

IN THE SEVERAL COURTS

JUDGE FRAZER HANDS DOWN A NUMBER OF DECISIONS.

Motion for New Trial in Case of Pope Against Portland Railway Company Denied—Notes.

Judge Frazer yesterday denied the motion for a new trial in the damage suit of W. H. Pope against the Portland Railway Company. Two weeks ago the court held that the plaintiff was technically entitled to a new trial because the verdict of the jury was for only \$200, while there was undisputed testimony that the doctor's bill incurred by Mr. Pope was \$200, and the bill for drugs to be used to treat the doctor thus being the same as the expenses attending the injuries sustained, which was said to be contrary to law. Counsel for the defendant at that time had not made any argument on the point, but Judge Frazer had passed upon the point, asked to be heard, with the result that Judge Frazer reversed his former ruling. The defendant's attorney contended that the jury was bound to find only what was a reasonable amount of doctor's fees, and not necessarily what had been paid or agreed to be paid. Suppose the plaintiff had paid or agreed to pay \$100 for slight services, the jury would not be obliged to find a verdict for that amount. They might have thought \$150 or \$100 was enough. The court referred to the fact that the evidence was that Mr. Pope had paid Dr. Hand, his physician, \$150, and intended to pay the other \$50, and the doctor said he expected to collect the balance. It further appeared that the doctor had offered to take \$100 in full settlement, in case an adjustment was accomplished between the plaintiff and defendant, without the necessity of a law suit. The court alluded to the argument on behalf of defendant on this point, that the jury might have concluded the doctor never would collect the remaining \$50, and that, in such a case, the jury would, and Mr. Pope testified that he intended to pay the same.

The court said the jury might reasonably find that the doctor never would collect with drugs, were not worth to exceed \$200. No loss of wages or loss of capacity to perform his ordinary labor was shown on the part of the plaintiff, and no such physical suffering as would justify the court in granting a new trial because of the failure of the jury to give more than nominal damages for the injuries. While the amount of damages found by the jury was small, affording little compensation for the injuries received, it was not so small as to cause the court to think the jury misdirected, or that the verdict was the result of any passion, prejudice or mistake.

The case has already been twice tried. At the first trial the jury disagreed.

Findings were rendered for the defendant in the suit of John Poole against Nicolai Brothers, for recovery of \$12,500 for the alleged wrong taking of 2,250 feet of Port Orford cedar lumber. According to the contention of the defendant, the lumber was purchased in October, 1899, by A. Neppach, president of the Nicolai Brothers, from E. B. Burns, for \$20 per 1000. It was then on the wharf at the foot of Pius street, and Smith, the wharfinger, was told to turn it in to Neppach. Under this arrangement, Neppach at once went to procure teams to haul it away. The court holds this to be a sufficient delivery, although the exact amount of lumber was not known.

Poole said he made an agreement with Burns to take and sell the lumber and receive as commission all he could get over \$25 per 1000.

Burns afterwards informed Poole of the sale to the Nicolai Company, and Poole protested, and Burns telephoned the Nicolai Company that the sale was off, but the company declined to consent. Both Poole and the Nicolai Company then proceeded to haul the lumber away, but the latter the most of it, throwing out some not considered desirable.

The defendant, in the answer to the complaint, set up a defense, and admitted to Poole, and for that reason Poole conceived a scheme to get the lumber and allow Burns \$25 per 1000 if he would execute a bill of sale. The defendant put in a counter-claim for \$115 on account of the 5900 feet hauled away by Poole. The court decided the Nicolai contract good, and also determined the amount of lumber secured by each party. The figures in the counter-claim at the trial, and the court fixed it at \$22 per 1000.

In the suit of Marie Pander and Albert Pander, a minor, by Marie Pander, guardian ad litem, against Lewis C. Pander, 12, Knights of Pythias, to recover \$250 sick benefits, and \$100 funeral benefit, Judge Frazer held that heirs can sue without the appointment of an administrator, where there are no debts against the estate. The complaint alleges that there are no debts. Marie Pander was the wife of Henry Pander, who died May 20, 1898. Mrs. Pander's husband, before beginning in April, 1897, became entitled to receive \$9 per week, and \$5 per week for a period of 26 weeks, and \$5 per week for 29 weeks thereafter, during which time the money was not being paid. The court held that \$100 funeral expenses was due and payable. She asserts that her husband was in good standing in the order, and she paid the expenses of the funeral, and that only such could maintain the action. William Reid, attorney for the plaintiff, submitted authorities to the contrary. Judge Frazer held that, although the rule is that heirs or creditors of an estate usually sue as an administrator, it is not necessary in this case, as the only use of an administrator would be to collect the money and distribute it to the plaintiff. This would be a needless expense and delay the law ought not to encourage.

In the suit of the E. T. Williams vs. City Lumber Company for dividends on shares of stock, the court decided that the plaintiff is entitled to his dividends, regardless of a claim of the defendant against the North Pacific Lumber Company. The defendant in his answer did not deny that Williams held certain shares on which the declared dividend has not been paid, but said Williams was the trustee of the North Pacific Lumber Company, and that this debt should be allowed as a set-off to the dividend. Judge Frazer ruled to the contrary.

The City Lumber Company was a trust, in which the North Pacific Lumber Company, Inman, Poulsen & Co., the Western and other companies were concerned, resulting in the winding up of its affairs.

The court passed upon two technical points in the suit of Guy G. Willis against George C. Sears, to recover fees in civil suits collected by the defendant as Sheriff. Pending a decision of the Supreme Court declared the fees in question abolished by the Butler act of 1895, and the plaintiff in this suit asks for some fees which it is alleged were not refunded. The questions decided were that the complaint should allege the assignment of the claims to the plaintiff, but that the allegation that he is the owner and holder is not shown, and frivolous.

Some of the cases were turned over to the county, and the county had to refund them.

In the suit of Edward B. Leigh against

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tel, proxy), Oscar P. Miller, F. Buchtel (by E. S. Ferguson, proxy), J. C. Mack, H. Richmond, J. L. Wells, J. D. Mickle, C. A. Cogwell, M. A. Flynn, O. Heppel, B. R. Botsford.

Tenth Ward, J. C. Jameson, E. S. Whillard, L. B. Cottingham, John T. Whaley, E. C. Robbins, F. Bailey, M. A. McCaskey, L. T. Gilliland, W. F. Turnbull.

Eleventh Ward, T. N. D. Beuten, J. H. Greengard, M. Carson, J. R. Swinton, J. H. Stanley, J. W. Booth, E. A. Cadwell.

Outside of the City of Portland. No. 55, St. John, and No. 54, Columbia, jointly, J. T. Monahan.

No. 57, Mount Tabor—Harry McGowan (by A. P. Tift, proxy), C. H. Thompson.

No. 58, South Mount Tabor—James E. Patterson.

United States Grand Jurors. Following is a list of the United States Grand Jurors drawn in the United States Circuit Court, and ordered to appear April 23:

Leslie Butler, commission, The Dalles. George H. H. Jeweler, Portland. A. G. Perkins, farmer, Brooks. George R. Hall, farmer, Monroe. John Klosterman, merchant, Portland. William C. Howay, transportation company, The Dalles.

William B. King, capitalist, Portland. Edward J. Altrock, banker, Portland. William J. Van Schuyver, merchant, Portland.

A. A. Belden, farmer, Cove. Maurice Allen, farmer, Junction City. John Bays, capitalist, Portland.

S. B. Booth, hotel man, Grant's Pass. J. A. Thayer, real estate, Oregon City. B. M. Donica, warehouseman, Lebanon. Charles Bowling, merchant, Adams. H. P. Hansen, farmer, Monkland.

J. O. Troutdale, E. Max, farmer, near John Poulsen, manufacturer, Portland. James Parker, farmer, Pleasant Hill. G. A. R. McGrey, merchant, Weston. Benjamin E. Lippincott, broker, Portland.

W. A. Huntley, stationer, Oregon City. C. O. Moen, manager, Astoria. N. O. Lamer, hotel man, Grant's Pass. W. W. Baker, merchant, Pacific City. W. C. Colwell, farmer, Lone Rock. Thomas Varwig, plumber, Portland. Chris Stimpson, farmer, Helix.

Hearing Postponed. The case of L. Brown, M. Brown and B. Schiedman vs. R. Jacobs, I. Jacobs, C. G. Jacobs and the Oregon City Manufacturing Company, was set for hearing in the United States Circuit Court yesterday. L. B. Cox, counsel for the complainants, stated that the hearing on the complaint could hardly be disposed of in one day, and as a session of the Interstate Commerce Commission was to be held in the courtroom today, and the session might continue for another day, he would like to have the hearing postponed. Judge Belden ordered the hearing postponed till 10 o'clock Thursday forenoon, providing that the Interstate Commission is through by that time. The parties to this suit are all stockholders in the Oregon City Wooden Mill, the Portland Pacific and the residents of San Francisco, and are dissatisfied in some way with the manner in which the defendants transact the business of the concern, although it pays dividends. Consequently they ask that a receiver be appointed and that a dissolution of the partnership or a dissolution of the defendant corporation be ordered, and that the officers and directors be ordered after an accounting has been made.

Court Notes. C. B. Trescott has sued Josephine Treccott for a divorce on the ground of desertion.

Default orders were made by Judge Cleland yesterday in the following divorce suits: Frank E. Ferris vs. Abbie H. Ferris; Mary Ford vs. Thomas Ford; Mark J. David vs. Matilda David.

Edward Holman filed his final report as special administrator of the estate of John Smith, deceased, showing \$23 receipts, and \$12 balance on hand. Mr. Holman resigned, and John Driscoll was appointed general administrator.

Horticultural Meeting. The semi-annual session of the State Board of Horticulture opened yesterday at 10 A. M. at 266 Washington street, at the residence of E. D. Dorsch, who is secretary of the board. The session closed at 4:30 P. M., and adjourned to 10 A. M. today. The board will end its session today.

Those present were: H. B. Miller, of Eugene, the retiring president, recently appointed as United States Consul at Chung King, China; E. L. Smith, of Hood River, who was appointed a short time since by Governor Geer to succeed Mr. Miller as president of the board; L. T. Newell, of Dilley, First District; L. T. Reynolds, of Salem, Second District; A. H. Carson, of Grant's Pass, Third District; H. Schumann, of Clatsop, Fourth District; Judd Geer, of Cove, Fifth District.

President Miller made his annual report, covering his travels and findings of the members of the board, and the work of the board.

At the close Mr. Miller introduced his successor, E. L. Smith, as president, who filed his cash of office and took the chair. Mr. Miller then read the following resolutions: "Whereas, Hon. H. B. Miller, the president of the State Board of Horticulture, has voluntarily resigned the Commission; and whereas, the conditions of a foreign Consularship; therefore be it resolved, that it is the sense of the members of the State Board of Horticulture that it is with regret that they sever the connection of the retiring president with the board, and as members of the board, would regard his loss to the horticultural interests of the state as irreparable, were it not that he is followed with such a well-known horticulturist and energetic gentleman as the Hon. E. L. Smith, of Hood River; therefore be it further

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ment, and reform in the expenditure of public money. When the Republican party was intrusted with power in municipal affairs two years ago the city was more wretchedly governed than it had ever been before. A large unnecessary debt had been put upon the taxpayers; vice was not suppressed, but, on the contrary, it was encouraged by the officials whose duty it was to enforce the law; the alliance between the Democratic local administration and the vicious elements was open and notorious. Two years of Republican administration have made a marked change for the better. Official reform is now justly suggested and public crime, and the improved condition in this regard has taken place in a period when the police force has been largely reduced in number and when the expense of maintaining it has been diminished 25 per cent. We pledge the Republican officials now in office and the nominees of this convention, if elected, to continued reforms in these respects, and particularly to the enforcement of the laws for the suppression of vice and crime.

We endorse the official career of Senator Joseph Simon, Multnomah County's representative on the Oregon Congressional delegation. We honor him for his ability, for his fidelity to the interests of his constituents, and for his energy in their service. We point with pride to his

death of a pioneer of 1852.

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