HIGH FENCE MUST GO

Silverfield Defeats Frank in Supreme Court.

TECHNICALITIES DO NOT WIN

Alleged Will of Esther Louise Mendenhall Declared Void Because Not Signed Before It Was Attested by Witnesses.

A contract will be construed so as to arrive at the intention of the parties and where it was agreed that a fence shutting off light and air shall not be built on a certain line, the construction of such a fence within a foot of such line will be held to be within the prohibition of the contract.

The document purporting to be the will of Esther Louise Mendenhall is held to be void because the signature of the testatrix was affixed after the signatures of the attesting witnesses.

SALEM, Oct. 26.—(Special.)—The Supreme Court today handed down decisions in four appealed cases, affirming the decisions in the court below in each instance. All the decisions were in Multnomah County cases:

Silverfield vs. Frank.

Saul Silverfield, respondent, vs. Sigmund Frank, appellant, from Multnomah County, J. B. Cleland, Judge; affirmed. Opinion by Justice Bean.

This was a suit to enjoin the violation of a written agreement concerning the use of real estate, and to compel the defendant to remove a certain fence or structure from the premises. Plaintiff and defendant are the owners of adjoining property in Portland. Prior to the time defendant purchased his property from plaintiff the parties had agreed in writing that defendant should not erect a house on the south 20 feet thereof, and "no fence, other than a wire or iron fence, six feet high, shall be erected on the north line of said south 20 feet during the ownership of said north 80 feet by said Silverfield." The north line referred to was the dividing line between the two properties.

Thereafter plaintiff erected two houses on his property, whereupon defendant constructed a solid board fence 18 feet high, not on the north line, but within one foot of it, and threatened to extend the fence and paint it black on the side next plaintiff's houses. This suit was then brought and in the court below resulted in a decree for plaintiff as demanded and defendant appealed.

The defendant contended that he could build any kind of a fence he desired any place except on the north line. The Supreme Court, in affirming the decision in the lower court, says:

"The object to be accomplished in construing a contract is to arrive at the intention of the parties as expressed by the language used. There is no room for argument as to the purpose and intent of the parties in making the contract in question. The defendant desired to prevent the construction of a building by the plaintiff so near his dwelling as to interfere with the use and enjoyment thereof by himself and family. The plaintiff's object was to avoid the construction by the defendant of a fence or structure south and east of his buildings, which would interfere with the use thereof by his tenants. For these purposes only, the contract was made, and, keeping this fact in view, there is no difficulty in interpreting its language and arriving at the intention of the parties. . . . The manifest intention of the parties should not be avoided and their purpose thwarted by any technical construction. The fence or structure erected or purposed to be erected by the defendant is within the prohibition of the contract and the decree is affirmed."

Mendenhall vs. Mendenhall.

In the matter of the estate of Esther Louise Mendenhall, deceased, E. and E. B. Mendenhall, respondents, vs. Rush Mendenhall, executor, appellant, from Multnomah County, A. L. Frazer and M. C. George, Judges; affirmed. Opinion by Justice Wolverton.

Mrs. Mendenhall died March 29, 1898, leaving a writing bearing date November 19, 1897, purporting to be her last will and testament. It named her husband, Rush Mendenhall, as executor, giving him all her personal property except certain articles bequeathed to Elizabeth C. Mendenhall, a daughter of her son, Elbert J., and the use of her real property during his life; to her sons, Edward C. and Elgin R., one dollar each; to her son Cyrus J., it devises one-third of her estate at her husband's death; to Elbert J., one-third for the use and benefit of himself and family during his life, thereafter to be divided equally between his wife, Harriet, and their issue; and to her said granddaughter, Elizabeth C., the remaining one-third. This instrument was admitted to probate on May 5, 1898, and on December 6, following, the respondents filed a petition contesting it.

The writing bore the signature of Esther Louise Mendenhall and the names of Ed Dennison and Lizzie B. Dennison, as subscribing witnesses. The single point in controversy was whether the testatrix subscribed the instrument or acknowledged its execution in the presence of the subscribing witnesses. After setting forth the substance of the testimony in the case, and commenting upon its weight, the Supreme Court holds that the evidence is such as to "impel us irresistibly to the conclusion that the will was neither signed nor the testatrix's signature acknowledged in the presence of the subscribing witnesses, and therefore that it was not, as a matter of fact, attested as by law required."

The husband had testified that the testatrix signed in the presence of the witnesses, and that he saw her write her signature. The attesting witnesses testified that the husband was not in the room at the time, and that she did not sign in their presence and that they did not know whether her signature had been attached at the time they signed. Ed and Al Mendenhall testified that they saw the will some time after it had been signed by the witnesses, and that the signature of the testatrix was not then upon it.

Ferguson vs. Reiger.

W. Ferguson, respondent, vs. O. H. Reiger, appellant, from Multnomah County, M. C. George, Judge; affirmed. Opinion by Chief Justice Moore.

This was an action brought in a Justice's Court to recover $250 alleged to be due upon an agreement made upon plaintiff delivering certain merchandise and store fixtures to defendant. The case was tried in the Justice Court and again in the Circuit Court, and came to the Supreme Court upon an appeal from a judgment in favor of the plaintiff for $250 and interest from the time the merchandise was delivered. The Supreme Court holds that as the jurisdiction in a Justice's Court is limited to the recovery of $250, no judgment could have been given in that court for interest antedating the judgment. On appeal the cause is tried in the Circuit Court as if originally commenced therein. "Considering the complaint as having been originally filed in such court, we think it had no authority, in the present instance, to give judgment for interest antedating its rendition, for the statute prescribing the form of complaint provides that it shall contain a demand for the relief which the plaintiff claims. If the recovery of money or damages be demanded, the amount thereof shall be stated, and as interest after the breach of a contract is recoverable only as damages, the failure to demand the same in the complaint rendered the judgment therefor erroneous." As no exception was taken by appellant to this particular part of the judgment at the time of its rendition, the respondent is allowed his costs in this court and the court below, and the cause is remanded with instructions to enter judgment for plaintiff for $250, with interest from date of judgment appealed from.

Heiney vs. Heiney.

Joseph Heiney, respondent, vs. Arthur and Albert Heiney, appellants, from Multnomah County, A. F. Sears, Judge; affirmed. Opinion by Chief Justice Moore.

This was an action of forcible detainer of a tract of land known as the Joseph Heiney farm. In the Justice Court judgment was for plaintiff and defendant appealed. They filed an ordinary appeal bond without providing for payment of twice the rental value in case the judgment should be affirmed. On motion the appeal was dismissed and appeal was taken from this order to the Supreme Court. Thirty-six days after the notice of appeal was given and before the Circuit Court made its order dismissing the appeal, the appellant offered to file the kind of bond required by law. The Supreme Court holds that in cases of this kind the additional bond providing for the payment of twice the rental value, must be given, and that where no such undertaking is given, the appellant cannot amend under section 249 of the code.

"In this case, the defendants did not give even a defective undertaking of the kind prescribed, and this being so, there was nothing to amend by." As the Circuit Court did not secure jurisdiction of the appeal, it is held that the appeal was properly dismissed.

STREET SCENE IN SHERIDAN, SHOWING THE BANK BUILDING TO THE LEFT.

POLITICS AT ASTORIA.

Call Issued for Republican Primaries November 4.

ASTORIA, Or., Oct. 26.—(Special.)—The Republican City Central Committee issued a call today for primaries to be held Wednesday, November 4, and for a convention to be held November 5, when a ticket will be named for the city election December 5. The committee met this evening and selected the list of delegates to be voted for at the primaries. The officers to be elected in December are a Mayor, Auditor, Police Judge, Treasurer, Surveyor, Superintendent of Streets, one Police Commissioner and three Councilmen. A Citizens' ticket will also be named, but no call for a convention has yet been issued. It is also stated that for the first time in years there will be a Democratic ticket in the field this Fall. Heretofore the Democrats have united with the Citizens' party in both the city and county elections, but now some of the leaders announce that they are determined to have a straight party ticket.

CLARK LOSES HIS SUIT.

Supreme Court Denies Petition for Writ of Certiorari.

SPOKANE, Oct. 26.—In the suit brought by Patrick Clark and others against the Buffalo Hump Mining Company and the Empire State Idaho Mining & Milling Company, the Supreme Court of the United States today denied the petition of the plaintiffs for a writ of certiorari, says a special to the Chronicle from Washington. This finally determines the case in favor of the defense.

The suit involved a lot of ore said to have been taken from the Missing Link and Ella mines, in money values to the amount of about $1,000,000, and was made interesting by lively charges of fraud. Charles Sweeny, one of the promoters of the Federal Mining Company, was the central figure of the defense. The properties are now owned by the Federal Company.

CONSTABLE WAS OBLIGING.

Permitted a Wily Thief to Escape His Clutches.

LA GRANDE, Or., Oct. 26.—(Special.)—Dan Purdee, charged with stealing a shotgun from Kirtley's barber shop today, also with other offences, was arrested by Constable Martin. While they were on their way to the jail the prisoner requested that he might stop and see his sister at a point on the street. He asked the officer to remain outside so as not to excite his sister. He stepped boldly into a residence which he had never seen before, asking the lady of the house if he might pass through the backyard.

The officer was awaiting his return, but the prisoner failed to show up, and at last accounts was still at large.

OFFER BY HEINZE

Counter Proposition to Buy MacGinniss' Stock

AND END THE LITIGATION

Makes Proposal to the Miners in Mass Meeting at Butte, but the Offer Is Rejected by President Scallon.

BUTTE, Mont., Oct. 26.—All chance of an immediate settlement in the war between the big copper interests, composed of the Amalgamated Copper Company on one side and F. Augustus Heinze on the other, was dispelled in a statement issued tonight by President William Scallon, head of the Amalgamated Copper interests in Montana.

Mr. Scallon's statement followed a proposal made by Mr. Heinze to a mass meeting of 15,000 miners of Butte, called this afternoon by Mr. Heinze, who stated that he would receive any proposition from the Miners' Union looking to a settlement of the present trouble and would, in return, state his proposition. Fearing trouble Mayor Mullins had several platoons of police present, but with the exception of the scene when President Long, of the Miners' Union, interrupted Mr. Heinze, demanding an immediate answer to the proposition of the miners to purchase the MacGinniss stock, nothing disturbed the peace of the meeting.

President Long grew very excited, and, with the members of his committee, abruptly left the meeting after Heinze had told him that he (Heinze) had the stand.

Mr. Heinze, in his address, declared Mr. MacGinniss had left the town at his suggestion, because of fear of bodily violence. The miners, at the meeting this afternoon, took objection to Mr. Heinze's remarks concerning Mr. MacGinniss' departure from the city, and in a resolution censured the statement of Mr. Heinze that MacGinniss was obliged to leave Butte because he was in danger of violence on the part of the workers.

The authorities are taking every precaution to prevent any disorder and a small army of special police will soon be on duty. The saloons and gambling-houses of the city will be closed at once as a result of the turn of affairs. The officials of the city, though they have everything under control, now fear the result when an army of idle men, such as is present traversing the streets of the city, grows hungry.

Mayor Mullins called the mass-meeting to order. Introducing Edward Long, president of the Butte Miners' Union, who, in a few words, formally submitted the proposition of the union to purchase the MacGinniss stock in the Boston & Montana and the Parrott companies, and thus end the litigation over the interests.

Offer by Heinze.

Mr. Heinze, as the authorized representative of John MacGinniss then took the stand, and after an address of over an hour, in which he criticized the course of the Amalgamated Copper Company and the attitude of H. H. Rogers and his Standard Oil associates, submitted a counter-proposal to that offered by the miners as follows:

"John MacGinniss purchased the 100 shares of stock in the Boston & Montana Company in April or May, 1898, at the cost of $200 per share. The cost of the stock in the Parrott Company, owned by MacGinniss and Lamm, was about $35 per share. John MacGinniss was offered in 1899, and at several times subsequent, $100,000 for the 100 shares of stock in the Boston & Montana Company. I understand the Butte Miners' Union to be willing now to pay as high as $50,000 for the Boston & Montana stock and $100 per share for the Parrott stock.

"I am authorized by Mr. MacGinniss and Mr. Lamm to state that they do not wish to make any money out of the sale of this stock, but, on the contrary, are willing to make a sacrifice if a sale thereof will result to the benefit of the miners, laborers and business people of Silver Bow County and the State of Montana, and I am authorized by them to make the following offer, towit:

"That John MacGinniss will sell the 100 shares of stock in the Boston & Montana Company for $200 per share, or $20,000, with interest thereon from the date of the purchase at the rate of 8 per cent per annum, and MacGinniss and Lamm will sell their shares of stock in the Parrott Company for $35 per share, with interest on the amount at the rate of 8 per cent per annum from the date of the purchase of said stock, provided the judgments and orders now entered in the case of Forrester and MacGinniss against the Boston & Montana Company and the costs of the various actions with reference to this stock are paid, and the whole controversy with reference to this stock and their rights as stockholders shall be forever settled; and provided further that the five undivided thirty-sixths of the Nipper lode claim, owned by the Anaconda Mining Company or the Amalgamated Copper Company, shall be sold and conveyed to me for the price paid therefor by the Anaconda Copper Mining Company at the time it purchased the same and 8 per cent interest thereon from the date when the same was purchased, and the Anaconda Copper Mining Company and the Parrott Silver & Copper Company shall give me a deed of conveyance, assuring title to all of the veins and ore bodies contained within the said Nipper lode claim, and that the whole controversy with reference to the Nipper lode claim shall be forever settled, so as to enable me to operate the Nipper property. This will put me in a position to give employment shortly to something over 500 men.

"And provided further that the Miners' Union shall obtain an agreement from Mr. Scallon and Mr. H. H. Rogers that the Amalgamated mines will be kept in continuous operation for the next year, and that the present rate of wages which prevails in the Butte mines and smelters shall be maintained for a period of at least three years.

"As a separate and distinct offer and looking to a settlement of the entire mining controversies, I hereby further agree to select two men, the Amalgamated Company to select two men, and those four to select a fifth, which committee shall have the right to settle all disputes and the ownership of all controverted ore bodies, and declare the rights of the respective parties, which decision shall be final and binding.

"I hereby bind myself to the prompt and immediate execution and carrying into effect of either or both of the above offers, if the same be accepted.

"F. AUGUSTUS HEINZE."

Rejected by Scallon.

President William Scallon, of the Anaconda Company, tonight rejected the proposition made by F. Augustus Heinze for a deed to five-thirty-sixths of the Nipper stock in controversy between him and the Parrott and Anaconda companies in return for the sale of the stock of 100 shares in the Boston & Montana and 100 shares in the Parrott Company, owned by John MacGinniss. President Scallon characterizes the proposition of Mr. Heinze as astounding and ridiculous and unworthy of consideration. In a sensational statement issued to the press tonight Mr. Scallon says:

"These offers may look innocent enough on the face; in reality they amount to a refusal to settle the MacGinniss cases. They are a turning down of the Miners' Union proposition, because the conditions of Mr. Heinze's offers are so unreasonable and exorbitant that they are impossible of acceptance. As to the proposed arbitration, it is one not recognized by law; and it would not be and could not be made binding on Mr. Heinze, and unfortunately would settle nothing, but would only lead to more prolonged litigation. To dispose of this last offer first: The law of Montana upon the subject is stated in section 2270 of the code of procedure as follows: "Persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them, except a question of title to real property in fee or for life. This qualification does not include questions relating merely to the partition or boundaries of real property."

"The Supreme Court of Montana, in the recent Pennsylvania case decisions, has held, in deciding in favor of Mr. Heinze, that these underground controversies between these parties involve questions of title to real estate, and not merely to questions of boundaries, and then title is one in fee. It thus appears that Mr. Heinze proposed a method of settlement which the law does not recognize, and if the decision was against him, he could snap his fingers at the arbitrators and the Amalgamated Company and keep right along.

"The Amalgamated people are not indisposed to settle these controversies, and any effective method of doing so would receive consideration; and I would suggest that the best way to settle any difficulty is for both parties to try to be fair. If Mr. Heinze would try to be fair, doubtless a reasonable settlement would be reached.

What Heinze Would Make.

"It will be seen at a glance what a haul he would make on the proposition—$231,000,000 to be distributed among the parties to this nice little wrecking arrangement—Heinze, Hinds, MacGinniss and their consorts—and that is not all yet. It is also conditioned, and Mr. Heinze states in so many words: 'Provided further, that the five undivided thirty-sixths of the Nipper lode claim, owned by the Anaconda Copper Mining Company, shall be sold and conveyed to me for the price paid therefor by the Anaconda Copper Mining Company at the time it purchased the same and 8 per cent interest thereon from date when the same was purchased, and the Anaconda Copper Mining Company and the Parrott Silver & Copper Company shall give me a deed of conveyance assuring title to all the veins and ore bodies contained within the said Nipper lode claim, and that the whole controversy with reference to the Nipper Lode claim shall be forever settled, so as to enable me to operate the Nipper property.'

"In a meeting held before the Clerk of the Supreme Court in 1900, Mr. Heinze, upon his oath, testified that his 31 thirty-sixths interest in the Nipper was worth $5,000,000. This was in the Pennsylvania case, when he was required to justify as a bondsman. If his statement under oath was anywhere near true, it would follow that, according to Mr. Heinze's sworn testimony, he would get in addition to the enormous sums above mentioned an interest worth, according to him, $806,450.

"But there is something more important yet involved in this condition. He must get deeds from the Anaconda and Parrott Companies assuring him title to all the veins and ore bodies within the Nipper claim; in other words, granting to him all he claims under the Nipper title. Under that he could lay claim to a large portion of the Never Sweat and Parrott mines.

"The value of the property which Mr. Heinze thus covertly seeks to obtain by this offer cannot be stated offhand, but it is enormous. For their little 100 shares of Boston & Montana stock and their 80 shares of Parrott stock, MacGinniss, Heinze & Co. would get millions of dollars. Note also that the market value of MacGinniss stock, judging from the present quotations of the Amalgamated and Parrott, is less than MacGinniss paid for it. These figures were, of course, not explained or stated by Mr. Heinze in his printed offer. How shall such a proposition be characterized? Is it not the rankest gall?

"In addition to that, he makes another condition, which is really an insult to the Miners' Union, as well as to Mr. Rogers and myself. He requires the Miners' Union to obtain 'from Mr. Scallon and Mr. Rogers an agreement that the Amalgamated properties shall be worked continuously for one year, and that wages shall not be cut for three years,' as if the members of the Miners' Union needed any whip or driving by Mr. Heinze to protect their rights, and as if there was any danger, or as if they needed this self-constituted protector. I think the Miners' Union knows it does not need his protection. I think they know that their wages are not in danger for three years, or at all. Neither Mr. Rogers nor myself would stand for any cut of wages.

"WILLIAM SCALLON."

CAUSE OF THE SHUT-DOWN.

Origin of Contest Which Has Stopped Mining in Butte.

The shut-down of all the Amalgamated Copper Company's properties in Montana is only a step in the great war of litigation which has agitated that state for years. The Amalgamated wishes to buy F. A. Heinze's copper mines and smelter at Butte, but does not intend to pay his price; Mr. Heinze is determined to worry the Amalgamated into paying his price. Hence the litigation. The contending parties own adjoining mining claims in many parts of Butte and have burrowed into them to a depth of thousands of feet. As the extra-lateral-right law allows the owner of a claim to follow his vein to an unlimited depth, no matter whether in doing so he crosses the side lines of his claim or not, this condition opens the way for no end of contests. When a man runs a cross-cut from his vein and thereby runs into a party of miners running another drift in his direction, it is the most natural thing in the world for each owner to accuse the other of trespassing on his ground. It is impossible to decide which is right until the veins of the two adjoining claims have been traced down from the surface to the point of conflict. By the time this decision is reached the cases have been appealed and remanded two or three times, the property is plastered with injunctions and orders of survey and the only people who have grown richer in the process are the lawyers and stenographers. One of Heinze's lawyers remarked after losing $50 at poker:

"Well, that's about one day's pay from Heinze." Mr. Heinze has a whole regiment of lawyers employed at about the same price, and they are the gainers by the Butte copper war.

The present crisis has come through the efforts of Mr. Heinze to prevent the absorption of the Boston & Montana Company by the Amalgamated. The Amalgamated arranged for the outright sale of the Boston & Montana properties, which include several of the best mines in Butte and smelters both at Butte and Great Falls, to itself. But Heinze's manager, John MacGinniss, secured 100 shares of Boston & Montana stock and used them as a basis for litigation to prevent the consummation of the deal. He secured an injunction from Judge William Clancy, of the State District Court of Butte, who grants any order Heinze asks and with almost equal uniformity refuses any petition or motion made by the Amalgamated and its constituent companies.

Then the Amalgamated lawyers tried a new tack. They organized a new company under the name of the Boston & Montana Company, of Montana, in exchange for the stock of the new company. Before this deal could be completed Heinze stepped in again and procured the issuance of an injunction by Judge Clancy and the appointment of a receiver, for the transfer would have enabled the company to have all its litigtion with Heinze transferred to the Federal Court, where Heinze has no such friends as Clancy and where the injunction mill and the legal procrastination factory do not work as regularly in one man's favor as they do in the Butte courts. The final decision went against the transfer to the new company as contrary to Montana law and the property had to be given back to the Montana company. For five days Clancy's receiver, a Populist politician who had sprung from nowhere in the turmoil of 1896, had possession of the property, and for this he charged the modest sum of $400,000, while he asked $40,000 for his attorney. Clancy cut the bill in two and assumed the air of having done the Boston & Montana a great kindness.

Then the Amalgamated returned to the original scheme of exchanging its stock for that of the Boston & Montana and made the exchange with regard to all the stock except the holdings of John MacGinniss and perhaps one or two others. At the regular time the dummy directors put in office by the Amalgamated declared a dividend on Boston & Montana about a year and a half ago. Before the date set for its payment arrived MacGinnis applied for an injunction against the payment of any dividend to the Amalgamated, on the ground that the absorption was in violation of state law. Clancy promptly granted a temporary injunction and the Amalgamated as promptly appealed to the State Supreme Court. That body refused to consider the case until it had been tried on its merits in the lower court. Clancy has now held the trial and made the injunction permanent. The Amalgamated has appealed, but says that in the meantime, as it cannot get the dividend earned by the Boston & Montana mines, it will not operate them. It also takes the position that the attacks on its title render the operation of mines in Butte unsafe, so it shuts down all of them.

There is no doubt in the minds of those familiar with the situation that both parties are playing for political effect with the voters of Butte. Heinze has been able for years to dictate the nomination and election of the three District Judges in Silver Bow County, of which Butte is the county seat, and he has been able to do so through the votes of the miners, who form the bulk of the population. The Amalgamated seeks to put him in the position of depriving these men of their jobs and thus to turn them against him. At the same time, the Amalgamated managers know that many of the miners will move to other mining centers rather than camp in Butte in idleness through a long shut-down. This means the migration of a large proportion of those who elect Heinze's candidates for Judges. When the Amalgamated mines are again put in operation it may be presumed that those men who are known or suspected to be friends of Heinze will not get jobs and the mines will be manned with men who can be counted on to vote as the interests of their employers dictate.

Amid all the aspersions cast on the integrity of the Judges of Silver Bow County, no shadow has been cast on those of any other District Court of Montana or on the Supreme Court. The interests of the mining companies are confined to the western part of the state, for Eastern Montana is almost entirely given over to the livestock interests. The Supreme Court has carefully held the balance even and has rendered decisions strictly according to the law and the facts, frequently reversing the decisions of Clancy and the other Butte Judges, and has rapped them over the knuckles severely when their decisions have been flagrantly unjust. The contending copper magnates have often sought relief through the Legislature, but the representatives of the "cow counties" have almost invariably thrown out bills designed to tinker with the courts in the interests of either party.

ANTI-TERRITORY MEN WIN.

Alaskan Convention Is Bolted by the Opposition.

SEATTLE, Oct. 27.—A special to the Post-Intelligencer from Juneau, Alaska, says:

The anti-territorial delegates captured the convention here yesterday and elected J. B. Hamlin chairman and W. Shorthill secretary. Ex-Governor Swineford bolted the convention. He is a strong advocate of a territorial form of government and the defeat of his friends sent him out of the convention.

The Valdes-Eagle road was enthusiastically indorsed by the convention.

There was a good representation from Southeastern Alaska present and the Third District had a number of delegates in the convention. Nome was not represented.

Gravelle Pleads Not Guilty.

HELENA, Mont., Oct. 26.—Isaac Gravelle, believed by officers to be the leader in the Northern Pacific dynamite conspiracy, pleaded not guilty in the District Court this morning. The information charges assault in the first degree.