

AS TO A MORTGAGE

Supreme Court Renders an Important Decision.

THE DUTY OF MASTER FIXED

Must Warn Unskilled Servant When Exposing Him to Dangerous Service, and Give Instruction as to Avoiding Injury.

An instrument once a mortgage is always a mortgage, and the parties cannot divest it of its character and treat it as a deed, so as to convert it by any subsequent verbal understanding or agreement.

It is the duty of a master to give an unskilled servant warning when exposing him to a dangerous service and to instruct him how to avoid injury.

A dedication of roads made by entering a plat thereof in the county records will be presumed to be a dedication for the general public, unless otherwise shown, and the service where land in the county has been cut up into small tracts and sold, as well as where city property has been cut up into lots and blocks.

SALEM, April 14.—The Supreme Court today handed down opinions in three appealed cases. The decisions are in brief as follows:

Nannie M. Starr, respondent, vs. Kate M. Kaiser, appellant. From Multnomah County. John B. Cleland, Judge, affirmed. Opinion by Justice Wolverson.

November 25, 1899, Nannie M. Starr commenced a suit against William L. Starr, her husband, for separate support, and on February 20, 1900, obtained a decree against him for \$15 per month. The money was to be paid from the community of the suit and to continue while he remained separate and apart from her, or until further order of the court. The decree was docketed two days later, July 14, 1900, Starr and his wife executed and delivered to the clerk of the court a quit claim deed, to lots 5 and 6, in block 15, Caruthers' Addition to Portland, returned to in this case as the "home property."

This instrument was recorded September 22, and on the same day the trust company quitclaimed the said lots to Kate M. Kaiser, receiving a consideration of \$10 therefor. January 25, 1901, while the suit was still pending between Mrs. Starr and her husband, Mrs. Starr executed to Mrs. Kate M. Kaiser a deed to lot 15, block 1, of Greenfield's Addition to Portland, receiving a consideration of \$50. Starr was the owner of both these pieces of property prior to the attempted transfers. August 12, 1900, execution was issued on the decree in Mrs. Starr's favor, and all of Starr's right, title and interest in the home property was sold. Mrs. Starr becoming the purchaser at the sale, which was later confirmed. She was in possession at the time, and continued in possession. Kaiser brought an action to eject her, and Mrs. Starr brought this suit by cross bill in equity, making Mrs. Starr co-defendant and alleging that the deeds to Mrs. Kaiser were fraudulent and void. The lower court found in favor of plaintiff and declared the deeds void. The defendant appealed to the Supreme Court.

The Supreme Court reviews the evidence and concludes that the deed to the home property was given by the Starrs in order to secure the payment of money due M. L. Pipes; that it was therefore a mortgage; that the money was thereafter paid to Pipes; and that the deed to the trust company should have been canceled. The opinion says:

"Once a mortgage always a mortgage, and the parties cannot divest it of its character and treat it as a deed, so as to convert it by any subsequent verbal understanding or agreement. So the acts of Starr and the trust company in deed, in Mrs. Kaiser, and treating the deed from Starr and his wife to the company as a deed absolute, and the company as title, did not make it so, or impart to it such a potency. Although the deed to the trust company was given to a third party, it must be treated as a mortgage nevertheless, and governed by the rules applicable to mortgages."

The trust company did not claim any interest in the property, but took the deed in trust for the use of the money due to Mrs. Kaiser in pursuance of a written order from Mr. Starr and Judge Pipes, the lien of the latter having been paid. No fraud was charged against Pipes or the trust company.

As respects the Greenfield lot, the opinion says that Mrs. Kaiser took the deed during the pendency of the suit between Mrs. Starr and her husband, and without the signature of Mrs. Starr, and therefore with notice. The opinion says:

"She could not claim as an innocent purchaser under these conditions. The circumstances are so full of suggestion that she was in collusion with Starr for the purpose of hindering and impeding the plaintiff in enforcing her demand for separate allowance and that she paid nothing for the deed, that it would be inequitable and unjust to allow it to stand."

The decree of the Circuit Court is, therefore, affirmed.

weight was for the jury to determine. This rule also disposed of the alleged error in giving an instruction. On the other point the Supreme Court lays down the rule of law as follows:

"As a general rule, one who seeks employment in any particular line of business assumes the ordinary risks incident to such employment, and he cannot charge the master with the consequences of his own want of knowledge or skill, for the master may ordinarily assume that he is competent and experienced in the danger of the service. But the application of this doctrine is subject to certain qualifications and limitations. It is the duty of the master to expose an inexperienced servant to a dangerous service, without giving him warning of the danger and instructions how to avoid it, unless both the danger and the means of avoiding it are apparent to the servant. Particularly is this true when the servant is directed to perform some service not contemplated in his original contract of employment." The court holds that it was for the jury to apply these principles of law to the facts proved, and to determine whether the plaintiff knew the danger of the service, and whether the defendant had sufficiently warned him. It is therefore held that the motion for non-suit was properly overruled.

S. Spencer, respondent, vs. V. C. Peterson, appellant. From Marion County. George H. Burnett, Judge, affirmed. Opinion by Justice Moore.

This was a suit for damages for the alleged obstruction of a highway. The defense was that no highway existed at the place in controversy. The evidence on this point was a plat of the Waldo Hills fruit farm, No. 3, entered on the records of Marion County. The defense contended that the dedication of highways was only for the benefit of purchasers of the farms, and not for the general public. The Supreme Court says:

"It will be observed that the 'dedication' does not in express terms grant an easement in the roads, but the instrument having been acknowledged and entered in the records, we think the proponent intended thereby to dedicate them to the public. The rule is well settled that when an owner of real property lays out a town upon it and divides the land into lots and blocks with streets and alleys between, and sells any of the lots with reference to such plan, he thereby irrevocably dedicates the streets and alleys to the use of an organized and dangerous gang on horseback whose depredations have caused much indignation among stockmen, was arrested at his residence in Astoria for about 30 years. Her husband is in Alaska acting as superintendent of a cannery."

John McCourt, respondent, vs. John E. Beah, appellant. Motion for leave to file a bill of exceptions for appeal allowed, but motion to recall writ continued for argument at Pendleton term.

J. Leve, et al., appellants, vs. William H. Leve, et al., respondents. Appellants allowed until May 30 to file brief.

Salem Light & Traction Company, respondent, vs. F. R. Anson, appellant. Order that transcript be made and returned until May 1 to file brief and have such correction printed thereon.

New Zealand Insurance Company, respondent, vs. E. J. Frazier, et al., appellants. Order that clerk complete transcript and that respondent have 30 days' additional time to file additional brief and same time to file answer.

James E. Leve, respondent, vs. T. W. Wann, appellant. Motion to dismiss appeal continued until the hearing on the merits.

NAMED BY PROHIBITIONISTS.

Candidates for County Offices in Wasco.

THE DALLAS, Or., April 14.—The county convention of the Wasco County Prohibitionists was held today in the County Courthouse. R. B. Hood, of this city, acted as chairman, and H. C. Shaffer, of Hood River, secretary. The Rev. Frank Spaulding, Prohibitionist pastor of Congress and E. O. Miller, secretary of the state central committee, addressed the convention.

The meeting quartet sang several selections. About 30 ladies took part in the voting for nominees. The following is the county ticket nominated:

Clerk—Dayton Taylor.
Sheriff—J. E. Hanna.
Assessor—J. E. Hanna.
Treasurer—William Hestler, Sr.
Surveyor—C. J. Hayes.
Commissioner—W. D. Richards.
Coroner—W. E. Balentine.

Representatives—Twenty-first District, H. C. Shaffer; Twenty-second District, N. P. Hanna and S. W. Harnbrook.

IN ANNUAL CONFERENCE.

United Evangelical Churches of Oregon Still in Session.

DALLAS, Or., April 14.—The annual conference of the United Evangelical Church held interesting sessions yesterday and today. Bishop Stanford delivered a sermon at the day session Sunday. At its conclusion he asked that contributions be made to the treasury of the Oregon conference, in the course of the day session. The money is to be used for missionary purposes. Subscriptions and collections amounted to about \$600. In the evening the bishop conducted an evangelistic service.

The conference began this morning at 9 o'clock. The Rev. H. L. Pratt, of Portland, was elected second ministerial delegate to the grand conference. M. J. Balentine and J. Bowersox were chosen as delegates.

Recommendations for changes in church discipline were taken up and the conference reached the question of time limit.

NORTHWEST DEAD.

Mrs. Mary Dean Kilgore.

ASHLAND, Or., April 14.—Mrs. Mary Dean Kilgore, relict of James Kilgore, and a pioneer resident of this county, died at her home in Ashland yesterday in the 83d year of her age. The funeral will take place tomorrow.

Man Arrested for Having Them in His Possession.

COEFAX, Wash., April 14.—Isaac W. James, who is believed by the officers to be a member of an organized and dangerous gang on horseback whose depredations have caused much indignation among stockmen, was arrested at his residence in Astoria for about 30 years. Her husband is in Alaska acting as superintendent of a cannery.

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DISCORD IS IN THE AIR

ALL IS NOT HARMONY IN REGARD TO SALMON PRICES.

Canneries Notify They Will Pay 5 Cents a Pound for Small Fish, Instead of 5½ Cents.

ASTORIA, April 14.—The indications tonight are that there will be a controversy between the fishermen and the cannerymen over the price to be paid for small fish. At the meeting of the Fishermen's Union last Monday evening the prices for salmon were fixed as follows: Six cents per pound for those weighing 25 pounds

expect to begin operations tomorrow afternoon. Those which will be operated on the lower river are: The Union Co-operative, Tallant's, Sanborn-Cutting, Booth's, Klamay's and Elmore's, owned by the combine, McIlwain's, Warren's and Negler's. The combine's Bureka cannery will be held in readiness for use. The following cold storage plants will be run during the season: Schmidt's, Warren's, Lindenberg's, Booth's, Columbia River Packers' Association and Vandyas.

Railroad Officers Re-Elected.

The annual meeting of the Astoria & Columbia River Railroad was held here this afternoon. The meeting was private, but at its conclusion the announcement was made that the old board of directors and officers had been re-elected.

Sawmill to Be Rebuilt.

The Clatsop Mill Company has decided to rebuild its mill at once. The plant will be in operation by the middle of the summer. A contract has been awarded to N. Clinton & Son to drive the foundation and lay the flooring within 40 days. A contract has also been awarded to Joseph Surprenant to build the superstructure. The machinery has been ordered in the East. The mill will be modern in every way, and have a capacity of 50,000 feet of lumber.

Circuit Court in Session.

Judge McBride convened an adjourned term of the Circuit Court today. He announced that he would summon a jury for the June term, and tomorrow will set dates to be tried at that time.

Outbreak of Hook Hatchery.

Superintendent Hansen, of the Chinook hatchery, reports that he has turned out 1,000,000 salmon fry this season.

Northwest Penitents.

WASHINGTON, April 9.—Penitents have been granted as follows:

Oregon—Original—Robert Kelly, Perry, 12; Thaddeus D. Bellinger, Sumpter, 46; Patrick Kline, Pendleton, 36; Byron M. Gullies, Tualatin, 36; Sarah S. Marquette, Eugene, 36; Sarah E. Chambers, Portland, 36; Martha A. Quales, Westbury, 36; Increase—George Harris, Glencoe, 37; John Conaway, Barlow, 32; Josiah Holinger, Salem, 32; Thaddeus, Tualatin, 32; Benjamin H. Stom, Palestine, 32; James Carille, Hale, 32; Charles C. Bidwell, Union, 32.

Idaho—Original—Christina H. M. Morris, Coeur d'Alene, 32; Increase—John C. Rickard, Glenn, 32; John Zimmer, Bellevue, 32; Joseph G. Hull, Gibbonsville, 32.

Vancouver Brevities.

VANCOUVER, Wash., April 14.—C. A. Riddle, of Eugene, Or., has bought the newspaper plant of the Vancouver Register-Democrat. The formal transfer of the property was made today. Thurston Daily, ex-Lieutenant Governor, former owner, who established the plant 21 years ago, will retire permanently from the newspaper business, and will devote his time to the promotion of his mining interests.

The new paper is a young man and has been for some time past city editor of the Eugene Register. Mr. Riddle will continue to publish the paper as the Democratic organ of Clark County.

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HEALTHY KIDNEYS AT 72 YEARS OF AGE

Mrs. Louise Grau, Who Is 72 Years Old, Has Been Permanently Cured of Rheumatism, Kidney and Liver Trouble by

WARNER'S SAFE CURE

A TRIAL BOTTLE OF THE WORLD'S GREATEST KIDNEY CURE SENT ABSOLUTELY FREE TO EVERY READER OF THE DAILY OREGONIAN WHO SUFFERS FROM KIDNEY, LIVER, BLADDER OR BLOOD DISEASE, OR WHAT IS COMMONLY KNOWN AMONG WOMEN AS "FEMALE WEAKNESS."

Warner's Safe Cure is the only safe cure for all forms of kidney, liver, bladder and blood diseases; it has cured thousands, it will cure you. Mrs. Louise Grau, who is 72 years old, says Warner's Safe Cure cured her of rheumatism, kidney and liver complications.

CURES RHEUMATISM

No. 37 St. Mark's Place, Brooklyn, N. Y.

"I am over 72 years old and have long suffered from kidney and liver trouble. Not long ago I called a physician who did me no good, and a friend recommended Warner's Safe Cure. I began taking it without hope that it would be of any service, but at once I began to notice a change for the better. In addition to kidney and liver trouble, I have suffered from rheumatism. The latter has entirely disappeared, and I feel like a young girl. I am willing at all times to recommend this greatest of all remedies. Thankfully yours,

"Nov. 13, 1901. Mrs. LOUISE GRAU."