HOTEL TILLAMOOK CASE IS MODIFIED.

Receivership is Denied—Both Sides Win Points.

The Supreme Court on Tuesday, in an opinion written by Justice Harris, ordered the dismissal of a suit instituted by John Leland Henderson to oust P. J. Worrall and his wife from the management of a hotel owned by the Tillamook Hotel Company, in Tillamook. The decision was a modification of the judgment entered by Circuit Judge Holmes appointing a receiver for the company and restraining Worrall from interfering with the management of the hotel.

Henderson was a stockholder and alleged that the hotel was mismanaged, and that also that it was losing money. The supreme court held that sufficient grounds did not exist for the appointment of a receiver and for the ousting of Worrall, who besides being president and manager, owned most of the stock of the company, and the decision diresta the receiver to turn all property over to the officers of the company.

Judge Lawrence Harris wrote the opinion, which was concurred in by Justices Moore, Eakin and Bean, and as this is a matter of some local interest, as most of the business men and others own stock in the hotel, we give the opinion in full. Judge Harris says:

"It is claimed that the circuit Judge was disqualified and that he should have declined to preside at the trial. In support of their contention the defendants point to the fact that on January 22, 1914, they filed a motion to secure a ruling on the alleged disqualifications of the presiding judge, the motion being accompanied by affidavits to the effect that he was a party in interest. It appears from the record that the trial judge had subscribed for one share of the capital stock of the defendant corporation; that his subscription had not been fully paid; and that on January 14, 1914, two days before the commencement of this suit, he sold all his interest in the stock subscription to the plaintiff Henderson, who on January 21, following, paid to the company the balance due on the subscription.

"Being a suit of equity, this case is tried de novo in this court on the entire record as made by the parties in the nisi prius court. The litigated questions are decided here on the facts as we learn them from the evidence and admissions made in the pleadings. The question of the alleged disqualification of the circuit judge is neither a persuasive nor a determinative factor in the conclusion to be reached by this court on the merits of the dispute between the plaintiff and the defendants. The appellate tribunal is not prevented from deciding this cause on the record brought here even though it be conceded that the circuit judge was disqualified. While the objection raised by the defendants is not an element of the case calling for decision here, we note, however, in passing, that although a technical disqualification was not shown to exist within the contemplation of section 956, L. O. L. because all right to the share of stock subscribed for had passed to the hands of another person, who had paid the balance due on the stock subscription, at the time of filing the motion, nevertheless, under the circumstances, it would have been more in keeping with prudence and a fine sense of impartially if the presiding judge had declined to try the suit.

"The defendants complain because an injunction was issued without an undertaking being given or required. Neither the restraining order made on January 16, 1914, nor the one issued on January 22, provided for the giving of an undertaking and none was required until February 10. Even though the restraining order was made by the judge, upon his own motion, as stated in the order dated February 10, 1914, nevertheless the statute required the giving of an undertaking. We read in section 417, L. O. L., that: "An injunction may be allowed by the court, or judge thereof, at any time after the commencement of the suit and before decree. Before allowing the same, the court or judge shall require of the plaintiff an undertaking, with one or more sureties,* * *" The terms of the statute are imperative and command the court or judge to require an undertaking before allowing an injunction pendente lite.

"The appointment of receiver made by the court on May 5, 1914, is questioned be defendants. The record discloses that on January 17, 1914, the plaintiff filed a motion for the appointment of a receiver. The motion and the accompanying affidavits were served on the individual defendants on January 17, together with a notice that the motion would be presented on January 20. From all that appears in the record and application for a receiver was not presented on the date designated and the next step seems to have been taken on January 22, when defendants filed affidavits in support of their claim that the presiding judge was disqualified. A restraining order was issued and the accountants were appointed on January 22. On January 27, an order was made directing the defendants to pay the accountants and if need be to borrow money to make such payments, The defendants on February 7, moved to dissolve the restraining orders and thereafter on February 10, the plaintiff was directed to file an undertaking in the sum of $500.00 on account if the issuance of the injunction. Not having paid the accountants an order was made by the court on May 1, commanding the defendants forthwith to procure funds by loan or otherwise and deposit the same with the clerk of the court for the use and benefit of the accountants. The defendants having refused to comply with the last mentioned order, the court, on May 5, appointed a receiver. It clearly appears from all that transpired and from the recitals contained in the different orders that the appointment was prompted by the refusal of the defendants to pay the accountants, and that this was the controlling factor causing the appointment. The affairs of the Tillamook Hotel Company on May 5, were not in a worse condition than on January 22. The refusal of the defendants to pay the accountants in obedience to the orders of the court did not furnish ground for receivership. Under all the circumstances, as we read the history of the litigation, a receiver should not have been appointed. It is proper to add, however, that from a careful examination of the record we find that the appointment of the accountants was made under conditions which warrant the conclusion that both plaintiff and defendants sanctioned the selection of the accountants and approved the amount of the compensation fixed by the court; and in view of the circumstances stated the corporation should have paid Gaylord and Carlton.

"The main grievance of plaintiff is that P. J. Worrall, by reason of his conduct, has acquired the reputation of being a quarrelsome, dangerous and disagreeable man and, on account thereof, the hotel lost much patronage. We gather from the evidence that the hotel in question is better furnished and equipped than any other hotel in Tillamook. If any loss of patronage could properly be traced to Worrall at least some information would be afforded by the hotel register. The company commenced business July 18, 1913, and the number of guests registered that month was 142, and during the subsequent months as follows: August, 815; September, 377; October, 382; November, 320, January, 90; February, 298; March 363; April, 357; and the first four days in May 35. Nearly all the persons registered were assigned rooms but some guests took meals only. It will be observed that with the exception of August and January, the patronage was practically the same. The business done in January is accounted for by the fact that the train service was tied up nearly all that month. No doubt Worrall's conduct, which was not at all times exemplary, gave rise to some discussion, but the conditions are not sufficiently grave to warrant the court in removing him from management of the business, especially in view of the fact that Worrall and his wife have invested $17,100.00 of their money in the property and have loaned the corporation an additional sum of $6,500.00. The evidence does not warrant the claim that P. J. Worrall is seeking by fraudulent or other means to depreciate the value of the stock. Although books of accounts were not kept with as much care and completeness as might be desired, still the plan employed afforded means of knowing how much was received from the dining room, the rooms and bar; and the disbursements were evidenced by checks.

"The final decree in effect removed the directors and officers of the corporation and placed the management in the hands of a person selected by the court. Assuming that the court of equity does have the power to remove the officers of a corporation and substitute a managing receiver or even to decree the dissolution of the corporation, nevertheless it is well settled rule that such court will proceed with extreme caution in the appointment of receiver over corporate bodies. High on receivers (4th Ed.) Sec. 292. The financial statement made on February 14, 1914, shows that the loss up to that time aggregated $828.14. A subsequent report was made by A. H. Gaylord showing that the receipts between January 42, 1914, and April 30, following, amounted to $6,088.25; and monthly over head expense, including light, water, fuel, telephone, laundry, rent, taxes, salaries of employes, the installments paid on the Equitable Loan & Savings Association and the National Cash Register Company, was $1,141.65. When the receiver was appointed pendente lite the corporation was a going business concern and was neither insolvent nor in such imminent danger of insolvency as to warrant the appointment of a receiver. The evidence does not disclose any material change in conditions when on June 19, the final decree was rendered. Sabin v. Columbia Fuel Co., 25 Ore. 15, 34 Pac. 692. Minority stockholders are entitled to protection against fraud or gross and reckless mismanagement on the part of the officers of a private corporation; but, under the evidence, the instant case does not afford an illustration of fraud and no such mismanagement has been shown to warrant a court to adopt the extreme measure of taking complete charge of the business and conducting it through a receiver.

"The defendant P. J. Worrall was in the habit of using liquor owned by the company and also made a practice of liberally treating patrons of the hotel bar at the expense of the corporation; and on other occasions he used the money and liquor of the corporation for the entertainment of himself and friends, although he contends it was done for advertising purposes. He cannat use or give away property of the company in the manner indicated and should be enjoined from doing so in the future. While it is impossible to determine with exactness the amount of money and liquor so used and consumed, still we think that $250.00 will fairly reimburse the company and therefore the defendant Tillamook Hotel Company is awarded a judgment against P. J. Worrall for that sum.

"While the appeal was pending the receiver filed a report and the findings made therein by the trial court are here for review on a separate appeal, and consequently the question of the costs of the receivership will be reserved determination hereafter.

"This suit is dismissed as to the defendants Anna A. Worrall and Chas. Kunze; the receiver is directed to turn over to the officers of the corporation all the property in his hands belonging to the Tillamook Hotel Company; the defendants P. J. Worrall, Anna A. Worrall and Charles Kunze are granted judgment against plaintiff for costs and disbursements in this court; but neither plaintiff nor defendants shall have judgment for the costs and disbursements of suit incurred in the circuit court. The decree of the circuit court should be modified in conformity with this opinion and it is so ordered.'

School Notes.

The Senior play which was given last Friday at the opera house met with great enthusiasm. There have been numerous requests to have it repeated for the benefit of those who did not see it, and for those who wish to see it again. If this is to be done notice will be given in due time.

Last Monday afternoon Mr. Monroe, who is one of the speakers at the Farmers' Institute this week, spoke to the high school student body. His talk contained a great deal of interest and value, and was enjoyed immensely.

The Senior class is daily becoming more and more conscious that graduation is only a few weeks hence. Class meetings have been held and the usual business in connection with graduation transacted. Invitations and pins have been decided on and sent for. Rev. Van Winkle has consented to deliver the baccalaureate address. The class is anxious to obtain a good speaker for the commencement exercises. Communications are being carried on with several well-known and recommended men and their answers are eagerly awaited.

The sixth grade won the Palmer pennant in the writing contest this week. The room making the biggest improvement is awarded the pennant for a week.

A splendid record has been made by the fourth grade in the spe'ling contest going on between the fourth and fifth grades. Not a child in the fourth grade misspelled a single word during the whole week. The fifth grade also made a very good record, but the perfect one of the fourth grade won the contest.

Quite a number of high school students are being excused from school to attend some of the lectures given in connection with the Home-builders' and Farmers' Institute held here in Tillamook this week.

Professor Fitts, of the Oregon Agricultural College spoke to the high school student body Wednesday afternoon.

Handkerchiefs to fit any purse; or any nose. Read the advertisements.

Spring, we understand, did begin March 21 at Montgomery, Ala., and other points similarly isothermally located; and is working this way.

Drowned While Walking Over to Tillamook.

Hillsboro, Or., April 27.—Coroner Barrett was called to Cochran, a station on the P. R. & N. railroad in the northwestern part of this county, Sunday to investigate the death of J. T. Broderick, found drowned under a high trestle on Saturday evening.

Deceased, with another man, C. P. McDonald, was traveling on foot to ward Tillamook. McDonald states that he walked the high trestle but his companion, fearing to cross them, walked under them. At the place where Broderick died, McDonald says he waited for nearly a half hour for his companion to come up on the other side, and then went to hunt for him and found his body lying face downward in the shallow stream where he had drowned. He removed the body from the water and summoned help.

Garibaldi.

The old Garibaldi Hotel, which was erected about forty years ago, was raised last week by Messrs Alley and Swenson. The old depot was moved back from the railroad about 40 feet.

At Bar View a new reservoir is being built. Since the establishment of a water power electric light plant the old resorvoir has been inadequate and a larger one is being built.

A surprise party was given on Tuesday evening at the Miami Quarry camp in honor of Miss Alice Bird's birthday. The evening was enjoyably spent with dancing and refreshments.

Louis Ivancovich has taken down his tent platform and is now erecting a building in which he will conduct his business the Central Oyster House.

Fishing is good along the Miami now. Tom Bray caught a twenty inch trout Saturday.

Otto Shearer and party made a trip to Necarney Sunday.

Collier's Caustic Critics.

One step heavenward has been taken by Patterson, N. J. It has brought the sawdust form Billy Sunday's meetin.

It is the Alpine war cloud that catches our anxious eye just now, not the Balkan war cloud. How about you Italy?

Though a New York court decides that all a wife earns belongs to her husband, it won't alter the unwritten law under which a man gives his pay envelope to his wife every week.

Something was once always happening to "add to the gayety of nations" now it is something that adds to the misery of nations.

Japan can almost be forgiven. When she takes charge of China all the little Chinese will have to go to school. That's something.

Greatest wheat crop in history is promised the United States. Timely. Probably have to be relieving the starving in other lands than Belgium and Poland by the time it ripens.

Nevada is determined on one way of getting immigrants, even if they'er only temporary.

No clear evidence is offered that the tango is danced in Argentine. Is that another Belgian hare story?

Federal reserve banks, swept and garnished, are all ready to do business. They can't be expected to make it.

Nome pay dirt washes out $3 a pan; and that is nearly like perpetually finding $3 in your pocket, no matter how often you take them out and spend them.

Adding to what President Wilson said, wars will never end so long as one people want the earth that another people is occupying.

Family fern has now come out on the front porch and the family furnace is taking the rest cure.

Atlas Woodson says: "There is no such thing as a $1000 dog except thinking makes it so."

What's wrong with the world? Every day there seems to be a new scandal. And in some instances it seems the public is busy burning the scandal at both ends, to quote something we saw somewhere.

Would it be possible for a bald-headed young man to ever develop into a fine violinist?

Owl cars run an hour apart, and it is a wise ould boil owl that goes home on the earliest one.

So much of sport is merely killing time; but it keeps one in the open air Though what of that, if one has nothing on earth to do but kill time.

Nobility in Europe can borrow money on as little collateral as their governments do.

What if King George should fall off the water wagon? As good men as he have done it.

On April 4 there were 100,000,000 people in the United States; thus we see one man in about 20,000,000 stands a chance of being president.

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All Tillamook City Road Warrants Series "B" outstanding will be paid on presentation. Interest ceases this 19th day of April, 1915.

M. W. Harrison,
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