

THE CAPITAL JOURNAL

E. HOFER, Editor and Proprietor. H. M. HOFER, Manager

Helps Most Newspaper Devoted to American Principles and the Progress and Development of All Oregon

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A WORD FOR THE CAPITAL CITY.

According to the U. S. Census Salem made the largest growth of any western city, from four thousand to nearly fifteen thousand, from 1900 to 1910.

Being the state capital and having nine state institutions located here, besides the large Indian training school, about a million dollars is spent here annually.

The Southern Pacific, the Hill system, Falls City & Western and the Portland, Salem, Eugene & Eastern are all building into and out of Salem, besides a magnificent electric street car system.

Located on the Willamette river, with steamboat traffic all the year around, and with free locks and canal, and the construction of the Panama canal, Salem is rapidly becoming a manufacturing and jobbing center.

With a rich and prosperous country in all directions for forty miles, with new electric lines building and planned to connect all parts of the Willamette valley, Salem is the one city that has no possible depressions before it.

To this city of peace, plenty and assured and permanent prosperity, The Capital Journal invites the home seekers of the whole world to come and enjoy our advantages with us.

The Capital Journal wishes you a Happy New Year. It will go a step farther and help you make it happy and prosperous. If this paper or its editor can assist in any way to that end, come around and let us talk it over with you.

THE PAST YEAR.

It was a slow, dragging, uncertain kind of year for business. There were times when things looked good and then times when the prophets saw things darkly.

Merchants and business men generally felt their way and made only small ventures on good prospects.

The year 1912 will not be much better, and the country seems to be passing through a kind of eclipse.

The man who could come out of last year with his business affairs in good shape need not fear the future.

Last year was a good testing-out time for weak enterprises and for disciplining those who needed it.

A slow year is a good time for all to get settled down to conditions that are not velvety.

Instead of a panic, there will be steaming along under slow bells, and the boat will land all right.

This was the kind of a year we can look back upon and be thankful the conditions were no worse.

The program to raise saloon licenses to \$1000 a year and then take off the limit will not appeal to some people, who have studied this subject. There are enough saloons now, and the question of raising the license involves the question of forcing the saloons to expand their traffic to illegitimate traffic.

SENATOR BOURNE FOR PRESIDENT.

In the straw ballot The Capital Journal is taking for president, once in a while a voter casts a ballot for Senator Bourne. The votes are scattered between Taft, Roosevelt, La Follette, and several more or less Democratic would-be candidates.

We wish to say that Oregon need not be ashamed to have a brilliant young senator mentioned along with the rest.

As a man who stands for clean and progressive policies, for a people, Senator Bourne has a record of achievement ahead of all.

His speech on the Oregon system has passed the three million mark in point of circulation and advertised Oregon to the whole world.

Senator Bourne is a man who stakes his entire political reputation upon the principles he advocates instead of upon personality.

As a publicist, as a man of keen intellectual grasp of facts and principles, he towers above the heads of all modern politicians.

In following a fundamental principle to its logical conclusion he adheres with bulldog tenacity of purpose to what he believes. No man from Oregon has ever made himself a national figure by purely legitimate means of publicity as Senator Bourne has.

He is more than ever a national influence and no man can become president of the United States without sitting down and talking it over at least with Jonathan.

Starts off good—new Salem city council.

It is now ascertained that half the coal mined is wasted at the mine. Half the fuel product is wasted in the forests and saw-mills. Half the food is wasted at hotels and restaurants, and half the time of one's life is fooled away.

Portland, as usual, ended in apportioned, as usual, ended in a riot, and higher taxes. The present system is open to many abuses. Five directors, each in for five years, and one elected each year, takes three years for the people to rebuke a majority, and there is no recall on school directors, says the attorney-general.

Marie Corelli's new novel, "The Life Everlasting," is a combination of theology, mysticism, spiritism, transcendentalism, mental science, electricity and what she calls radio-activity let loose.

The race will be between Taft, Roosevelt and La Follette on one side and Harmon and the New Jersey professor and a dark horse on the other, with betting about even on Taft and Harmon.

Now to exchange holiday presents.

It is gratifying to learn that the football program for all the big colleges is all amicably arranged for 1912.

There are many men outside the pen whose honor will hardly stand up against a free drink that Governor West's honor brigade is really making a pretty good record.

What! Graft in Portland? Yet Portland dictates state and federal politics.

It would be interesting to know how much Mr. Parkison, a mere transient, has cost the people of Oregon.

A suffragette cow kicked a pitchfork through a man at Echo.

Mayor Dimick and Law Maker U'Ren agree on one thing—government by a business manager.

OREGON SUPREME COURT DECISIONS.

Full Text Published by Courtesy of E. A. Turner, Reporter of the Supreme Court.

Marion County v. Woodburn Mercantile Co., Marion County. Decided, December 23, 1911. Marion county, appellant, v. Woodburn Mercantile company, a corporation, respondent. Appeal from the circuit court for Marion county. Hon. Geo. H. Burnett, Judge. Argued and submitted December 13, 1911. W. C. Winslow (John H. McNary and W. C. Winslow on the brief) for appellant. Thomas Brown (Carson & Brown on the brief) for respondent.

This is an action to recover delinquent taxes. The cause being at issue was tried without a jury and from the testimony given findings of fact were made substantially conformable to the averments of the complaint and to the effect that on March 1, 1908, the defendant was a private corporation engaged in business in Marion county, and that all the property it then owned or held hereinafter consisted of merchandise, money, note and accounts which were valued at \$10,250 by the assessor who made an entry of the estimate and a description of the property in the assessment roll; that such schedule was duly returned to the county clerk and the appraisal made by the board of equalization; that based on such valuation certain taxes were levied for various purposes upon the personal property mentioned and the items thereof entered on the tax roll; that about January 15, 1909, the board of directors of the defendant divided all its property among its stockholders, receiving from them a surrender of their respective shares of stock, but no provision was made by the corporation for discharging the taxes referred to, no part of which has been paid; that a warrant for the collection of the taxes so levied was attached to the roll February 1, 1909; and that pursuant to such command the tax collector, after due and diligent search and inquiry was unable to find any property in the county belonging to the defendant.

Based on these findings, the court deducted the conclusion of law that the complaint did not state facts sufficient to constitute a cause of action, and that the action should be dismissed. A judgment having been entered in accordance therewith the plaintiff appeals.

Moore, J. Are the conclusions of law thus made deducible from the findings of fact is the question to be determined. This inquiry makes a consideration of whether or not our statute permits the maintenance of an action to recover a delinquent tax levied on personal property. Attention will be attracted to the enactment governing the proceedings in such cases.

All property liable to taxation is required to be assessed to the person or corporation owning it at 1 o'clock on the first of March of each year. L. O. L. Sec. 3586. When a tax levied on personal property becomes delinquent, it is the duty of the tax collector to seize and sell, in the manner prescribed sufficient of the tax payer's goods and chattels, if they can be found in the county, to satisfy the demand. If, in the opinion of the tax collector, it becomes necessary to charge the tax on personal property against real estate in order that such tax may be collected, he is required to select some particular tract of land owned by the person or corporations owing the personal property tax, and to note upon the tax roll, opposite the description of such tract, the tax on the personal property, whereupon such tax becomes a charge against the real estate and to be enforced, in case of delinquency, in the same manner as other real property liens. Id. Sec. 3683. All taxes levied upon real property, including taxes on personal property that have been charged against real estate constitute liens upon real property. Id. Sec. 3684.

The lien thus declared may be enforced in a suit instituted for that purpose and the land subject thereto sold pursuant to a decree. Id. Sec. 3685. If the premises are not redeemed from the sale a deed to the real property must be executed to the purchaser. Id. Sec. 3702. The foregoing provisions are a brief summary of the mode prescribed for the collection of the rateable portion levied by authority of law upon property to maintain the power of the state and to enable it to discharge its various functions. No lien is impressed by our statute upon personal property and if an owner thereof remove it to another county or otherwise dispose of it before his payment of delinquent taxes levied upon that class of property, and he has no real estate in the county against which such taxes can be maintained against him to recover the taxes the county levying them is remediless and he is not bearing his share of the public burden. No enactment of this state expressly authorizes the bringing of an action in such a case.

When the levying of a tax is prescribed by law, but no provision is made for collecting the burden thus imposed, it may reasonably be inferred that the legislature intended that legal remedies, available in ordinary civil actions, might be invoked for enforcing the payment. So too, when a law places upon property a lien, as security for the payment of a tax, but the enactment contains no provision for barring the equity of redemption, it may fairly be deduced that a suit maintainable to foreclose the charge is enjoined. Cooley, Tax (3d. ed.) 17. This rule of construction is probably based on the doctrine that when a right is conferred by statute a further privilege is also impliedly granted without which the right itself would be ineffectual.

A statute formerly in force in Oregon required the sheriff, who was the tax collector, to pay the full amount of state and school taxes in gold and silver coin to the county treasurer and ordered the latter to pay to the state treasurer the state tax in like medium of exchange. Several owners of property, situated or held in Lane county, insisting that the act of congress of February 25, 1867 (12

U. S. Stat. 345) making United States treasury notes legal tender for all "debts" etc., offered to pay their respective taxes with that kind of medium of exchange, but the sheriff, refusing to receive it, they instituted mandamus proceedings to compel him to accept such payment, and it was held that state taxes were not "debts" within the meaning of the federal statute relied upon. Whitaker v. Haley, 2 Or. 123.

Thereafter the county treasurer of Lane county tendered to the state treasurer United States treasury notes in payment of the taxes due from that county, but the offer having been rejected an action was instituted by the state, against that county to recover as its portion of the public burden, \$5,469.96 "in gold and silver coin." The cause having been tried, an appeal from the judgment was taken to this court which held that a recovery could be had in the specie demanded. The opinion in that case, if any were announced, is not published in our reports. From the judgment thus rendered, a writ of error was taken to the supreme court of the United States which affirmed the determination taken up for review and held that the act of congress making United States notes legal tender for "debts" had no reference to taxes imposed by state authority. Lane County v. Oregon, 7 Wall. 71. In deciding that case Mr. Chief Justice Chase adopts language from the case of Shaw v. Packett, The U. S. 482, 486, where it is said: "The assessment of taxes does not create a debt that can be enforced by suit, or upon which a promise to pay interest can be implied. It is a proceeding in invitum." The rule that a tax levied on property has become well established. Cooley, Tax (3d. ed.) 17; 1 Desty, Tax Sec. 6; 27 Am. & Eng. Ency. Law (2d. ed.) 580; 37 Cyc. 710.

A contrary of judicial utterance exists regarding the right to maintain a suit or an action to recover delinquent taxes when the statute commanding the levy prescribing the remedy to enforce the collection. Thus, notwithstanding the organic law of Louisiana of 1879, declared that delinquent taxes should be collected "without suit" by a sale of the property on which the tax was levied, it was ruled that a valid claim against a decedent's estate might be made by a municipal corporation for the payment of delinquent taxes, the court holding that the award was not a judgment, but the allowance of a legal demand which was to be paid in due course of administration. Succession of Mercier, 11 L. R. A. 817. In the notes to that case the authorities are collated setting forth the determination of courts in favor of and opposed to the maintenance of a suit or an action to recover delinquent taxes. See also the case of State v. Georgia Co. 19 L. R. A. 485.

Since a tax levied upon property is not a debt, the burden imposed by law for the support of government is not a sum of money due or owing by agreement, and hence there exists no concord of understanding or intention between the tax payer and a municipality regarding the respective rights and duties, from which can be implied a promise that forms the basis of an action of assumpsit.

Upon principle we conclude that as our statute prescribes the manner of collecting delinquent taxes levied on personal property, the maxim "expressio unius est exclusio alterius" governs making the remedy exclusive. 27 Am. & Eng. Ency. Law (2d. ed.) 783; 37 Cyc. 1241. From this conclusion it necessarily follows that after the levy of a tax on goods and chattels and before their seizure to satisfy the demand if the tax payer removes to another county his personal property or otherwise disposes of it, no action can be maintained against him for the recovery of his share of the public burden, and the county levying the tax is remediless, if he has no real estate against which such tax can be charged. Legal remedies cannot be created ex necessitate rei by courts when no mode of procedure is prescribed by law, but relief for the correction of the evil must be sought from the law making department of the state.

Believing that the conclusions of law made by the trial court were properly deducible from the findings of fact the judgment is affirmed. Mr. Justice Burnett having heard this cause in the lower court, took no part at the trial or in the consideration hereof.

THE ROUND-UP

- A squab and hare farm started near Medford.
Oregon is overrun with calendar peddlers.
Oregon City has built a \$650 comfort station.
Portland is asked for \$10,000 for the unemployed.
Next state issue in Oregon—to hang or not to hang.
Portland flour exports gained 159 per cent in 1911.
The next Capital City Assembly will be a masquerade.
Shaniko sports had a big rabbit and coyote hunt Sunday.
The S. P. is condemning land in Eugene for a "Y."
The Holland, Medford's new hotel, opened New Years.
Corvallis stores advertise "after supper special sales."
Oregon will get \$35,000 earnings from forest reserves.
Introducing the midnight matinee at Portland theatres.
Baker City Y. M. C. A. will establish a rest room for ladies.
A Chahalls boy, infatuated with

Roots Barks Herbs

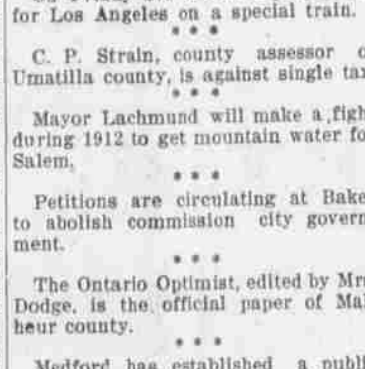
That have great medicinal power, are raised to their highest efficiency, for purifying and enriching the blood, as they are combined in Hood's Sarsaparilla.

Hood's Sarsaparilla

Get it today in usual liquid form or chocolate tablets called Sarsatabs

- Any tax levy 1912 is nearly three mills less than for 1911.
Oregon City continues to be the Greenia Green for divorcees.
Fred Stewart has opened a new livery business at Ontario.
Lentis complains of too much black-guard talk and blind pigs.
A. N. Whittier, prominent sheep man, of Hermiston, dead.
Mayor Dimick wants a business manager for Oregon City.
The Drain Nonpareil proposes to create the Port of Umpqua.
The big battle in Oregon in 1912 will be over woman suffrage.
Butte Falls, Jackson county, is putting in a gravity water system.
Three stamps are being operated at the Treasury mine on Blue River.
On Friday 175 Medford people left for Los Angeles on a special train.
C. P. Strain, county assessor of Umatilla county, is against single tax.
Mayor Lachmund will make a fight during 1912 to get mountain water for Salem.
Petitions are circulating at Baker to abolish commission city government.
The Ontario Optimist, edited by Mrs. Dodge, is the official paper of Malheur county.
Medford has established a public market, and other cities are talking of doing it.
At Gresham 30,000 cubic yards of rock were lifted out of a quarry at one blast Sunday.
Klamath county 35 mills this year against 27 1/2 last year, but most of it goes into good roads.
An Albany restaurant man blacked his wife's eye, spent a night in jail, and then paid \$50 fine.
The W. G. Jenkins prune orchard, near Nyssa, has just been sold for \$90,000, of \$750 an acre.
The Oregon campaign opens with registration January 2, and closes with election in November.
Jay Bowerman has begun a suit against Devlin, receiver of the defunct Oregon Trust & Savings.
If the supreme court upholds the Jackson county decision, Umatilla county will try for \$500,000 road bonds.
Leone Case Baer, an Oregonian paragon, is considered by many as the brightest newspaper person in that city.
It may interest some of the editors to know that Klamath county has opened a fine, modern, up-to-date infirmary.
The question of whether flowers can be legally paid for from the estate of the deceased is in the courts at Pendleton.
The Medford Sun had a grand New Year's edition, and maintained for that city the reputation of being the pacemaker of Oregon.
Chief of Police Shaw, of Oregon City, increased taxes collected for 1911 to \$1411.25, as against \$350 by his predecessor for 1910.
The Shaniko Star says: "Just keep your eye on that Roosevelt boss. If he don't win it will be because he is scratched before post time."

A HAPPY NEW YEAR TO YOU



The Salem German Society made enough out of their Thanksgiving concert to hold a nice Christmas festival for the children. It takes the German boys to make both ends meet.

Notice of Intention to Construct a Sewer to Be Known as Lateral Sewer District No. 6.

Notice is hereby given that the common council of the city of Salem, Oregon, deems and considers it necessary and expedient and proposes to construct a sewer to be known as "Lateral Sewer District No. 6," and that there shall be laid 8-inch vitrified or concrete sewer pipe so as to include block 9, Boise's Second Addition and block 2, Boise's First Addition to Salem, Oregon; commencing at a man-hole opposite intersection of an alley between block 9, Boise's Second Addition and block 2, Boise's First Addition, with "D" street; thence southerly in said alley 320 feet, in the city of Salem, Oregon, as shown and designated and according to the maps, plans and specifications adopted for the same, and on file at the office of the city recorder which said plans and specifications are hereby referred to for a more detailed description of said sewer, and hereby made a part of this notice and that the entire cost of the same will be assessed upon the property directly benefited by the construction of said sewer.

This notice is published for ten (10) days by order of the common council of the city of Salem, Oregon, and the date of the first publication thereof is the 27th day of December, 1911. Chas. F. Elgin, City Recorder. 12-27-11-dly

Notice of Intention to Construct a Sewer to Be Known as "Lateral Sewer District No. 7."

Notice is hereby given that the common council of the city of Salem, Oregon, deems and considers it necessary and expedient and proposes to construct a sewer to be known as "Lateral Sewer District No. 7," and that there shall be laid 8-inch vitrified or concrete sewer pipe so as to include block 9, Boise's Second Addition and block 2, Boise's First Addition to Salem, Oregon; commencing at a man-hole opposite intersection of an alley between block 9, Boise's Second Addition and block 2, Boise's First Addition, with "D" street; thence southerly in said alley 320 feet, in the city of Salem, Oregon, as shown and designated and according to the maps, plans and specifications adopted for the same, and on file at the office of the city recorder which said plans and specifications are hereby referred to for a more detailed description of said sewer, and hereby made a part of this notice and that the entire cost of the same will be assessed upon the property directly benefited by the construction of said sewer.

This notice is published for ten (10) days by order of the common council of the city of Salem, Oregon, and the date of the first publication thereof is the 27th day of December, 1911. Chas. F. Elgin, City Recorder. 12-27-11-dly

ACKNOWLEDGED IT.

Salem Has to Bow to the Inevitable—Scores of Endorsements Prove It. After reading the public statement of this fellow-sufferer given below, you must come to this conclusion: A remedy which cured years ago, which has kept the kidneys in good health since, can be relied upon to perform the same work in other cases. Read this: E. P. Reed, First and Geary streets, Woodard's addition, Albany, Oregon, says: "I had backache and kidney complaint and at times became so lame and sore that I could not stoop. The reports I heard about Doan's Kidney Pills were so favorable that I procured this remedy and began its use. Prompt and thorough relief followed, and my back and kidneys were greatly strengthened. I am in a position to recommend Doan's Kidney Pills to anyone afflicted as I was." (Statement given February 6, 1906.)

A Second Statement.

On November 15, 1909, Mr. Reed said: "I can confirm all I have ever said about Doan's Kidney Pills. This remedy did me a world of good and consider it an excellent one for kidney disorders." For sale by all dealers. Price 50 cents. Foster-Milburn Co., Buffalo, New York, sole agents for the United States. Remember the name—Doan's—and keep no other.

Piles Cured in Six to 14 Days.

Your druggist will refund money Pazo Ointment fails to cure any sore of itching, blind, bleeding or protruding piles in six to 14 days, cents.

SALEM BANK & TRUST CO.

GENERAL BANKING AND TRUST BUSINESS. With our assurance that we are able and willing to take care of it, we solicit your Banking Business. Open an account with us, and we will extend you every favor consistent with good banking principles. WE PAY FOUR PER CENT ON SAVINGS. Liberty Street, Just off State. J. L. AHLERS, President. W. G. EAST, Cashier. S. S. EAST, Vice-Pres. DR. L. B. STEEVES, H. H. ROBERTS, Directors.

Gold Dust Flour

Made by the SYDNEY POWER COMPANY, Sydney, Oregon. Made for Family Use. Ask your grocer for it. Bran and Shorts always on hand. P. B. WALLACE, Agt.

Children Cry FOR FLETCHER'S CASTORIA

CHAS. F. ELGIN, City Recorder. 12-27-11 dly

Full Four Per Cent Intest

UNDER OUR NEW RELATIONS, EFFECTIVE JANUARY 1, 1912, WE PAUL FOUR PER CENT INTEREST ON ALL SAVS DEPOSITS OF ONE DOLLAR OR MORE, WITH PENALTIES FOR WITHDRAWALS OR DEPOSITS OF ANY KIND. DEPOSITS MADE DURING THE FIRST FIVE DAYS OF A MONTH WILL DRAW INTEREST FOR THE FULL MONTH. START THE NEW YEAR WITH A SAVINGS ACCOUNT IN OUR BANK.

Capital National Bank

SAVINGS DEPARTMENT. J. H. Abert, Pres. M. Croisan, Vice Pres. Jos. H. Alb. Cashier

Salem Steam Laundry

136-166 S. Liberty Street Telephone Main 25