

AGREEMENT BINDING

Rights of Shippers as Defined by Supreme Court.

CLAIMS AGAINST AN ESTATE

Need Not Be Stated With Particularity Required in Pleading—No Relief for Persons Who Delay Suit for Money Due Them.

A claim against an estate need not state the facts with the particularity required in pleading. In an action on a disallowed claim, it is sufficient if it be shown that the claims are identical.

SALEM, Aug. 11.—(Special.)—The Supreme Court today handed down six decisions on appeal cases, four of which were affirmed and two reversed.

W. H. Collier, executor of the estate of Hugh Fields, deceased, appellant, vs. Jane Penland, executrix of estate of William Penland, deceased, respondent, from Morrow County, W. R. Ellis, Judge, reversed; opinion by Chief Justice Moore.

This is an action originally brought by Hugh Fields against the executrix of the estate of William Penland, deceased, to recover \$3,000, and certain sheep alleged to have been converted by Penland to his own use.

The lower court held that there was a fatal variance between the plaintiff's claim as presented to the executrix and his cause of action set forth in the complaint. For this reason the verdict for defendant was ordered.

The statute neither provides nor requires any particular form for a claim against the estate of a deceased person. It is sufficient if the claim as presented shows a subsisting liability in favor of the claimant and against the estate and is verified in accordance with the statutory requirements.

Edward Poppleton, respondent, vs. G. W. Jones and P. G. Adams, appellants, from Yamhill County, George H. Burnett, Judge, affirmed; opinion by Chief Justice Moore.

This was an action to recover money upon a contract "to deliver building material of the value of \$600" by March 31, 1902. Building material of the value of \$223.33 was delivered, and the action was for the money, with interest, at the legal rate after March 31, 1902.

The principal question on appeal was whether interest is due on this kind of a contract after maturity. The statute in force at that time provided that the rate of interest in this state shall be 8 per cent per annum, and no more, on all moneys after the same become due.

It is also held in this case that an action may be maintained against the surviving member of a partnership without joining the estate of the partner as one of the defendants.

S. Normie, respondent, vs. Oregon Railway & Navigation Company, appellant, from Clatsop County, T. P. McCall, Judge, reversed; opinion by Justice Worton.

This was an action to recover the value of a mule shipped by the defendant by steamer Hassalo. At Astoria the mule was tied to a plow while waiting for the owner, and, after the freight had been paid and a receipt signed, the mule ran away and was injured.

The plaintiff contended that the contract of shipping it was agreed that the liability of the company should not be more than \$100 per head for the stock. Plaintiff contended, however, that if agreement was void because contrary to public policy. At the trial he recovered judgment for \$150, and defendant appealed.

The Supreme Court holds that although a common carrier cannot evade all responsibility nor limit his liability to one-half or nine-tenths of the value of the property, it is lawful for him to agree upon the value of the property, such valuation being the basis of the freight rate.

In such a case the shipper is estopped to deny the value which he has deliberately agreed to as the real value of the property. If the contract, that the agreement was valid, that no common law action for damages could lie, but he must recover upon the contract if at all.

J. W. La Follett, respondent, vs. McKinley Mitchell, appellant, from Marion, W. Hamilton, Judge, affirmed; opinion by Justice Bean.

This was an action to recover damages for breach of a contract. In May, 1898, Mitchell contracted La Follett's crop of potatoes, estimated at between 800 and 900 sacks, agreeing to furnish the sacks and pay a stipulated price for the potatoes, which were to be delivered in October.

that he would not receive any of his potatoes, demanded the return of an advance payment of \$20 and the price of the sacks that had been furnished. This was refused, and a demand for an attachment suit to recover for the \$20 and cost of sacks, and in this proceeding 270 sacks of potatoes belonging to plaintiff were attached and sold for 10 cents per sack. The case was finally dismissed on a nonsuit.

At a subsequent date Mitchell brought suit to recover damages for breach of a contract, but judgment was rendered for La Follett for his costs, the judgment being affirmed on appeal December 24, 1900.

On January 23, 1901, this action was brought by La Follett, who demands judgment for \$272.15 as general and \$73.25 special damages. The answer denied the material allegations of complaint, and by way of set-off sets up proceedings and judgment in previous action to recover for an alleged breach of contract. At the trial defendant's motions for a nonsuit and for an order directing the jury to return a verdict in his favor were overruled, and judgment was given plaintiff for the amount asked. Defendant appealed, the principal assignment of error being that the judgment in the former action was not binding on the plaintiff for the purpose of recovering damages for an alleged breach of the contract was a bar to this action.

Court holds that in the former action Mitchell was not bound to sue and sought to recover on an alleged breach of the contract by La Follett, and since the final judgment was in favor of La Follett, "it constituted an adjudication that there had been no breach of the contract on his part, but did not determine that Mitchell himself had not violated the terms and conditions thereof. That question was not involved in the former controversy, and the judgment therein is no bar to this action."

The judgment of the lower court is affirmed. W. C. Wilson et al., appellants, vs. G. W. Brown et al., respondents, from Douglas County, J. W. Hamilton, Judge, affirmed; opinion by Justice Worton.

Held that if by the laches and delay of the complainant it has become doubtful whether a first separate defense, the evidence necessary to a fair presentation of the case on their part, or if it appears that they have been deprived of such advantages as they might have had if the claim had been seasonably insisted upon, or before it became antiquated; or if they are subjected to any hardship that might have been avoided by a diligent prosecution of the defense, a court of equity will not interfere to give relief, although the full time may not have elapsed which would be a bar to a remedy at law.

John W. Gardner, respondent, vs. D. C. McWilliams, appellant, from Douglas County, J. W. Hamilton, Judge, affirmed; opinion by Chief Justice Moore.

Agreements of a first separate defense, which were incorporated into a second defense by reference thereto, necessarily resulted in uniting two affirmative defenses, the second having been seasonably stated, and the latter was properly stricken out as redundant.

Had No Jurisdiction. SAN FRANCISCO, Aug. 11.—In the United States Circuit Court today Judge McCall rendered a decision in favor of the Oceanic Steamship Company in the suit of Mrs. Cecily Farren, who claimed \$50,000 damages from the company for the death of her husband, who was killed on board the steamer Ventura by the bursting of a steam pipe during the initial voyage of the vessel from Philadelphia to this city. The company held that the court lacked jurisdiction, the accident having occurred on the high seas.

INGRAM BACK IN ALBANY. Says Shot Which Broke His Leg Was Fired by Merrill.

ALBANY, Or., Aug. 11.—(Special.)—The return of Frank Ingram to Albany after an absence of over 30 years spent in the state penitentiary on a life sentence, created considerable interest in Albany today on account of the attention given him in connection with the Tracy and Merrill escape from the penitentiary, and his former residence in this city, where he was sentenced in March, 1869, to the penitentiary for the murder of his brother, Henry. Having left the penitentiary with only about \$5, Ingram is endeavoring to raise off a set of teeth and other tools in order to secure money with which to make another start in life.

The sentence here in reference to his case is varied. Ingram states positively that the shot which struck his leg was fired by Merrill as he was endeavoring to wrench the gun from him, and was not an accident, as he was attempting to get to the ladder, as reported in some of the papers of the state.

CHEHALIS, Wash., Aug. 11.—(Special.)—An examination of the rifle found near the spot where Merrill's body was discovered shows that it is a Winchester, round barrel, .45 or .50 caliber, and numbered 33,747. It had some rust spots on it from lying out in the ferns, but was in good condition otherwise. From its general appearance it was not a new gun, but an old one.

Looking for Wright. EUGENE, Or., Aug. 11.—(Special.)—Since the first report was received by the Oregon State Police that Harry Wright had been seen in the vicinity of Eugene, about 20 miles west of Eugene, considerable effort has been made to locate the alleged accomplice of Tracy and Merrill in their escape from the penitentiary, but without success.

Beyond the fact that he was known to be with friends three weeks ago, nothing can be learned of his whereabouts or his movements. It is still believed, however, that he is yet in this country, being kept in concealment by friends, and that the officers will finally locate and capture him.

Logging-House Burned. BAKER CITY, Aug. 11.—(Special.)—A disastrous fire broke out in the Oakes building, on Washington street, this morning. The upper part of the building was occupied by Mrs. Grant as a rooming-house. The fire started from a gas stove, which exploded, and in an instant the flames were well covered by flames. It is a frame building, cloth-lined, and papered. The whole upper story is a total loss. J. Rosenbaum's Golden Rule Cash Store, J. H. Ferguson and the Singer Sewing Machine Company occupied the lower story. They were all damaged by water. Rosenbaum's loss will be about \$1000. Ferguson's and the Singer people's losses will be less.

There was no insurance, except on the building, which was insured for \$100. The damage to the building is about \$2000, and the other losses will amount to \$4000, on which there is no insurance.

Navigation Dangerous. PORT TOWNSEND, Wash., Aug. 11.—The continuation of dry weather the past week has resulted on the beginning of the smoky season, which is being met by which are raging. The lower Sound country is now covered with a pall of dense smoke, making navigation difficult and dangerous. As yet no accidents have been reported.

Fires East of the Sandy. GRESHAM, Aug. 11.—(Special.)—Extensive forest fires are reported east of the Sandy River, but so far no great amount of damage has been done. A corps of forest rangers is doing good service in the Cascade range and around the Bull Run headwaters. So far no fires have occurred in those sections.

Stages Resume Runs. HOOD RIVER, Aug. 11.—(Special.)—The stage road to the Cloud Cap Inn is again open to travel, the large forest fire near the Inn having subsided. The fire was not so dangerous as reported Saturday night, and the stages are again making regular daily trips.

Laundry Company Incorporated. ASTORIA, Or., Aug. 11.—(Special.)—Articles of incorporation of the Troy Laundry were filed in the County Clerk's office today. The incorporators are O. J. Sherman, W. H. Norman and John Tait, and the capital stock is \$15,000, divided into 120 shares of \$100 each. The object of the company is to conduct a general laundry business in Astoria. The incorporators also own a company recently purchased and Columbia steam laundry, at this city, and will erect a new building in which to install their plant.

Portland-Chicago. SEASIDE, Wash., Aug. 11.—(Special.)—The time of the "Chicago-Portland Special" from Portland to Chicago, leaves Astoria every Wednesday at 10 a. m. Leaves office Third and Washington, O. R.

Everett, Wash., Aug. 11.—Wheeler's shingle mill at Arlington was destroyed

FIRE IN FIVE SECTIONS

EXTENT OF FOREST CONFLAGRATION NEAR SPRINGWATER.

Flames Were Started by Careless Campers and Farmers Had to Fight to Save Property.

OREGON CITY, Aug. 11.—(Special.)—A. S. Dresser returned to this city last night from Springwater, where he went early Sunday morning to obtain information about the big forest fire that has been raging in the vicinity of Springwater for the past week. He learned of the extent of the blaze Saturday afternoon, and being the owner of valuable timber land in the burning district, was anxious to know what damage had been done. He reached Springwater, about 25 miles from this city, at 9 o'clock and the Myers place about an hour later, along the road from Springwater to the fire. The fire was so hot that he was compelled to shield his face from the intense heat.

Mrs. Myers saw the beginning of the fire on Sunday, August 2. At that time it was not thought that it would spread and no attention was paid to it. But it steadily gained each day, and by last Friday had reached a point where it was a case of "burn or be burned."

WALLA WALLA MAN WHO WAS DROWNED NEAR SEATTLE SATURDAY.

WALLA WALLA, Aug. 11.—(Special.)—Charles E. Burrows, Jr., who was drowned in Egret Sound Saturday, was born in Salem, Or., 27 years ago, was educated in the public schools of Walla Walla and the University of California. He was connected with the Walla Walla Gas & Electric Light Company, being its cashier at the time of his death. He was married July 2, 1900, to Miss Irene Lowe, of Dayton, Wash. He was the father of a 2-year-old son to mourn his loss. He was the son of Charles E. Burrows, general manager of the Walla Walla Gas & Electric Light Company, which was a member of Integrity Lodge, A. O. U. W., at Walla Walla, No. 287, B. P. O. Elks. He was a man of exemplary habits, and had very many friends in this city, who extend their sympathies to his bereaved family.

of all the people in the neighborhood getting out and fighting to save their property. Men worked for three days and nights unceasingly without sleep until the safety of the buildings in the locality was assured. In spite of their heroic efforts, however, the house and fences on the farm of Mr. Naiman were entirely destroyed by the flames.

The fire started in section 24, township 3 south, range 4 east. It burned into sections 22, 23, 26 and 27 and it may be that the flames also reached section 36, where there is a great deal of green timber. The fire approached the buildings, Mr. Myers hastily got a force of men together Saturday night and removed all the machinery from the mill. He fully expected his mill to go up in smoke, but with the aid of his men he succeeded in saving his buildings.

The fire has covered an area of probably 3000 acres, most of which is known as down timber. Several years ago the same district was swept by flames and since then the ground has been strewn with logs in every direction. On this account there was no fire in the vicinity of the flames. The green timber is still wet and does not burn easily. There is no doubt but that there has been considerable damage done to the extent of it cannot be ascertained until the fire is extinguished. Mr. Dresser was close to the flames and said that when the green fire and bushes would ignite, a sound like throwing water on fire, and when a sound like a huge tree fell it would make a sound like a blast.

As many as 500 people have been camping about Springwater during the fire-pleeting season, and it is impossible to determine who left the campsite, but started a blaze which traveled to the extent of four or five miles. The place where the fire started is called the "huckleberry patch." The forest is a dense growth of Springwater against the careless person is so intense that Mr. Dresser said he would have probably been struck up had he been caught.

WAREHOUSES BURNED.

Spark From Engine Sets Fire to Two at The Dalles.

THE DALLES, Or., Aug. 11.—(Special.)—Two feed warehouses, one owned by the Wasco Warehouse Company, and the center building of the O. R. & N. Co.'s stock yards were burned at noon today. The loss is about \$50,000, well covered by insurance. One warehouse, which was a two-story hay, which was destroyed, as were two or three sheep and hogs confined in the enclosure. The fire is supposed to have originated from a spark from a passing engine.

E. M. Logreus, an employee of the Wasco Warehouse Company, was run over by an engine and slightly injured.

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PORTLANDERS GET MINE

WILL OPERATE FAMOUS MINERAL PROPERTY NEAR WEISER.

At One Time It Was a Leading Silver Camp in Idaho—Closed During the Depression of 1893.

WEISER, Idaho, Aug. 11.—(Special.)—Portland capitalists are opening up one of the old and in its day one of the leading silver camps of the state. The old camp of Mineral, 23 miles from Weiser, is a busy scene of activity. Masons left Weiser today to repair the smelter and place it in condition for an early resumption of work. New machinery and equipment to make it an up-to-date smelter have been added lately. The capacity is 150 tons daily. Ladd & Titton, of Portland, have secured the services of G. M. McDowell, of Portland, as superintendent and general manager of the smelter and mines. Mr. McDowell is considered one of the best mining men of the West, and under his experienced and conservative management there is no question of the success of the smelting works and mines. A large force has been employed for several months in running new tunnels and blocking out ore in anticipation of the starting up of the smelter. Coke for smelting has been accumulating for some time, until there is now over 100 tons in the bins. Near the mines are inexhaustible supplies of iron and lime for fluxing, and only the coke is to be freighted to the smelter. The ore runs high in silver, and carries good values in gold and copper. Previous to 1893, when the great slump in silver occurred, the mines and smelter were operated by a large force and paid large dividends to the lucky owners. The ore bodies are large and easily and cheaply worked. The company operating it is a wealthy corporation, and will soon put it on the paying basis that it was prior to the shut-down in 1893.

Great Strike at Cripple Creek.

CRIPPLE CREEK, Aug. 11.—A strike of sulphide ore carrying 6000 ounces of silver and a large percentage of copper, has been made on Bull Hill, the very center of the Cripple Creek district, at a depth of 1265 feet. This bears out the theory of many experts who have predicted that deep mining would change the character of the district's output.

Colorado Smelter Closed.

PUEBLO, Colo., Aug. 11.—The American Smelting & Refining Company has closed the Philadelphia smelter here. The reasons given are a shortage of ore and the fact that the smelter has just been started at Murray, Utah.

Mining Stock Quotations.

SAN FRANCISCO, Aug. 11.—Official closing quotations for mining stocks: Best & Belcher... 40 1/2 Occidental Con... 40 1/2 Best & Belcher... 40 1/2 Occidental Con... 40 1/2 Best & Belcher... 40 1/2 Occidental Con... 40 1/2

NEW YORK, Aug. 11.—The closing quotations were: Adams Con... 40 1/2 Little Chief... 40 1/2 Alice... 40 1/2 Ontario... 40 1/2

BOSTON, Aug. 11.—Closing quotations: Adventure... 22 3/4 Parrot... 22 3/4

PROFESSOR BLACK DEAD.

Instructor of the State University Dies Suddenly at La Grande. LA GRANDE, Or., Aug. 11.—(Special.)—Professor Charles W. M. Black, assistant in mathematics in the University of Oregon, died in La Grande this morning at 10:45 o'clock. Professor Black was on his way to Boulder, Colo., presumably for his health, and, feeling unable to proceed, telegraphed Dr. Bacon to meet him at the depot here. Dr. Bacon saw that Professor Black could live but a little while, and had him taken to his office, where he lived but a short time. Undertaker Henry was ordered by President Campbell, of the university, to embalm the body, and a dispatch was sent to his relatives in Boston, but up to this time no word has been received as to the disposition of the body. Quite a number of University of Oregon students reside in La Grande, and were much shocked to learn of Professor Black's sudden death.

YOUNG WOMAN KILLS A BEAR.

One Woman Wounds Him and the Other Ended His Struggles. BAKER CITY, Or., Aug. 11.—(Special.)—Miss Ruth Jackson, of this city, and her friend, Miss Angie of Medford, who is visiting Miss Jackson, had a very interesting adventure with a bear in the mountains near Austin, a few days ago. The young ladies, in company with Roy Jackson, Miss Ruth's brother, were out camping, and for amusement they spent their time hunting and killing bears. They reported positively that when they started out it was their intention to hunt for bear, but being engaged in the pursuit, they were brave enough to tackle a bear which came roaring at them, and that it was exactly what happened. Miss Jackson was carrying the gun when they met a bear in the path, and without further ceremony she took aim and fired. Her aim was true. She brought down the game, and although not killed instantly, it was mortally wounded. Miss Angie took part in the slaughter, ending the struggles of the bear with a club.

WANTS GOVERNOR ARRESTED.

John D. Spreckels Swears Out Warrant Against Gage. SAN FRANCISCO, Aug. 11.—John D. Spreckels, proprietor of the Morning Call, has sworn out a warrant in the police court here charging Governor Gage with libel. The alleged libel is contained in a statement published on Friday in which the Governor charged Spreckels with libel recently published in the Call were made for the express purpose of attempting to defeat his renomination. Judge Cahalan signed the warrant, which was placed in the hands of Captain of Detectives John Marth for service on the Governor.

Freight Train Wrecked.

OLYMPIA, Wash., Aug. 11.—(Special.)—A bed freight wreck occurred in the Olympia depot yards about noon today. In which Edward Searies, in charge of a supply car, was seriously injured, engine No. 500 badly damaged and several freight cars demolished. A heavy logging train coming rapidly around the curve west of town crashed into a long line of freight cars that had been left on the main track by a freight engine switching in the yards. The supply car and in the shock it completely damaged between a car of logs and the engine. How Searies escaped alive is a mystery. Engineer Dewey and Fireman Schupert jumped and were uninjured.

Not Weakness—Symptoms.

By far the greater number of patients suffering from the so-called weakness are strong, robust men in the prime of life, who, for other reasons, such as overwork, over-exhaustion, etc., are not weak, but are suffering from the symptoms of weakness, such as contracted bladder, and too often repeated loss of continence, etc. It is now being adopted by the leading specialists of the world. Under our new plan of treatment, directed toward restoring the enlarged and swollen prostate, immediate results, as indicated by increased circulation and renewed strength, are observed.

A BEAUTIFUL WOMAN

Imperial Hair Regenerator. In the only one and harmless remedy for hair loss. It is absolutely safe, and is applied, and leaves the hair soft and glossy. It is used by the Board of Medicine, ONE APPLICATION RESTORES THE HAIR TO ITS NATURAL GLOSS. Privacy assured. Send for pamphlet. IMPERIAL CHEMICAL CO., 115 W. 23d St., New York.

MANHOOD RESTORED

"CUPIDINE" is a non-poisonous remedy for all nervous disorders and nervous weakness, such as Loss of Manhood, Impotence, Premature Ejaculation, etc. It is a safe, reliable, and effective remedy for all these ailments. It is used by the Board of Medicine, ONE APPLICATION RESTORES THE HAIR TO ITS NATURAL GLOSS. Privacy assured. Send for pamphlet. IMPERIAL CHEMICAL CO., 115 W. 23d St., New York.

BRITISH GENERAL'S LIFE SAVED.

New York, May 9, 1902. Gentlemen—Many years ago I recommended your Safe Cure to my friend, General William Frost Nuttall, of the British Army, who was a great sufferer from kidney troubles after long service in India. He took my advice, and, after using your remedy, he was completely cured. He is now just up in the world climates of Egypt and India, but also in the Arctic regions of Alaska. Your cure has saved my friend's life, and I am sure it will save many others. I myself have used your remedy with the greatest benefit, as I was refused by the Quinine Insurance Co. years ago for indications of British Disease, but after taking your cure for some time I was able to obtain my life insurance. I have also had my military career in some way greatly benefited by your remedy. I have also had my health improved, and I am now just up in the world climates of Egypt and India, but also in the Arctic regions of Alaska. 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