no notice required to be given of the presentation of the petition, and the court is required to order the election if the proper petition is filed therewith. The petition itself gives jurisdiction to order the election, and there being no reason why the matter should be continued until the following regular term of court, it would seem evident that the intention of the law was complied with when the court ordered the election to be held as it did. This petition is further strengthened by the reading of 6118, L.O.L. providing for compelling the county court to order the election. As to the claim made that no notice of election was given, and that because positive evidence was not introduced as to the giving of notice and therefore the election must fail, the defendants submit that under the presumptions of the law the court was authorized to, and must find, in absence of any contrary evidence, that proper notices were given, the presumption being that official duty has been regularly performed, which presumption will apply to the giving of notice as required by the charter of the county court in this case ordering the special election. It thereby being made the duty of the clerk to issue the notices, and the judges and the clerks to post them, and the same being looked in the regular order by the holding of the election in accordance with the order, and the proclamation setting out the holding of the election and declaring the result. Subdivision 15 of Sec. 709 L.O.L.; 15 Cyc. 323. Knox Co., vs. Bank, 147 U.S. 91; 13 Supreme Court reporter 267. As to failure of all of the commissioners appointed by the Governor to meet on the day when organized by the public authority, we manifest that this provision is directory as said by Justice Burnett in the case of Bennett vs. Sengstacken, 113 Pac. 864. And as all the commissioners appointed by the Governor thereafter participated in the proceedings of organization and recognized by their actions all of the proceedings that were taken on the day of the organization, it is manifest that nothing entered in the circumstances which would require the overthrow of the organization as a whole. Foley's Honey and Tar Compound is a reliable family medicine. Give it to your children, and take it yourself when you feel a cold coming on. It checks and cures coughs and colds and croup and prevents bronchitis and pneumonia. Sold by Chas. I. Clough Co. Wants Dairy Ranch. I have a reliable client who will pay cash for 40 to 75 acre dairy ranch in Tillamook County, mostly cleared, with or without buildings, with or without cows. Give price, distance to creamery and full particulars in first letter. Must be snap. Address E. M. Shutt, Heppner, Oregon. Child Portraits Made by Us are Child-Like. Just as our portraits of adults possess strength and character. We are experts in lighting and posing, and our equipment is complete. Come in and see our line. Monk's Studio, Next to the Post Office. Use BEAVER STATE Hard Wheat Patent Flour A TRIAL CONVINCES Every Sack Guaranteed to Give Satisfaction. Watkins' Stock Tonic is a scientific preparation which not only improves the flavor of the feed you feed, but also supplies that tonic element so needed to make your live stock do their best. There is no longer any doubt about the need of a tonic for the modern domestic animal kept under artificial conditions. You must give them something to help them digest their feed and get the greatest good from it. Watkins' Stock Tonic supplies this need. It makes the animal relish its feed more; it aids in the digestion and assimilation of the feed, and in addition to that, it has a tonic effect upon the whole system. Your animals need a tonic of this kind. Watkins' Stock Tonic is not a secret preparation. We tell you the actual ingredients that are used in it. You know exactly what you are buying, and pound for pound it will go farther and do more good than any other stock tonic or so called stock food ever made. The Watkins Man will be glad to leave you a pail on trial, backed by the Watkins guarantee. Delivered by Waggon. R. R. ROBERTS

The Reliable Route Steamer "Sue H. Elmore" (CAPT. P. SCHRADER) Tillamook & Portland. Leaves Portland, Albers No. 3 Dock Every Tuesday, Arrives Tillamook Wednesdays. Sailing for Portland, every Thursday or Friday according to Tides. PACIFIC NAVIGATION COMPANY. B. C. LAMB, Agent, S. ELMORE & CO, Agents, Astoria, Ore. Lamb's Dock, Tillamook, Ore. F. P. BAUMGARTNER, Agent, Albers No. 3 Dock, Portland, Oregon.

MORNING AND EVENING TRAINS. ASTORIA to PORTLAND Tickets and Baggage through to Puget Sound points, Spokane, St. Paul, Chicago, Denver, Kansas, City, Omaha, St. Louis and all points East. Atlantic Steamship Agency. Agents of The Oregon Electric Ry. at Forest Grove and Hillsboro sell through tickets to all points east. Fares and train schedules will be forwarded on request. W. E. COMAN, General Freight & Pass. Agent, Portland, Ore. G. B. JOHNSON, General Agent, Astoria, Ore.

LAMB-SCHRADER CO. Incorporated. Warehouse and Commission Men. Coal, Shingles, Lime, Cement and Brick. Dock and Warehouse, Front Street, between 2nd and 3rd Avenue West.

Are You Giving Your Live Stock a Fair Deal? You like a little salt and pepper—a little mustard—a little lemon extract—a little this and that to flavor your grub. Your cow, your steer, your hog under natural conditions would have a chance to get a bite of this, a bite of that and a bite of the other thing and so get a variety in its feed. But under the unnatural condition in which you keep them, they get every day about the same sort of stuff to eat. As a natural consequence they get "off their feed." Even if they do not, their digestive organs need the tonic effect which comes from a variety of feeding stuffs. Watkins' Stock Tonic is a scientific preparation which not only improves the flavor of the feed you feed, but also supplies that tonic element so needed to make your live stock do their best. There is no longer any doubt about the need of a tonic for the modern domestic animal kept under artificial conditions. You must give them something to help them digest their feed and get the greatest good from it. Watkins' Stock Tonic supplies this need. It makes the animal relish its feed more; it aids in the digestion and assimilation of the feed, and in addition to that, it has a tonic effect upon the whole system. Your animals need a tonic of this kind. Watkins' Stock Tonic is not a secret preparation. We tell you the actual ingredients that are used in it. You know exactly what you are buying, and pound for pound it will go farther and do more good than any other stock tonic or so called stock food ever made. The Watkins Man will be glad to leave you a pail on trial, backed by the Watkins guarantee. Delivered by Waggon. R. R. ROBERTS

Use BEAVER STATE Hard Wheat Patent Flour A TRIAL CONVINCES Every Sack Guaranteed to Give Satisfaction. Watkins' Stock Tonic is a scientific preparation which not only improves the flavor of the feed you feed, but also supplies that tonic element so needed to make your live stock do their best. There is no longer any doubt about the need of a tonic for the modern domestic animal kept under artificial conditions. You must give them something to help them digest their feed and get the greatest good from it. Watkins' Stock Tonic supplies this need. It makes the animal relish its feed more; it aids in the digestion and assimilation of the feed, and in addition to that, it has a tonic effect upon the whole system. Your animals need a tonic of this kind. Watkins' Stock Tonic is not a secret preparation. We tell you the actual ingredients that are used in it. You know exactly what you are buying, and pound for pound it will go farther and do more good than any other stock tonic or so called stock food ever made. The Watkins Man will be glad to leave you a pail on trial, backed by the Watkins guarantee. Delivered by Waggon. R. R. ROBERTS