

MILWAUKIE RATE CASE UP TO SUPREME COURT

Argument of Question of Constitutionality of Act Creating Railroad Commission and Scope of Its Powers Is Made by Counsel Before Higher Tribunal.

"That defendant has no power to adjust rates on the ground of unjust discrimination except where such discrimination appears in a difference in charges to shippers or to different persons for a like and contemporaneous service and this does not include discrimination as between different localities."

This is the principal point of law which has been raised on appeal from the decision of Judge Galloway, of the court of Marion County, to the Supreme Court, in the case of the Portland Railway, Light and Power Company, plaintiff and appellant, vs. the Oregon Railroad Commission, defendant and respondent, argued and submitted to the Supreme Court yesterday by Franklin T. Griffith, Oregon City, and Frederick V. Holman, Portland, for plaintiff, and Attorney General Crawford, Clyde B. Altchison and G. H. Sewell, for the Commission. The suit was brought to enjoin the enforcement of an order of Judge Galloway, making a reduction in the fare charged by the railway company between Milwaukee and Portland.

"At common law, so long as the carriers carried for all persons who applied in the order in which the goods were delivered," the Railway company contends, "and the charges for transportation were reasonable, the carriers were not bound to make the same charge to all persons alike for the same service, nor had one locality any right to complain of the charges of a carrier on the ground that one locality was favored by the carrier with a lower rate than that given another locality."

"Inasmuch as at common law the court would be without power to adjust discrimination between localities, it is apparent that before the Railroad Commission can proceed to adjust discriminations between localities, that power so to do must be conferred upon it by the legislature and if the power to adjust discrimination as between localities has not been granted by the legislature to the Railroad Commission, the orders of the defendant based upon said alleged discrimination between localities must necessarily be held void for want of jurisdiction."

"Assuming, but not conceding, that the legislature has power to adjust

discriminations between localities and that such power may be delegated to a commission, it is, we believe, a fundamental rule that the intent to delegate such power must appear by unequivocal language or by necessary implication.

"We contend that the power to adjust discrimination between localities has not been delegated to the defendant by the Railroad Commission Act of 1907, from which act the defendant derives all of its powers.

"The powers to adjust discriminations as between localities not being expressly granted to the Oregon Commission, if the power exists at all, it must be found by necessary implication, and the defendant, recognizing the fact that such power is not expressly conferred upon it, claims that such power exists by necessary implication from the provisions of Sections 28, 30, and 55 of the Oregon Act."

In support of plaintiff's contentions plaintiff relies upon the following points:

"That defendant has no power to adjust rates on the ground of unjust discrimination except where such discrimination appears in a difference in charges to shippers or to different persons for a like and contemporaneous service and this does not include discrimination as between different localities."

"That the rate of fare, five cents, on plaintiff's Mt. Scott Division, from First and Alder streets in Portland, to the town of Lent was made by plaintiff's predecessor for a valuable consideration long prior to the passage of the act of 1907."

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sage of the Oregon Railroad Commission Act and cannot now be considered against Milwaukee and Oak Grove. "That if the court should hold that discrimination between localities can be considered by the defendant in adjusting rates, it is contended by the plaintiff that such discrimination must appear to exist in a difference in charges for substantially the same service, under like and similar circumstances and conditions, and that if the service performed which is alleged to constitute a discrimination is shown to be different in character and the circumstances and conditions surrounding such performance to be dissimilar, the charge of unjust discrimination must necessarily fail. In these cases the service to Milwaukee and Oak Grove is dissimilar and rendered under substantially different circumstances and conditions to the service to the localities alleged to be receiving an undue preference and advantage.

"That the chief test as to reasonableness of rates is whether or not such rates furnish a reasonable return upon the capital invested in the business of the carrier. That the maintenance of existing rates is necessary to furnish such reasonable return.

"That neither the defendant nor the court can speculate as to the probable effect upon the business of the carrier due to a reduction in fares nor can the defendant nor the court speculate as to the probable effect of said reduction in fares upon the increase or decrease of population or the increase or decrease of the value of real property in the affected district.

"That if any reduction should be proper that an arbitrary cut of 50 per cent, and 33 1-3 per cent, in existing fares is excessive, unjust, unreasonable and unwarranted."

A Peculiar Wrench.

Of the foot or ankle may produce a very serious sprain. A sprain is more painful than a break. In all sprains, cuts, burns and scalds, Ballard's Snow Liniment is the best thing to use. Relieves the pain instantly, reduces swelling, is a perfect antiseptic and heals rapidly. Price 25c, 50c and \$1.00. Sold by all druggists.

When a woman goes calling she thinks she is lucky if she finds her friends out, but when a man goes calling he wants to find people at home; he wants to see them.

CASTORIA

For Infants and Children.

The Kind You Have Always Bought Bears the Signature of *W. D. Hoagland*

CANDIDATES' CARDS

FOR GOVERNOR.

Ignorance and superstition combined with intense selfishness comprises the greatest obstacle with which civilization has to contend. N. NELSON
P. S. I believe a candidate for Governor should agree to accept the constitutional salary only.

Won't Slight a Good Friend.

"If ever I need a cough medicine again I know what to get," declares Mrs. A. L. Alley of Beas, Me., "for after using ten bottles of Dr. King's New Discovery and seeing its excellent results in my own family and others, I am convinced it is the best medicine made for coughs, colds and lung trouble." Every one who tries it feels just that way. Relief is felt at once and its quick cure surprises you. For bronchitis, asthma, hemorrhage, croup, la grippe, sore throat, pain in chest or lungs, it is supreme 50c and \$1. Trial bottle free. Guaranteed by J. C. Perry.

MADAME DEAN'S FRENCH FEMALE PILLS.
A Safe, Certain Remedy for Suppressed Menstruation. NEVER KNOWS TO FAIL. Safe! Sure! Speedy! Satisfying! Guaranteed. Money Refunded. Best remedy for \$1.00 per box. Will send three on trial, to be paid for when received. Samples free. If your druggist does not have them send your order to the UNITED MEDICAL CO., BOX 74, LANGFORD, PA.

Sold in Salem by Dr. S. C. Stone



Phone the Butcher--Quick!

What Butcher? E. C. Cross & Son, of course; we always get the best meat there. It isn't necessary to go down to the market these warm days. Just call Main 291 and tell them to send you a nice steak, roast, boil or anything you want in the meat line and it will reach you on time and in first class condition.

Classified Ads

Capital Journal "Want Ads" Bring Quick Results
One cent a word for first insertion. One-half cent a word for each insertion thereafter. No advertisement taken for less than 25c. Count six words to the line.

FOR SALE.
FOR SALE—Good 1 1/2 H. P. Staver gasoline engine, cheap. Inquire at 178 South Liberty St. 5-23-tf.

FOR SALE—Threshing outfit, consists of 20-horsepower double cylinder engine and 36-60 Reed's separator, all of the latest make. There is a Parson's feeder. Perfection veigher and Farmer's Friend blower. Price reasonable and terms easy. Apply to J. J. Langmack, Albany. Home phone 1352. 5-21-tf

FOR SALE OR TRADE—For Salem property, 60 acres, partly improved; adjoins town, 344 State street. 10-15-tf

FOR SALE—Good 4-roomed house; lot 74x75; \$600. Ten acres close to Oregon Electric, \$1,000. Good 6-roomed house, newly painted and papered, for rent; \$6 per month. Phone E. C. Minton, 1649. 11-25-tf

FOR SALE—Oliver typewriter No. 5; been used but little. A bargain if sold soon. Address "E," care Journal. 11-26-3t

FOR SALE—Good dry fir wood. Call at 24th and Oak street or phone 649. 11-26-3t*

WANTED.
WANTED—At once, three sawmill men, two men at \$2.25 per day, one man at \$3 per day. A. C. Smith & Co., 54 State street. 10-30-tf

WANTED—Girl to do housework in small family. Must be competent. Phone 654. 11-26-3t*

WANTED—Housekeeper. Middle-aged lady preferred. Phone 52. 11-26-3t*

MISCELLANEOUS.
COAL OIL, GASOLINE—And Distillate delivered to private families in any quantity, to any part of the city. Starr Oil Co. Phone 1729. 9-15-tf

DOCTORS.
DR. H. S. STONE, D. C., CHIROPRACTOR—Spine and nerve specialist. Rooms 4, 5, 6, D'Arcy building. Phone Main 87, Salem, Oregon. 4-28-tf

The approach of Christmas excites a storekeeper as much as the approach of election excites a politician.

It isn't difficult to strengthen a weak stomach if one goes at it correctly. And this is true of the heart and kidneys. The old-fashioned way of dosing the stomach or stimulating the heart or kidneys is surely wrong. Dr. Shoop first pointed out this error. "Go to the weak or ailing nerves of these organs," said he. Each inside organ has its controlling or "inside nerve." When these nerves fall then those organs must surely falter. The vital truth is leading druggists everywhere to dispense and recommend Dr. Shoop's Restorative. A few days' test will surely tell! Sold by Capital Drug Store.

Men probably gossip as much as women, but forget a "story" sooner than women. Women will talk about a "story" 20 years, whereas men usually forget it in a week, and look for something new.

Tickling, tight coughs can be surely and quickly loosened with a prescription druggist are dispensing everywhere as Dr. Shoop's Cough Remedy. And it is so very different than common cough medicines. No opium, no chloroform, absolutely nothing harsh or unsafe. The tender leaves of a harmless, lung healing mountainous shrub gives the curative properties to Dr. Shoop's Cough Remedy. Those leaves give the power to calm the most distressing cough and to soothe and seal the most sensitive bronchial membrane. Mothers should, for safety's sake alone, always demand Dr. Shoop's. It can with perfect freedom be given to even the youngest babes. Test it for yourself and see. Sold by Capital Drug Store.

BECHTEL & BYNON'S BARGAINS.
5 lots at \$75 each. Easy terms.
1 lot close to car line for only \$150; \$5 down, \$5 per month.
1 lot on good corner for \$250. Easy terms.
1 lot on North Commercial for \$250.
2 lots on car line in North Salem, \$400 each.
1 lot on Nob Hill, \$400. Easy terms.
1 lot on State near 14th, for \$350.

A splendid buy is one we have on State street. Two houses and 100 x300-foot lot, only \$3000. State street property is going up.

We have a fine list of farms to choose from. Drop in and let us know your wants.

BECHTEL & BYNON, Telephone 452, 347 State street. Ground Floor

PAINTERS, PAPER HANGERS

PAINTER AND PAPER HANGER— Estimates made and first class work done. I. D. Driver, 517 North Capital street, Salem, Or. Phone 926. 6-26-tf

KENNEDY & PORTER— 130 Liberty street. Phone 485. Dealers in Oregon Sienna (Salem-made) paint, wallpaper and all interior furnishings. Painting, papering, and all manner of interior work done promptly in first class style at moderate prices. 8-6-tf

BAKERS.

CAPITAL BAKERS— Bread, cake, pies, and all kinds of pastries, cookies, etc. Watch for our wagon. Phone 954. Radeck & Smith. 11-19-tf

BUTTERNUT BREAD— It is worth more than any other bread, yet the price is no higher. For sale at your grocer's. California Bakery, Thomas & Cooley, Props.

DRAYMEN.

EXPRESS WAGON— General draying. Furniture and piano moving. Phone Main 465. Fred Schindler, 365 State street. Horse for sale. 8-12-tf

SALEM TRANSFER CO.— Successors to Cummins Transfer Co. All kinds of transfer work done. Furniture moved and pianos boxed ready to ship. Prompt service our motto, 253 South Commercial street. Phone 210. 10-13-tf

BUSINESS CARDS.

BUTTE & WENDEROTH— Fine wines, liquors and cigars. We handle the celebrated Kellogg and Castle whiskies. Cool and refreshing beer constantly on draught South Commercial St. 9-8-1yr

SALEM WATER COMPANY— Office, city hall. For water service apply at office. Bills payable monthly in advance.

G. F. MASON BOX COMPANY 247 Mill-r street, South Salem, manufacturers of all kinds of boxes, crates and fruit dryer accessories. Phone 308. tf

FRANK E. CHURCHILL— Representative of the Western Conservatory of Music, of Chicago, in this city, will resume classes in piano, harmony, theory, sight reading, etc., on and after September 20. Studio opera house building, room 9. Phone 1100. Pupils may receive lessons either in their home or at the studio. 9-11-3m

LIVERY STABLE.

LIVERY AND FEED STABLES— Old Postoffice stables, at 254 Perry street, between Commercial and Front. Telephone 188. Some of the finest livery in the city can be found here. W. W. Johnson. tf

OSTEOPATH.

DR. B. H. WHITE, Osteopath and Nerve Specialist. Graduate of the American School of Osteopathy, Kirksville, Mo., 1902. Post-graduate and specialized in nervous diseases at Los Angeles College 1909. Treats acute and chronic diseases. Consultation free. Office 17-18 Breyman Bldg. Phone 859. Residence 346 North Capitol St.; phone 469. 8-30-tf

PLUMBERS.

THEO. M. BARR— Plumbing, hot water and steam heating and tinning, 164 Commercial street. Phone Main 192. 9-1-1y

OTTO MUELLHAUPT— Plumbing, heating, gas fitting; prices reasonable; work guaranteed; estimates furnished. Phone 373. 1066 Chemeketa street. 4-17-tf

TONSORIAL.

H. G. MEYER & CO.— The best and largest shop in the city. Six first class barbers. Only first class bootback in city; porcelain baths, and everything pertaining to a first class shop. Also carry a full line of cigars and tobacco and barbers' supplies. 162 Commercial street, next door to Statesman office. 4-6-tf

LODGE DIRECTORY.

MODERN WOODMEN OF AMERICA Oregon Cedar Camp No. 5246. Meets every Thursday evening at 8 o'clock in Holman hall. A. E. Banber, V. C.; F. A. Turner, clerk

WOODMEN OF WORLD— Meet every Friday night at 7:30 o'clock in Holman hall. L. W. Acheson, C. C.; L. H. Fletcher, Clerk. 1-16-09

No Case on Record.
There is no case on record of a cough or cold resulting in pneumonia or consumption after Foley's Honey and Tar has been taken, as it will stop your cough and break up your cold quickly. Refuse any but the genuine Foley's Honey and Tar in a yellow package. Contains no opiates and is safe and sure. J. C. Perry.

REAL ESTATE NEWS

SAVE YOUR RENT AND BUY A HOME

- \$1500—Buys a 7-room house, good barn, six lots, near school and car line; \$500 cash and \$10 per month on balance.
- \$2300—Six-room, strictly modern dwelling, nice lot, fine location; \$300 cash and \$20 per month on balance.
- \$1050—Four-room bungalow, corner lot with east front; \$200 cash, balance \$10 per month.

Farm Snaps

86 acres, house and barn, two miles from Liberty, lays slightly rolling, finest kind of fruit land; \$50 an acre if sold this week.

Business Property

It will pay you to investigate our business properties; either with brick buildings or vacant grounds; several good opportunities for Mr. Investor. See us for particulars and terms.

H. A. Johnson & Co.
Murphy Block Salem, Oregon

Quick Returns Follow Good Investments

HERE ARE SOME THAT ARE RIGHT.

Fine building lot on 17th street, between State and Court, \$550 Lot close in on Chemeketa street, \$750.
Two good lots in North Salem, near mute school, high and dry, bearing orchard, on graded street, city water, bargain at \$175 each, \$10 down, \$5 per month.
The Francesco Seeley home in Yew Park, one of the most artistic residences in the city, offered at a bargain.

SMITH-GILLINGHAM CO.
ROOM 5, MCCORMACK BUILDING.

SEE **GEO. O. SAVAGE**
For farms and city property
135 S. Commercial St.

Are You Looking for a Home?
65 Acres.
All extra fine land, in sight of Salem, good 9-room house, hot and cold water, 2 barns, 20 acres just beginning to bear, 3 acres young Royal Ann cherries and all kinds of small fruits; best home in 3 miles of Salem. Investigate.

9 Acres.
Within half mile of West Salem depot, fine new 6-room house, new barn, new fence; buildings cost \$2500; only \$3,000 for a few days.

15 Acres.
New 6-room house, new barn, fruits, etc. within one mile of the capitol building, only \$3000.

100 Acres.
70 in cultivation, 30 acres timber, only \$4000.

Six Room Bungalow.
New fine, modern 6-room bungalow, close in, a snap, \$2700.
New 7-Room House.
Large lot, fruit, etc., \$1800.

We also have the choicest vacant lots in the city.

Fruit Tracts.
Some choice unimproved tracts of land close in. We have some fine inside business property at a bargain. If you want anything in this country see
A. C. SMITH CO.
Room 544 State St. Phone 1507

For Sale

26 acres 2 1/2 miles northeast of Salem; fine soil, and located good to cut into 5-acre tracts.
60 acres timber land; will cut over 2000 cords of wood; only \$26 per acre.

Derby & Willson

FARMS ORCHARDS CITY PROPERTY
My list may contain exactly what you want. T. C. JORY, 205 Com'l St., Salem, Or.

FOR SALE.
A good 160-acre farm 3 miles from Salem; good buildings, running water whole pear, and some timber; 50 acres in cultivation; family orchard. Can be bought cheap.
A good 15-acre tract 4 miles out of Salem; 6 acres in cultivation; good house and barn; good well; some fruit; good place. \$2,250.
40-acre farm, house and barn; good well; the place is in cultivation, just out of town. Price \$125 per acre.
52 acres, 25 acres in cultivation, balance timber and stumps. Price \$55 per acre.
We also have plenty of city property; good bargains. Come and see
J. C. SCHULZ & CO.
490 State Street Salem, Oregon

Union Land Co.

Newport, Oregon.

Population and property value tripling every year. The next 3 years is the time reasonably-priced lots can be purchased.

LOTS AND BLOCKS FOR SALE IN ALL PARTS OF THE CITY.
If required, buildings erected on any property sold. Correspondence solicited.

J. A. OLSSON, Mgr.
Newport, Oregon.

ELLIS & WOOD— Real estate, loans and insurance, notary public, employment bureau. Phone 554, 476 Court street, Salem, Oregon. Ticket office Hamburg-American steamship lines. 11-1-1yr

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