CITY OF SALEM HAS WON ANSON BOND SUIT

The Supreme Court Holds That the Ordinance, Contract and Undertaking Were Legal and Just

And the Surety Company Is Liable for the Five Thousand Dollars, for the Failure of Frank R. Anson to Construct the Electric Light Plant---The City Not Compelled to Show Damages Sustained by Failure to Erect Light Plant.

In the Supreme Court yesterday a most important appeal case—important to the city of Salem—was decided, and decided in favor of the city, with the result that it is safe to say that the city is $5000 ahead on the Anson light contract, having secured a decision in its suit against F. R. Anson and his surety, the Fidelity & Deposit Company. The case follows:

City of Salem, appellant, vs. F. R. Anson, and Fidelity & Deposit Company of Maryland, respondents; appeal from Marion county, Hon. George H. Burnett, judge; reversed and remanded.

This was an action on the bond executed by F. R. Anson as principal and the Fidelity & Deposit Company of Maryland as surety. The bond of $5000 was given to insure the construction of an electric light and power plant in Salem, by F. R. Anson, within a specified time. The city reserved the right of purchasing the plant, and Anson agreed to pay to the city, monthly, 2 per cent of the gross income from the plant from the time of its construction. Anson failed to construct the plant, and the city brought this action against him and the surety to enforce the collection of the bond. The complaint sets out the ordinance granting the franchise, and the bond, but does not allege damage, and the trial court sustained a demurrer to the complaint, whereupon judgment was entered and the appeal followed.

The appellate court, in passing on the case says the first question is as to the bond. The opinion quotes the charter provisions respecting the council's exclusive power to contract for light and water, to grant franchises for light and water companies, et., and continues:

"The Legislature has thus delegated to the city the power of regulating and controlling the use of the streets by light and water companies, and vested it with exclusive authority to grant to such companies the privilege of so using them, upon such terms and conditions as the council may prescribe. The paramount authority over streets and highways is vested in the Legislature as the representative of the entire people. It may, however, delegate to municipal corporations such a measure of its power as it may deem expedient, and the local authorities, by virtue of such delegation, can enact ordinances and local laws, which have, within their jurisdiction, the force of the general statutes of the state. The granting of authority to public service companies to use the streets and highways is a legislative act, entirely beyond the control of the judicial power, so long as it is within proper constitutional limitations. It may be exercised directly by the Legislature, or be delegated by that body to a municipal corporation, and when so delegated, the municipality has, within the authority granted, the same rights and powers that the Legislature itself possesses. To that extent it is endowed with legislative sovereignty, the exercise of which has no limit, so long as it is within the objects and trusts for which the power was conferred. It is admitted that the Legislature may, by virtue of its paramount authority, require bonds or undertakings of the grantees of such privileges, conditioned that they will construct their works within a specified time, or that they will otherwise comply with the terms of their grant, and a municipal corporation to which the exclusive power over the subject has been delegated may exercise the same right. There is no express provision in the charter of Salem authorizing the council upon granting the privilege to use the streets to require that the work shall be done within a specified time, nor is it necessary. It is given the exclusive power to make the grant 'upon such terms and conditions' as it may prescribe, which necessarily authorizes it to impose such reasonable conditions precedent or subsequent to the granting or exercise of the franchise as may be deemed necessary or proper, including the requirement that the grantee shall give a bond, conditioned as the one in suit. * * * We are of the opinion, therefore, that the bond in suit was valid, and within the power of the city to require and accept.

"The remaining question is as to whether the sum specified in the bond is to be regarded as a penalty or as liquidated damages. It is often difficult to determine whether a sum stipulated in a contract to be paid on breach thereof shall be considered as liquidated damages or as a penalty, and there is a wide divergence of opinion in the adjudged cases on the subject. The object is, of course, to ascertain the intention of the parties, as nearly as possible, and to enforce the contract according to their agreement. In doing this the courts are not governed altogether by the language of the contract or by the term employed to designate the sum to be paid. 'If it is liquidated damages, they will enforce it, though erroneously called a penalty, and, on the other hand, if it is in the nature of a penalty, they will not allow it to be enforced, although the parties have expressly stated that it is to be paid as liquidated damages, and not as a penalty.' Clark, Cont., 599. See, also, 52 Cent. L. J. 183; 19 Am. Eng. Ency. Law (2 ed.) 400; Kemp vs. Knickerbocker Ice Co., 69 N. Y. 45; Foley vs. McKeegan, 4 Ia. 1. For the construction of such contracts, as between private parties, certain arbitrary rules have been laid down, which, although not necessarily controlling in all cases, are regarded as affording a general guide by which controversies relating thereto may be determined. Among these are (1) where the contract is conditioned for the performance of some collateral agreement, the sum mentioned therein will be presumed to be a penalty, and it is incumbent upon the party desiring to recover the sum named as liquidated damages, to show that it was so intended by the contracting parties; and (2), when the actual damages in case of a breach of the contract must necessarily be speculative, uncertain and incapable of definite ascertainment, the stipulated sum will be regarded as liquidated damages, and may be recovered as such without proof of actual damages, unless the language of the contract shows, or the circumstances under which it was made indicate, a contrary intention of the parties, or it so manifestly exceeds the actual injury suffered as to be unconscionable. Where the damages are uncertain and speculative, the presumption ordinarily is that the parties have taken that into consideration in making the contract, and have agreed upon a definite sum to be paid in case of a breach, in order to put the question beyond dispute and controversy, and to avoid the difficulty of proving actual damages. It would seem, therefore, that, even if the present case is to be controlled entirely by the rules applicable to controversies between private parties, there is reason for holding that the amount stipulated in the bond should be regarded as liquidated damages, and not as a penalty. The damages, if any, to the city from Anson's failure to build his plant within the specified time, were necessarily speculative and uncertain, if not absolutely incapable of proof. Indeed, it is quite doubtful whether the city could have been damaged in any way by such failure. It could gain nothing in its political or sovereign capacity by the construction of the plant, and would lose nothing by its non-construction. The damages resulting from the loss of the promised share of the gross income of the proposed plant, and the right to purchase are not covered by the bond, and, moreover, are so speculative, uncertain and dependent upon so many contingencies, that they can scarcely be regarded as a subject of judicial investigation. But whatever the rule might be as between private individuals, this action is not to be determined wholly by the principles applicable to contracts of that kind. The sum specified in the bond is somewhat in the nature of a statutory penalty for the nonperformance of a duty enjoined by law. The ordinance, granting to Anson the right and privilege to use the streets and highways of the city in the construction and maintenance of his plant, had the force and effect of a statute, and by his acceptance of its provisions he became bound to comply with its terms as a statutory duty. The bond in question was given as security for the performance of such duty, and the sum specified therein is in the nature of a penalty to be imposed as a punishment for disobeying or disregarding the provisions of the ordinance."

The opinion here quotes from several authorities, in cases directly in line with the one at bar, and concludes by saying:

"Within the doctrine of these cases, and they seem to be sound, the demurrer to the complaint should have been overruled. The judgment of the court below must therefore be reversed, and the cause remanded for such further proceedings as may be proper, not inconsistent with this opinion."

Two other cases were decided by the court as follows:

United States Investment Corporation and Percy H. Blyth, respondents, vs. Portland Hospital, et al., appellants; appeal from Multnomah county, Son. John B. Cleland, judge; affirmed. Opinion by Chief Justice R. S. Bean.

The Pacific Export Lumber Company, respondent, vs. A. Prescott, et al., appellants; appeal from Multnomah county, Hon. A. L. Frazer, judge; reversed. Opinion by Associate Justice F. A. Moore.

The case of Alice O. Brandt, respondent, vs. A. P. Brandt, appellant, an appeal from Multnomah county was argued and submitted, by W. T. Muir for appellant, and John H. Hall for respondent.

Minor orders were made as shown below:

R. D. Hume, appellant, vs. Jesse Turner, sheriff, et al., respondents; ordered on stipulation that appellant have until April 1st to serve and file his brief.

G. D. Simmons respondent, vs. The O. R. & N. Co., appellant; ordered on stipulation that appellant have until February 20th to serve and file his brief.

F. C. Goodrich was licensed as an attorney for nine months, on certificate from the Supreme Court of Ohio; recommended by Judge Walter D. Jones, of Troy, Ohio, and R. W. Wilbur and W. A. Cleland, of Portland.

MASTER FISH WARDEN REPORTS COLLECTIONS

His Receipts for December Aggregated $322, and He Has Deposited This Sum with the State Treasurer.

Master Fish Warden H. G. Van Dusen has filed his financial report for December with the State Treasurer, and remitted the amount due the state, on account of his collections for that month. The report shows collections as follows:

14 individual fish licenses	$ 14 00
4 gill-net licenses	10 00
8 set-net licenses	8 00
14 fish dealers licenses, 1st class	140 00
1 fish dealers license, 5th class	50 00
1 fish canners license, 1st class	100 00
Total	$322 00

There Is a Class of People

Who are injured by the use of coffee. Recently there has been placed in all the grocery stores a new preparation called GRAIN-O, made of pure grains, that takes the place of coffee. The most delicate stomach receives it without distress, and but few can tell it from coffee. It does not cost over ¼ as much. Children may drink it with great benefit. 15 cts. and 25 cents per package. TRY it. Ask for GRAIN-O.

A CHURCH.—The German Evangelical Lutheran Trinitarian Society N. A. C., of Sheridan, Yamhill county, Oregon, yesterday filed articles of incorporation. The estimated value of the property on hand is $200. George Gathbod, Adolph Schultz and Karl Zimmerman are the trustees and incorporators

At Bed Time.

I take a pleasant herb drink, the next morning I feel bright and my complexion is better. My doctor says it acts gently on the stomach, liver and kidneys, and is a pleasant laxative. It is made from herbs, and is prepared as easily as tea. It is called Lane's Medicine. All druggists sell it at 25c. and 50c. Lane's Family Medicines moves the bowels each day. If you cannot get it, send for a free sample. Address, Orator F. Woodward, Le Roy, N. Y. 5.

PRINCE HENRY COMING

THE CABINET PREPARES TO GIVE HIM A RECEPTION.

A Joint Commission, Representing the State Department, the Army and Navy, Will Do the Honors to the Prussian.

WASHINGTON, Jan. 13—While the subject of the reception to be accorded to Prince Henry, of Prussia, has not been finally discussed by the Cabinet, it is believed that the necessary arrangements will be placed in the hands of a joint commission, composed of representatives of the State Department, and an officer each of the army and navy. There is no present disposition to bring the North Atlantic squadron back from the Caribbean Sea, to form an advance reception line. The navy still has some fine ships at the northern yards, which may be used for this purpose.

The Charges Untrue.

Pekin, Jan. 12—The United States Consul at New Chwang, Henry B. Miller, has replied to the Russian administrator's charge, that the sailors belonging to the United States gunboat Vicksburg shot a Russian soldier during the recent disturbances at New Chwang, saying that he and Commander Barry, of the Vicksburg, investigated the affair thoroughly, and found no evidence whatsoever to connect the Americans with the shooting.

Old Soldier's Experience.

M. M. Austin, a civil war veteran, of Winchester, Ind., writes: "My wife was sick a long time in spite of good doctor's treatment, but was wholly cured by Dr. King's New Life Pills, which worked wonders for her health." They always do. Try them. Only 25 cents at DR. STONE'S drug stores.

TO THE ASYLUM.—Upon complaint of Supt. H. E. Bickers, of the Reform School, yesterday, and the examination and certificate of Dr. W. C. Smith County Judge John H. Scott committed James Curtis, aged 11 years, and a former inmate of the Reform School, to the Insane Asylum. He was conducted to the latter institution by W. Scott Taylor yesterday afternoon.

REMARKABLE CURE OF CROUP

A Little Boy's Life Saved.

I have a few words to say regarding Chamberlain's Cough Remedy. It saved my little boy's life and I feel that I cannot praise it enough. I bought a bottle of it from A. E. Steere of Goodwin, S. D., and when I got home with it the poor baby could hardly breathe. I gave the medicine as directed every ten minutes until he "threw up" and then I thought sure he was going to choke to death. We had to pull the phlegm out of his mouth in great long strings. I am positive that if I had not got that bottle of cough medicine, my boy would not be on earth today.—Joel Demont, Inwood, Iowa. For sale at STONE'S drug stores.

LIQUID AIR.

Five years ago air was regarded as a gas only. Then came liquid air with all its possibilities of usefulness, and this has been followed by solid air, the discovery of which is the culmination of a serious of laborous experiments with liquid air by Prof. Metz. Having nearly come to the end of his supply of liquid air, he determined to use all that was left in a bold experiment, and succeeded in obtaining solid air. He took a large test-tube, about 18 inches in length and over one inch in diameter, and put the liquid air into it, filling it to within six inches of the top. He then corked it, and through the cock inserted a bent glass tube connected with his vacum apparatus, and the latter was started so as to cause the most rapid evaporation possible. The liquid air when put into the tube stood at the low temperature of 312 degrees below zero, and under the rapid evaporation the temperature fell many degrees lower still. The cold became so intense that the atmospheric air all about the tube condensed and liquefied on the outside of the tube and ran down just as steam condenses on the outside of a tumbler of cold water. These drops were caught in a Dewar tube, and proved on experiment to be identical with liquid air. In the meantime the original volume of air in the test-tube was found to have been reduced to a small lump scarcely more than one inch deep in appearance, resembling fairly clear ice. That was solid air, the first ever produced so far

ASSESSMENT OF COUNTIES

Shows a Great Increase in Valuation of Property

OVER TWENTY-FOUR MILLION DOLLARS MORE ON THE 1901 ROLLS THAN IN 1900.

Multnomah County Pays Less Than Its Proportion of the Tax Under the New Law, While Marion Pays More Than Its Share.

Secretary of State F. I Dunbar has given out, in tabular form, the statement of the assessed valuation of the property of the state, as shown by the summaries of the assessment rolls of the several counties. The statement shows an increase of $24,004,621.83 in the assessed valuation of all the property

	1900.	1901.
Acres of tillable lands	$ 24,258,795 50	$ 22,343,641 00
Acres of non-tillable lands	20,784,600 76	28,566,794 06
Improvements on deeded or patented lands	6,863,270 00	7,607,016 00
Town and city lots	21,881,901 00	29,401,682 00
Improvements on town and city lots	13,612,162 00	17,990,424 00
Improvements on lands not deeded or patented	549,567 00	559,151 00
Miles of railroad bed	5,217,229 50	5,645,943 00
Miles of telegraph and telephone lines	388,645 35	391,971 00
Miles of street railway bed	107,800 00	216,745 00
Rolling stock	855,503 20	936,490 60
Steamboats, sailboats, stationary engines and manufacturing machinery	2,200,157 00	2,913,598 00
Merchandise and stock in trade	5,933,573 00	7,357,242 86
Farming implements, wagons, carriages, etc	1,832,515 00	1,905,089 00
Money, notes and accounts	6,708,898 00	7,200,825 00
Shares of stock	1,573,000 82	1,988,740 34
Household furniture, watches, jewelry, etc	2,979,485 00	3,251,906 00
Horses and mules	2,575,379 00	2,840,777 00
Cattle	4,993,885 00	5,734,858 00
Sheep and goats	2,299,584 00	2,794,442 50
Swine	172,870 00	196,635 00
Gross value of all property	$125,738,761 13	$149,743,882 96
Exemptions	7,933,887 00	8,345,369 00
Total value of taxable property as finally equalized by County Board of Equalization	$117,804,874 13	$141,398,513 96

in the state, compared with last year. The exemptions for 1901 also increased $411,482, making the net increase of the total taxable property for 1901, as compared with the preceding year, $23,593,639.93. The total valuations are higher for 1901 than it has been for five years. Every class of property shows an increase except tillable land, in which there is a decrease of $1,915,154.50, while non-tillable land shows an increase of $7,782,19390. Below is given a comparative statement of the several classes of property for the years 1900 and 1901, showing at a glance in what classes the increase is found:

Following is a comparative statement showing the total taxable property, by counties, for 1900 and 1901:

Baker	$ 2,880,255 00	$ 3,523,340 00
Benton	2,524,762 00	2,388,208 00
Clackamas	4,284,841 00	4,477,483 00
Clatsop	2,686,016 00	2,928,067 00
Columbia	1,477,350 00	1,517,845 00
Coos	2,658,103 00	2,766,535 00
Crook	1,686,322 00	1,790,388 00
Curry	503,232 00	516,072 00
Douglas	4,223,215 60	4,206,147 16
Gilliam	1,062,198 00	1,039,745 00
Grant	1,356,350 00	1,701,902 50
Harney	2,241,655 00	2,199,015 00
Jackson	3,230,914 56	4,130,719 66
Josephine	1,198,853 00	1,289,030 00
Klamath	1,588,243 00	2,299,169 00
Lake	1,546,254 00	1,583,384 00
Lane	5,454,381 00	5,709,853 00
Lincoln	584,578 00	729,927 00
Linn	6,684,050 00	6,773,040 00
Malheur	1,567,765 00	1,456,860 00
Marion	7,121,781 00	8,314,636 00
Morrow	1,117,781 00	1,452,014 00
Multnomah	32,639,987 00	48,195,662 00
Polk	3,129,790 40	3,769,943 00
Sherman	1,364,563 00	1,506,504 00
Tillamook	1,313,722 00	1,440,185 00
Umatilla	5,584,999 57	5,685,924 64
Union	3,387,762 00	3,375,249 00
Wallowa	1,124,698 00	1,386,120 00
Wasco	3,129,829 00	4,077,405 00
Washington	2,870,935 00	3,468,986 00
Wheeler	808,782 00	957,521 00
Yamhill	4,770,106 00	4,731,634 00
Totals	$117,804,874 13	$141,398,513 96

The above table shows that Multnomah county has about 34 per cent of all the taxable property in the state of Oregon; as its proportion of the state tax to be raised is only about 31 per cent, it can be seen that Multnomah county fares well under the assessment law. Marion county's proportion of the state taxes is 6.13 per cent, while its total taxable property is only 5.9 per cent of the total taxable property of the state, thus showing that Marion county pays a little more than its proportion of the taxes for the state's exchequer.

The Latest Yarn.

A Pittsburg drummer tells this new yarn: I always carry a bottle of Kemp's Balsam in my grip. I take cold easily and a few doses of the Balsam always makes me a well man. Everywhere I go I speak a good word for Kemp. I take hold of my customers—I take old men and young men, and tell them confidentially what I do when I take cold. At druggists, 25 and 50 cents. 4

BIDDING WAS BRISK

DELINQUENT TAX SALE AT THE COURT HOUSE YESTERDAY.

Brought Out a Large Crowd of Buyers and All the Property Put Up was Sold—The Sale Will Continue This Morning.

There was a large crowd of Marion county propertyo wners, representatives and others speculatively inclined, in attendance at the sale of the delinquent property at the court house, yesterday. The sale opened at 10 o'clock yesterday morning and continued until 4 o'clock p. m. The bidding was very spirited all day and the result was quite satisfactory to the officers, as all of the property outside of the city of Salem was disposed of and good prices were received for all. In no case was there a sale for less than the amount of the taxes, but the greater amount of the property brought prices ranging from $1 to $20 and $25 above the taxes. This latter fact is very gratifying to the officials as it will serve to swell the county's revenues materially.

Under the law which provides for the redemption of property sold for taxes, the owner may redeem his property within two years from the date of its sale, upon paying the purchaser the amount bid with 20 per cent interest thereon for the first year and 30 per cent thereon during the second year. The sale will be continued at 10 o'clock this morning, when the city property will be disposed of and it promises to be even more spirited than that of yesterday.

Mrs. D. W. Craig and Miss E. S. Waterous are in Oregon City, at the bedside of Mrs. E. D. Kelly, their sister, who is seriously ill.

United States District Attorney John H. Hall, of Portland, was a Salem visitor yesterday afternoon, having business before the Supreme Court.

Miss Emria Washburn, one of the Salem Hospital nurses, returned last evening from a few days visit to friends and relatives in Silverton.

Mrs. R. C. Churchill, of Albany, who has been visiting with relatives in this city the past few days, departed for home on the local last evening.

Rev. H. L. Barkley returned last evening from Woodburn, where he conducted services last Sunday.

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In all its stages there should be cleanliness.

Ely's Cream Balm cleanses, soothes and heals the diseased membrane. It cures catarrh and drives away a cold in the head quickly.

Cream Balm is placed into the nostrils, spreads over the membrane and is absorbed. Relief is immediate and a cure follows. It is not drying—does not produce sneezing. Large Size, 50 cents at Druggists or by mail; Trial Size, 10 cents by mail.

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PILES Dr. Williams' Indian Pile OINTMENT will cure Blind, Bleeding, and Itching Piles. It absorbs the tumors, allays the itching at once, acts as a poultice, gives instant relief. Dr. Williams' INDIAN PILE OINTMENT is prepared only for Piles and Itching of the private parts. Every box is warranted. Sold by druggists, or sent by mail on receipt of price, 50c and $1.00 per box. WILLIAMS MFG. CO., Prop's, CLEVELAND, O.

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Start right and you will probably arrive at your destination all right, and, to start right, use the Northern Pacific, and preferably the "NORTH COAST LIMITED" train, in service after MAY 5th.

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CAUTION Beware of counterfeits and imitations. The genuine is put up only in paste-board Carton with fac-simile signature on side of the bottle, thus: Send for Circular to WILLIAMS MFG. CO., Sole Agents, Cleveland, Ohio.

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