

RACETRACK GAMBLERS GET NO CONSOLATION

INGLESIDE'S HORDE MUST OBEY THE LAW

Injunction Dissolved by Judge Murasky.

THE POLICE ARE VICTORIOUS

If It Is Found That the Jockey Club Is Breaking the Law, and It Is, It Can Have No Relief.

In its effort to enjoin the police "from interfering with the regular course of business" at Ingleside, the Pacific Coast Jockey Club met a first defeat yesterday. Next week the club will meet its Waterloo and the great corrupting corporation must retire from business as far as conducting it in San Francisco is concerned; at least the gambling, the most profitable end.

Judge Murasky yesterday dissolved the

Injunction heretofore issued to restrain the police from breaking into the racetrack of the corporation and carrying away law breakers and evidence to secure their conviction. When this injunction was issued the hands of the police were tied. Later a modification of the injunction was made by Presiding Judge Daininger which gave the police authority to enter the grounds if they believed a breach of the law was being or was about to be committed. As it was with but little difficulty that the police could bring themselves to believe that a crime was being committed or was about to be committed, and the belief never proved erroneous, the modification gave the police practically the same freedom enjoyed prior to the issuance of the original injunction.

The Jockey Club went into court and endeavored to set aside the modification of the injunction on various systems of reasoning, and during the hearing of this question a motion was made on behalf of the police to dissolve the original injunction and set the case for trial on questions of fact. The motion on behalf of the police has been granted. Judge Murasky has dissolved the injunction and set April 3 as the date of trial. In his opinion the court says that if upon the hearing it appears that the club is a law breaker, and that the police wrongfully trespassed upon its property to its irreparable injury, full relief will be accorded. From the evidence in the hands of the police it is obvious that the club will expect considerable difficulty in proving that it is not a law breaker and that it comes into the court of equity, before the hearing is only necessary to forever establish the status of the club and its rights in this community.

In full, Judge Murasky's opinion reads: The matters before the court for determination are: A motion to set aside the modification of the original injunction; a motion to dissolve the injunction, as modified; a motion to strike out parts of the answer, and a motion to set the case for trial.

By the injunction, as it stands, the club is restrained from entering upon the premises of plaintiff without its permission or unless they have reasonable cause to believe that an offense is being committed or is about to be committed thereon. The original order restrained them from entering without permission of plaintiff

ADVERTISEMENTS.

tiff or "without warrant or process of law."

Upon the argument it appeared, among a number of incidental problems, that there are involved in the case chiefly two questions:

1. Is a peace officer empowered by statute or by virtue of his office to enter forcibly, without warrant, upon places such as a racetrack when he has reasonable grounds to believe that an offense is being or is about to be committed?

2. Will a court of equity interfere? The modified injunction permits the defendants to enter upon plaintiff's premises upon belief that an offense is being committed, whether the offense be a felony or a misdemeanor. Though the word offense, used in the modified injunction, includes felonies as well as misdemeanors, and though defendants would be justified in entering where a felony was being committed, it is not tenable from the pleadings and the arguments of counsel that the "belief" of defendants was as to the commission of a misdemeanor.

To state that a police officer can arrest for a misdemeanor only when armed with a warrant, or that the misdemeanor is committed in his presence, is merely to state what has been the common law, with variance, for centuries, what is the statute law of this commonwealth, and what is a principle embodied in every set of grievances put forth by the people from the Bill of Rights to our Declaration of Independence. I do not understand that this rule is denied. Under our statutes when a person who has committed a misdemeanor in the presence of an officer, or who is sought upon a warrant, is within a house, such police officer may forcibly enter such house, without a warrant, and demand admittance and stated his business. It is claimed by the plaintiff that these restrictions upon the power of the police are not extended to places where the public gather, even though such places are private property, but the research of counsel, and it has been most diligent, has failed to find in the statute law of the State any provision which distinguishes the rights of a peace officer when seeking to enter a place such as is owned by plaintiff from those he has when demanding admittance to a house. I am inclined to believe, though for present purposes it is not necessary so to decide, that in this State a peace officer is a creature of the statute, having no existence and no powers except by virtue of the statute.

Numerous illustrations of the immovable status of things which would occur were audiences permitted to gather for the purpose of viewing prohibited performances, and those subjected to intrusion by the police have been cited; but such audiences would be unlawful assemblies, as defined by the Penal Code, and unlawful assemblies being crimes against the peace, may be dispersed by the police without warrant.

2. The gist of the case as thus far presented, however, is the right of the plaintiff to an injunction pendente lite.

The plaintiff comes into a court of equity, where he alleges that he and his are innocent of fraud, of crime, of a violation of law, who are of pure conscience concerning the matter in dispute, and asks to restrain a department of the municipal government from performing certain acts which the plaintiff alleges to be irreparable injury to it, and which that department has no right to perform. The plaintiff asserts that the defendants are acting in bad faith and with bad intent. The defendants allege that plaintiff is a wrongdoer, a violator of the law. The plaintiff asserts by reason of the fact that the defendants' business has been greatly impaired and that unless defendants are restrained from continuing their acts the injury to its property will be irreparable. The defendants allege that the injury to plaintiff's business has arisen from the fact that plaintiff cannot continue in its violations of the law. Plaintiff says the presence of the police deters its patrons from visiting the racetrack. The defendants assert that the absence of poeisseling is the absence of inducement to the acts offered by the plaintiff to its patrons, and for that reason they remain away. These are the principal issues presented by the complaint and the answer of affidavit of defendants.

Where greater injury will be inflicted upon plaintiff by the defendant by the dissolution of an injunction pendente lite, the injunction should be maintained until the trial is had. Where the contrary result will occur the injunction should be dissolved. If the plaintiff's allegations are true, if will suffer much loss, unless defendants are restrained, and defendants will suffer none by the injunction. If, however, the allegations of plaintiff are true, that plaintiff is a law-breaker, then the injury to the municipality from the continuance of the injunction would be greater than any that can be compensated by money, and therefore greater than any the plaintiff can suffer.

Many of the equities of the bill are denied by defendants. It is denied that force was used in entering, or that the entry was without permission, or that there was any interference, except with those actually found in violation of a public offense. Where such an issue is raised it is to be presumed at least for the purposes of a motion to dissolve the injunction, that the municipal officers acted within the scope of their authority. Under the circumstances, I believe that the injunction should be dissolved until a hearing upon the fact is had. If upon the hearing it appears that plaintiff is a law breaker, and that defendants wrongfully trespassed upon its property to its irreparable injury, full relief will be accorded.

The motion to strike out portions of the answer will be denied. That the matter may be speedily determined the cause will be set for April 3, 1899, for trial, provided such day will suit the convenience of counsel.

It is, therefore, ordered:

1. That the injunction pendente lite be dissolved.

2. That the motion to strike out portions of the answer be denied.

3. That the motion to set cause for trial be granted for April 3, 1899.

Attorney Garret McEnerney, who, with Judge Murphy, represented the police, said after he had examined the decision that he believed the decision of Judge Murasky to be correct. He stated that the right of the club to seek relief in a court of equity rested solely, according to the opinion of the court, upon the fact, which was easily established in favor of the police. Mr. McEnerney is of the opinion that there is no escape for the club under the anti-pool ordinance, and that it must either refrain from further selling or suffer the consequences.

Hotel Belvedere.
The Hotel Belvedere, under the management of Mrs. A. T. Moore at Belvedere, opened yesterday for the reception of guests for the summer season. Increased accommodations have been made in the way of additional suites and single rooms; also several new cottages have been built and will be conducted in conjunction with the hotel. Old patrons will be pleased to learn that one of the new features of Mrs. Moore's management will be the addition of a ranch, from which will be supplied her own chickens, butter, cream, eggs, vegetables, etc., for the use of the hotel.

A Wily Chinese.
Ah Wan, 723 1/2 Sacramento street, swore to a complaint in Judge Mogan's court yesterday for the arrest of Ah Ben on the charge of obtaining money by false pretenses. Ah Ben was advanced \$105 on the agreement that he would go to Alaska for the season's fisheries, but when he should have reported at the vessel to go on the voyage he did not turn up, and it was ascertained that he was in hiding.

Terror of the Potrero.
Mrs. Bridget Kavanagh, who is known to the police as the "terror of the Potrero," was sent to the County Jail for six months by Judge Mogan yesterday. She appeared before the Judge several days ago on a charge of vagrancy and he gave her twelve days to mend her ways. Instead of doing so Bridget continued to drink and make trouble and the police brought her in.

Patriotism—Channing Auxiliary.
At the Channing Auxiliary, First Unitarian Church, Monday, April 3, at 3 o'clock, Chaplain Frederick Brown, a Unitarian, of the U. S. S. Iowa will speak on "Patriotism." Major General Hart and Captain Edward Selfridge will be present as guests and Mr. Montague Turner will sing Mrs. Turner was formerly a member of the society.

El Campo will open Sunday, April 3.

NEW STATE LIBRARIAN.



JAMES L. GILLIS.

JAMES L. GILLIS of Sacramento was elected State Librarian to succeed Frank L. Coombs at a meeting of the State Board of Library Trustees held last night in the Union League clubrooms. W. C. Van Fleet, the newly appointed member of the board, took his seat after a felicitous introduction by Chairman Frank D. Ryan. There were also present Dr. Thomas Flint, A. B. Lemmon and Bradner W. Lee, members of the board. Mr. Coombs, the retiring librarian, presented his resignation, which was accepted after some complimentary things had been said about him. On motion of Chairman Ryan, Mr. Gillis was unanimously elected to succeed Mr. Coombs.

Mr. Gillis is a well-known resident of the capital city, and has been a lifelong Republican. He is about 45 years of age, and was a deputy in the State Library under Edward McCabe. Under Secretary of State Lou Brown's administration he was keeper of the archives and was clerk of the Committee on Ways and Means for two sessions.

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BIG SALE OF OREGON SUGAR PINE LANDS

BOOTH-KELLY LUMBER COMPANY THE PURCHASER.

Means the Launching of a Big Enterprise in Lane County and Railroad Development.

One of the biggest deals in timber lands in Oregon made for some time was consummated Friday in the purchase by the Booth-Kelly Lumber Company from the Southern Pacific Company, through W. H. Mills, of a large tract in Lane County, the consideration being \$121,220. This sale is the first of several that have been under consideration between the parties named for some time. It is probable that before the season is over lands to the aggregate amount of \$300,000 may be transferred.

The lands purchased are tributary to Mill Creek, and are located east of and about sixteen miles from Coburg, the terminus of the Oregonian Railway East Side, which runs out from Portland. It is the purpose of the Booth-Kelly Lumber Company to construct a railroad from their newly acquired lands to Coburg, and the road may ultimately be extended westward to connect with the main line of the California and Oregon Railroad, about five miles north of Eugene City. The latter project will involve some expensive bridge work, as several large streams near the forks of the Willamette will have to be crossed.

Should all the lands under negotiation be sold, which is highly probable, the company will become the owner of about 40,000 acres, comprising mostly sugar-pine, for which there is a ready market at all times.

Frank Buok of Vacaville, Cal., is one of the large stockholders in the company. This enterprise means the employment of a large amount of capital and of a large number of men. The company expects to cut a million feet of lumber during the season.

Sarsfield's Anti-Inflammation Salve will cure deep abscesses and all inflammatory swellings. All diseases of this character yield quickly to its influence. Druggists.

Foresters Elect Delegates.
Court Bonita, Foresters of America at its last meeting, which was one of the largest of the year, elected the following named delegates to the Grand Court: Joseph Armstrong and John Lynch. The alternates are Frank Cowan and D. O'Callaghan. After the election the court appointed a committee to arrange for a banquet in celebration of the court's anniversary.

Court Seal Rock has elected Ed J. Coffaney, John F. Ahearn and Fred H. Garnice alternates to the Grand Court, and Walter Taisen, Thierbach and H. W. Williams, alternates. B. de Silvia was advanced from senior woodward to sub-chief, and Charles M. Troppman was advanced from junior to senior woodward, while B. Hill was elected junior woodward. These officers were installed by Deputy Harry Simon.

Special Easter French dinner, 50c, at Perini's Italian Restaurant, 18 Mason st.

Manufacturers to Banquet.
The Manufacturers' and Producers' Association will hold its annual banquet on the evening of Wednesday, April 12, in the rooms of the Merchants' Club, on the seventh floor of the Mutual Life building. Over a hundred members have signified their intention of attending, and the gathering is expected to be productive of much good. Aside from the promotion of good fellowship among the members, it is likely that progressive measures and the future policy of the association will be discussed, although the addresses will be limited to ten minutes each. Representatives of similar bodies on the coast are expected to be present.

A Revelation
It will be to you when you smoke a Flor de Heyneman cigar as compared with what you have been smoking, and you will thank us for having called your attention to this fine clear Havana cigar. Try one. All first-class stores have Flor de Heyneman cigars in 12 1/2 and 25c sizes. If your dealer does not carry them send us \$3 for a sample. Flor de Heyneman Cigars, express prepaid, and if you do not like them we will refund your money. Heyneman, Brown & Co., 11 and 119 Pine street, sole agents.

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Sept. 11, 1898. H. JENKINS, Middleboro, Ky.

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Bathe the affected parts with hot water and CUTICURA SOAP to cleanse the skin and scalp of crusts and scales, and soften the thickened cuticle. Dry, without hard rubbing, and apply CUTICURA Ointment freely, to allay itching, irritation and inflammation, and soothe and heal, and lastly take CUTICURA RESOLVENT to cool and cleanse the blood. This sweet and wholesome treatment affords instant relief, permits rest and sleep in the severest forms of eczema and other itching, burning, and scaly humors of the skin, scalp, and blood, and points to a speedy, permanent and economical cure when all other remedies and even the best physicians fail. The SET, price \$1.25; or SOAP, 25c; OINTMENT, 50c., and RESOLVENT, 50c. (half size), may be had of all chemists, druggists and stores where medicines are sold throughout the world. Send for "How to Cure Itching Scaly Humors," free, of the Sole Props., POTTER DRUG & CHEM. CORP., Boston, Mass.