

SUPREME COURT SUSTAINS TILLAMOOK COUNTY.

County Court Made a Faithful, Pains-taking Effort to Comply With The Law.

Holding that the county court of Tillamook county has substantially complied with the law in preparing the estimates for the 1916 county budget, the supreme court today in an opinion written by Justice Bean, refused to issue a writ of mandamus to make it more specific.

Alleging that the estimates for road improvement, the surveyor's office and district attorney's office were not itemized, but made out in the aggregate, S. V. Anderson, instituted the proceedings, contending that this was a violation of the law of 1913 on the subject. Incidentally the court also held that before a private party could institute mandamus proceedings in such a case, a demand must have first been made on the county court for a more specific estimate.

It was certain timber owners who instituted the proceedings which was engineered by John T. Dougal, Anderson simply swearing to the complaint.

We give below part of the order of the Supreme Court:

It appears that the county court made a faithful, painstaking effort to comply with the requirements of the statute. While the result is commendable it may not be perfect from a technical point of view. Neither is it plain that the relator is legally correct in all his claim. The obvious purpose of the law is to have an estimate of county expenditures made and published, together with the total amount of taxes levied by any road or school district, city, port, or other tax levying authority within the jurisdiction of the county in order that the taxpayers may be informed approximately the amount proposed to be levied against their property and the purpose for which it is to be expended, in order that those upon whom the tax burden rests may oppose or favor any such levy in a discussion with their officers. The statute was not intended to stop the wheels of progress or to be a stumbling block. Taking up the estimates under the three heads complained of, in their order, and looking at the law, we find that the estimate to be fully itemized showing under separate heads the amount required for each department of county government, each county improvement, and maintenance of each county building, etc. When we come to the matter of highways, we find embraced in one group the improvement and maintenance of public highways, roads, streets, bridges. The contention of the relator as set forth in the petition and the writ is that specific separate amounts should be designated and expended for the (1) "improvement," (2) or "maintenance" of each public highway, and (3) each road, etc. To distinguish in all cases between an improvement and a maintenance would be exceedingly difficult, if not impossible. We do not perceive that for the purpose of the estimate the law recognizes a difference between "highways" and "roads." Neither does it require that a street should be given a separate heading. Pursuant of an old custom bridges are embraced in the same category with roads and highways, yet the relator requests an estimate for "each highway," "each road," "each street" and "each bridge." Such a construction of the statute would be practically injecting into the same word "each" where it is not found. The law does not indicate what would be termed a road or highway, or whether it should be designated by name, description, or number, as laid out and established, which would seem to be essential if it contemplated a compliance with the relator's demand. Doubtless, if a considerable amount of money was to be raised for the construction or improvement of a particular highway or structure, in order to conform to the spirit of the law and to fully inform the taxpayers, it should be mentioned. That the technical nicety suggested is mandatory in all cases, we cannot concede. Substantially the same difficulties would be encountered were an attempt made to segregate the amount necessary for repairs on machinery from that which would be required for supplies. Such details are not within the mandate of the law.

Exception is taken by the relator because the number of road supervisors and the amount of the salary of each are not given in the estimate. These positions are filled by appointment under section 6314, L. O. L. and their per diem compensation fixed by section 6319, L. O. L. They are road district officers and do not come within the class of salaried county officers or employes within the meaning of the law. Payment for their services is properly included in the expenses of roads and bridges, and no one could be misled or injured by such listing. There was therefore a substantial compliance with the enactment as to public highways.

Under the head of Surveyor's office the writ is predicated upon the theory that the surveyor of this county has a retinue of regular salaried employes. It is not alleged that he has such a force, nor do we know it as a matter of law. Except in counties having 30,000 or more inhabitants, under sections 2985 and 6310, L. O. L. and other statutes, the county surveyor is paid a per diem or according to the fee system. That official is authorized to appoint assistants such as chainmen and markers, etc. The maximum of whose compensation per day is fixed by section 2987, L. O. L. No approximately correct estimate of the expenses of such casual estimates could be made and the statute does not require it. Neither do we believe the law presumes that the county court could separate the estimate of the "cost of surveys" from the "cost of engineering." It would seem that if such a segregation of expenses were necessary the matter should be left to a skilled civil engineer. The writer not being one gladly leaves this subject. In legal questions we always expect to find some difficulties.

When we come to the District Attorney's office there seems to be some misunderstanding as to the law. The relator desires first that the salary of the district attorney be specified. It is only county expenditures that are to be enumerated. In 1913 the legislature provided for a district attorney in each county of the state and directed that his salary be paid by the state, fixing that of the district attorney for Tillamook County at \$1200 per annum (Gen. Laws, 1913, p. 686), so that the county is not required to bear the burden alone. The present regime has not been long in vogue and the county court might not have had such data from which to estimate the expenses of this office separately. In making the fifty-eight estimated items of county expenditures for the coming year, as shown by the writ, three of which are complained of, the members of the county court did not evince any wilful disregard of their duty. Neither does it appear that their action was extremely wrong or flagrantly improper. See State ex rel. vs. Bare, 56 S. E. 390. Indeed, it did not occur to the learned council for the relator, to assert that by reason of the generalization of the estimated items, the petitioner and other taxpayers were unable to gain sufficient information to intelligently discuss the questions with their county servants. On the whole it does not appear that the writ is necessary in order that justice may be done in accordance with the statute. The matter involved must be substantial and of sufficient importance to justify the use of the remedy. 26 Cyc. 156. The writ is employed to promote principles of justice. It will not issue in support of unjust claims, although they may be technically regular. 26 Cyc. 155. 19 Am. & Eng. Ency. of Law, 737, states the rule and its exception thus: "The writ cannot be used for the correction of errors. If, however, such judgment or discretion is abused, and exercised in an arbitrary or capricious manner, mandamus will lie to compel a proper exercise thereof."

No suggestion is alleged to have been made to the county court for a more specific estimate. As a general rule where the duty to be performed by an official, is of a purely public nature, wherein no individual right or duty is concerned, and where there is no one person upon whom the right or duty devolves to make a demand for performance, an express demand or refusal is not necessary. See spelling of Ex. Reliev 1381. The law does not require a useless thing. But there is an exception to this rule. Where the proper mode of performance is doubtful, a demand specifying that mandamus will be granted before the mandamus will be granted. Merrill, Mandamus, 224, p. 279. It is also stated by the last named authority that: "When a mandamus is asked by a private party to compel a public officer to keep his books in a certain way, in order to conform to the statute, he must have requested the officer to do so before he asks for a mandamus, because there are often differences of opinion as to the construction of a statute, and the officer should have an opportunity to act on the relator's construction before being involved in litigation."

See also State vs. Eberhardt, 14 Neb. 201. This case, upon which the latter part of the text is based, is the nearest in point of any authority we find. See Women's Catholic Order of Forrester vs. Condon, 84 Ill. App. 346, Ingerman vs. State, 128 Ind. 225. In the matter under consideration the estimates prepared for publication indicate that the county court was willing to fully comply with the law, and there appears no refusal to adhere to any reasonable demand if one had been made, thus bringing the case within the exception noted. People vs. Dulaney, 96 Ill. 503; State vs. Sunset Tel. Co., 30 Wash. 676; In re W. River Bank, 23 Vt. 478. The writ will only issue in cases of necessity to prevent injustice, or great injury. If there is a doubt of its necessity or propriety, it will not go. 26 Cyc. 146. For the different reasons referred to, the demurrer to the writ should be sustained, and it is so ordered.

Notice of Sheriff's Sale of Real Property.

Notice is hereby given, that under and by virtue of an execution dated the 27th day of December, 1915, issued out of the circuit court of the State of Oregon, for Tillamook County, in the cause wherein J. M. Nichols, David Strome, and Joe Strome were plaintiffs, and Frank Shipley and Mrs. Naomi Shipley, Allen Jenner and Mrs. Allen Jenner were defendants, upon a judgment duly given and rendered against the said defendants on the 12th day of November, 1915, in the Circuit Court of the State of Oregon, for Lane County, which judgment was enrolled and docketed in the Clerk's office of the said Circuit Court of the State of Oregon, for Tillamook County, on the 27th day of December, 1915, and was for the sum of \$880.00, the further sum of \$27.00 costs and disbursements, commanding me to satisfy the said judgment, less the sum of \$60.00 received on said judgment, by the levy and sale of the property of said defendants.

Now, therefore, I have duly levied upon and will, on the 11th day of February, 1916, at 10 o'clock a.m., at the front door of the county court house in Tillamook City, Tillamook County, Oregon, sell the hereinafter described real property of the said defendants, at public sale to the highest bidder for cash in hand, in order to satisfy the amount due on the said judgment, as aforesaid, including and of such sale, the said real property is described as follows, to-wit: The N. E. 1/4 of the S. W. 1/4 and the N. W. 1/4 of the S. E. 1/4 of Sec. 10, in T. 5 S., R. 10 W. of W. M., in Tillamook County, Oregon, containing 80 acres, more or less.

H. Crenshaw, Sheriff of Tillamook County, Ore.
First publication Jan. 6, 1916.
Last publication Feb. 3, 1916.

Sensational Sale of MANUFACTURER'S CLEARANCE
Thirty-five Hundred Yards of **COTTON GOODS**

Ginghams, Chambrays, Zephyrs, Percales, Romper Cloths, Tickings, Madras Waistings, Crepes, Table Damasks, Aprons, Sheets, Pillow Cases and Towels at Wonderful Savings.

It will pay you to investigate the sensational values we are offering during this Sale of Cotton Goods commencing to-day. Our Drygoods buyer participated in an exceptional offer that was being made by a prominent manufacturer and we consider ourselves very fortunate indeed in being able to offer such a variety and such an extensive selection of Bargains in Cotton Goods at this time of the year.

Buy now for future needs—you will save dollars upon dollars by filling your spring and summer wants now.

- Reg. 10c. Apron Chambrays for 7c.
- Reg. 10c. 27 inch Percales for 7c.
- Reg. 12c. Dress Ginghams for - 8c.
- Reg. 15c. Fine Chambrays for - 9c.
- Reg. 18c. Romper Cloths for - 12c.
- Reg. 20c. Madras Waistings for 12c.
- Reg. 20c. Dress Zephyrs for - 12c.
- Reg. 25c. Plisse Crepes for - 15c.
- Reg. 25c. Amoskeag Tickings for 17c.
- Reg. 50c. Hemmed Sheets for - 39c.
- Reg. 83c. Hemmed Sheets for - 69c.
- To 15c. Huck Towels for - 8c.
- To 15c. Pillow Cases for - 10c.
- To 65c. Damask Tabling for - 44c.

Very Special Sale Ladies Bungalow Aprons, 50c. Each.

INCLUDED in this Sale of Cotton Goods you will find an extra special offering of Ladies Bungalow Aprons in neat, roomy styles some in the new button shoulder models, and made of good quality guaranteed fast color Amoskeag Chambrays.

The patterns include checks in Light Blue, Black and Navy blue, light checks, light and dark grounds with stripes and figures, and self colors, with Black and White Bindings. Many of the models are trimmed with Rick Rack Braids and are exceptionally neat and smart looking. Very special each 50c.



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The Wirthmor Waists illustrated above and offered at \$1.00 each are typical of the unusual values obtainable here. These New Models go on Sale Tomorrow.

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For Ladies, Misses, Boys and Infants.

Wonderful savings in many kinds of footwear for Infants, Boys, Girls, Misses and Women are possible by purchasing now. Space only permits mention of a few particulars but the prices make up for the brevity of descriptions that obtain.

Reg. to \$3.50 Ladies' Patent Vici Kid and Gunmetal Shoes and Patent Shoes with Cloth Tops for \$2.19

Reg. to \$2.50 values in Children's and Misses' Button and Blucher Shoes in Gunmetal, Patent and Vici Kid and E.C. Skufflers in Patent Gunmetal and Tau Calf for \$1.48 per pair

Reg. to \$2.50 values in Boys' Button and Blucher Gunmetal and Calf Dress, School and Work Shoes for \$1.65 per pair

Reg. to \$3.75 values in Boys' Button and Blucher Gunmetal and Calf Dress, School and Work Shoes in Sizes 1 to 8 for per pair \$1.95

Reg. to \$1.75 values in Baby's Patent Vici Kid and Gunmetal Button and Blucher Style Shoes in Sizes 1 to 8 for per pair \$0.98

Actual \$22.50 to \$27.50 LADIES' TAILORED SUITS FOR SPRING, \$13.87

Suits in absolutely late models of fine French Serges, Wale Serges, Gabardines, Tweed Mixtures and Worsteds, and shown in such fashionable colors as Port, Russian Green, Browns, Black, Marine, Navy and Midnight Blues.

Sizes are from 16 years to 44 inch bust, and you can be sure of a perfect fit and models being perfectly tailored and finished.

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You can save money by purchasing a nice smart comfy Coat now. Practically every Coat in the House is on Sale at a price that seems almost impossible. But the reductions are genuine and well worth your while investigating.

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\$12.98 for Values to \$30.00

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- Reg. \$7.50, 12 inch Top Dayton Loggers for per pair \$6.65

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- Reg. \$3.50 plain, short Gum Boots for the special price per pair \$3.15
- Reg. \$5.00 Short, Snag-proof Gum Boots for per pair \$4.25
- Reg. \$6.50 Long, Snag-proof Gum Boots for per pair \$5.95
- Reg. \$7.00 Long, Snag-proof Gum Boots for per pair \$6.15

SUITS.

- Reg. \$25.00 Hart Schaffner & Marx Suits in all newest styles for \$18.65
- Reg. \$15.00 to \$17.50 values in Men's stylish Suits, Serges, Tweeds, etc., \$13.65 for

OVERCOATS.

- Reg. \$22.50 and \$25.00 Hart Schaffner & Marx stylish Overcoats for \$14.65
- Reg. \$10.00 and \$12.00 smartly Cut and up-to-date style Overcoats for \$6.65

SHIRTS.

- Reg. \$1.50 Flannel Shirts in all sizes for the special price each \$1.00
- Reg. \$1.50 Monarch Shirts Golf Styles neat Patterns for each \$1.15

UNDERWEAR.

- Natural color, heavy plush wool, medium light weight, Glastonbury wool, and Cooper Ribbed Shirts and Pants. Per Garment \$0.98. Very Special 98c.
- Values from \$1.00 to \$5.00 in Union Suits in Cotton, Wool and Silk and wool for 70c. to \$3.60

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