# FRAUD WAS PROVED

## Deed From Husband to Wife Is Set Aside.

### MOTHER-IN-LAW ALSO PARTY

**Subcontractor Is Entitled to a Lien on Building for Labor and Materials Under the Mechanic's Lien Statute.**

In a suit by a creditor to set aside a deed executed by an insolvent creditor to his relative, the burden of proof is imposed upon the grantee to show that he is an innocent purchaser for a valuable consideration.

Although not specifically mentioned in the statute, a subcontractor is entitled to a lien for labor and materials furnished, as provided in section 5640 of the Oregon statutes.

SALEM, Or., Dec. 28.—(Special.)—The Supreme Court today handed down decisions in three appealed cases, affirming two and reversing one. The cases are:

**Walker vs. Harold.**

T. F. Walker, appellant, vs. G. F. Harold and Sarah Harold, respondents, from Linn County. R. P. Boise, Judge, reversed; opinion by Chief Justice Moore.

This was a suit to set aside a deed. The facts are that on March 15, 1899, defendant, G. F. Harold, was the owner of 240 acres of land in Linn County, at which time he gave his promissory note to W. P. Kaiser for $200, payable in five months with interest. Thereafter he incumbered the premises by executing a mortgage thereon to Henry Keene for $600, one to Ellen Caldwell for $800 and one to Parmelia Howard for $1200, and on January 5, 1902, conveyed the land by deed to his wife, the defendant Sarah Harold. Only a part of the note having been paid, Kaiser commenced an action and secured a judgment for $200, with interest from July 12, 1901, at 8 per cent, $25 attorney's fees, and $14.50 costs and disbursements. The judgment was assigned to T. F. Walker and an execution having been returned nulla bona, this suit was brought to set aside the deed from Harold to his wife on the ground that the conveyance was given for the purpose of defrauding creditors and without consideration.

Mrs. Harold answered that when she secured the deed the land was incumbered as above stated, that in addition her husband owed his mother-in-law, Parmelia Howard $400, that she had agreed to pay all these debts and had paid all except the Caldwell mortgage, all of which she had paid in good faith and in consideration for the deed for the land, and without any knowledge of fraudulent intent on the part of her husband. The trial in the court below resulted in a decree dismissing the suit and plaintiff appealed.

The Supreme Court lays down the rule that in a suit by a creditor to set aside a deed executed by an insolvent creditor to his relative, the burden of proof is imposed upon the grantee to show that he is an innocent purchaser for a valuable consideration. After a review of the evidence it is shown that Harold had previously made contradictory statements under oath in an attempt to secure cancellation of the Howard mortgage and the court expresses the opinion that Harold and his wife and his mothr-in-law were parties to an attempt to defraud his creditors. The court plainly declares its impression that the testimony of Harold at the trial is unworthy of credence. The decree of the Supreme Court is that the equitable lien of Mrs. Harold for $400 be foreclosed, subject to the lien of the unpaid portion of the Caldwell and Hobson mortgages, the latter being substituted for the Keene mortgage, and that the mortgaged property be sold and the proceeds applied to the payment of first, the costs; second, $400 and interest to Mrs. Harold; third, plaintiffs' judgment, and fourth, the balance to Mrs. Harold.

**Smith vs. Wilcox.**

H. N. Smith, respondent, vs. Nathan Wilcox, et al., appellants, and H. N. Smith, respondent, vs. Isaac Turple, et al., appellants, from Multnomah County, A. L. Frazer, Judge, affirmed; opinion by Justice Wolverton.

In 1902, the G. H. Dammeier Company entered into a contract with Nathan Wilcox, whereby for the consideration of $850 it agreed to sell Wilcox the east half of lots 5 and 8, block 3, Doscher's Second Addition to Portland, and, for the further consideration of $1510 to construct thereon an eight-room house. At the same time the company entered into a like contract with Turple for the sale of the west half of the same lots to him, for $700, and to construct an eight-room house for him for $1510. The Dammeier Company subcontracted with H. N. Smith to build these houses, each at $1345. When the work was completed plaintiff filed a lien for $145 on each house and this lien was foreclosed in the court below, whereupon defendants appealed. The liens and suits were filed separately but the cases tried together.

The contention of defendants was that a subcontractor is not within the purview of the mechanic's lien statute, section 5640, of B. & C. comp. The opinion of the Supreme Court, affirming the lower court says in part:

"The statute was certainly intended to be and is by its terms very comprehensive in its scope and bearing, as it concerns persons performing labor and furnishing materials, one or both, in the construction or repair of the structure or superstructure designated. A subcontractor is not specifically designated by name, as are others in the statute, as entitled to its benefits; but, if the term contractor is to be treated as used in its generic sense, he certainly falls within that category. He is assuredly a person who performs labor or furnishes materials, one or both, as the case may be, and in the case at bar he has not only done both, but he has erected and completed the entire structure."

It is also held after a review of the evidence, that the contracts for the building of the two houses were separate, and that the liens were therefore properly filed separately.

A petition for rehearing in the case of Gottlieb Schmidtke, respondent, vs. George Keller, appellant, was denied.

## TEACHERS' LIFE DIPLOMAS.

**Examinations May Be Taken Before Law Becomes Effective.**

SALEM, Or., Dec. 28.—(Special.)—Superintendent of Public Instruction J. H. Ackerman today issued a circular letter giving information as to the effect of Senator Mulkey's bill authorizing the issuance of life diplomas to certain teachers who hold state diplomas. The Mulkey bill will not become a law until March 23, but Superintendent Ackerman will permit applicants to take the required additional examination in February. The circular letter says:

"To Whom It May Concern: In accordance with the late legislative enactment, the State Board of Education will issue state life diplomas on and after March 24, 1904, to teachers who have taught not less than six years successfully in the public schools of the state and who hold state diplomas received in consequence of having held state certificates and having taught four years successfully in the public schools of this state and having passed an examination before a County Superintendent or a board of county examiners in bookkeeping, composition and physical geography; provided, they passed an examination before the State Board of Examiners at the time of holding examinations for state certificates, viz., February and August of each year, in the additional branches of algebra, English literature, Oregon school law and general history, and present a recommendation from the Board of County Examiners and have paid a fee of $10; provided, further, that the applicant shall have made an average of 85 per cent in all the branches herein prescribed and shall not fall below 70 per cent in any one branch; provided, further, that the applicant has complied with all the other requirements of the law.

"Such teachers may at their discretion take an examination for a state life diploma in the additional branches in February, 1904, and the standings secured at such examination will be placed to their credit and, if successful, a state life diploma will be issued on March 24, 1904. All such applicants must file with the Superintendent of Public Instruction a separate application on blanks furnished by him for that purpose.

**Time Enough to Examine Books.**

VICTORIA, B. C., Dec. 28.—Judge Drake today refused the application made by Mrs. John Dunsmuir, intervener in the Hopper-Dunsmuir will case, for an examination of the books of the Esquimalt & Nanaimo Railway Company of R. Dunsmuir Sons Company. The Judge said that it would be time enough to ask for an examination of the books when the will case had been won.

**Tracklaying Under Difficulties.**

NEW WESMINSTER, B. C., Dec. 28.—(Special.)—The trouble between the Vancouver, Westminster & Yukon Railway, which is entering this city, and the Canadian Pacific Railway came to a climax here today when the Vancouver, Westminster and Yukon tore up the Canadian Pacific Railway spur into the Columbian cold storage wharf and commenced laying their main line. It looked like a fight between the trackmen at first, but quieted down on the arrival of the Canadian Pacific Railway officials from Vancouver. The Canadian line is now applying for an injunction against the other road. Its cars placed on the spur to prevent the Yukon Company tearing up the track, were moved by cable before the spur was torn up.

**Wants Divorce and Alimony.**

OREGON CITY, Or., Dec. 28.—(Special.)—Because he failed to keep his promise not to drink, made prior to the marriage, Mrs. M. M. Bowers, of this city, today instituted a suit for divorce from John S. Bowers, to whom she was married in this city in September, 1902. In addition to asking for a divorce and the privilege of resuming her maiden name, Mrs. M. M. Davis, the plaintiff, asks for an order directing the defendant, who is employed at the United States Fish Commission, near this city, to advance the necessary funds with which to meet the costs of the suit and also for an allowance per month as alimony.

**Observed St. John's Day.**

FOREST GROVE, Or., Dec. 28.—(Special.)—The Freemasons of this vicinity observed St. John's day with a public installation of officers of Holbrook Lodge No. 30, A. F. & A. M., and Forest Chapter, No. 42, Order of the Eastern Star, in Masonic Hall. The ceremonies were in charge of ex-Senator E. W. Haines, past master and past grand patron. An address on the relations of Masonry to the church was delivered by Rev. A. Robinson, of Hillsboro. About 100 sat down at the annual banquet.

**Change of Venue Granted.**

BUTTE, Mont., Dec. 28.—A miner special from Missoula says Judge Webster today granted a change of venue in the case of A. B. Cook et al., versus Alice B. Sanders, transferring the case to Judge Napton, of Deer Lodge County. Judge Webster's action is taken upon the filing of an affidavit in court under the provisions of the "fair trial" bill for which enactment the recent extraordinary session of the Legislature was called.

**Smallpox at Eagle Creek.**

OREGON CITY, Or., Dec. 28.—(Special.)—Dr. C. B. Smith, of Eagle Creek, today reported to County Judge Ryan, as health officer, the existence of a case of smallpox at that place. The afflicted man is Joe Bracket, who contracted the disease in Eastern Oregon.

HOMER DAVENPORT ON THE NEW YORK WORLD

FIRST CARTOON OF THE ARTIST IN HIS NEW EMPLOYMENT.

Homer Davenport, the cartoonist, has entered the service of the New York World. He had retired from the New York American about six weeks ago, after having been continuously in the employ of the Hearst newspapers for ten years. When his withdrawal was announced last month, it was said that he was going to the lecture platform, but it would now appear to be doubtful if he will carry out that plan. It is known that Mr. Davenport has received flattering offers from both Collier's Weekly and from Frank A. Munsey; but he declined both. The above cartoon appeared in the New York World last Tuesday, December 22, and is the first the artist ever drew for any Eastern publication except the New York American. It is entitled "Jolting the Rough Rider."

# RECORD IS COMPLETE

## GOVERNOR FILES LAST OF ACTS PASSED BY LEGISLATURE.

**Only Ten of the Bills Have Effective Emergency Clauses as Required by Referendum Amendment.**

SALEM, Or., Dec. 28.—(Special.)—Governor Chamberlain today filed the last of the acts passed by the last Legislature, and the record of that body at its special session is complete. Only ten of the bills seem to have effective emergency clauses. A number of others have emergency clauses which merely declare that an emergency exists, but under the referendum amendment it is necessary that in order to put an act into effect at once the Legislature must declare that the immediate preservation of the public peace, health or safety so requires. Those acts which contain an emergency clause such as is required by the referendum amendment, are marked with an asterisk. All others will take effect 90 days from December 23.

**Senate Bills.**

S. B. 2, Smith of Umatilla—To amend charter of Adams.

S. B. 3, Carter—To incorporate town of Gold Ray.

S. B. 4, Dimmick—To incorporate Beaver Hill.

S. B. 5, Dimmick—To incorporate North Bend.

S. B. 6, Dimmick—To amend charter of Marshfield.

S. B. 7, Miller—To amend charter of Lebanon.

S. B. 8, Wade—To provide for Deputy District Attorneys in Eighth District.

S. B. 9, Smith of Yamhill—To fix salary of Judge of Lincoln County.

S. B. 14, Carter—To amend law prohibiting killing of elk.

S. B. 17, Rand—Correcting law relating to executions at penitentiary. *

S. B. 18, Pierce—Fixing time to give notice of tax levies in 1904. *

S. B. 19, Rand—Fixing time of holding Circuit Court in Ninth District.

S. B. 21, Marsters—Appropriating $2500 for Soldiers' Home.

S. B. 22, Carter—Placing limit of 10 per cent on interest on tax sales.

S. B. 23, Brownell—To prevent assignees from bringing suits to recover Recorders' fees. *

S. B. 25, Tuttle—To amend charter of Seaside.

S. B. 26, Mulkey—Granting life diplomas in certain instances.

S. B. 27, Wehrung, by request—Providing for condemnation of water rights.

**House Bills.**

H. B. 1, Kay—To repeal the tax law of 1902. *

H. B. 2, Kay—To re-enact the old tax law. *

H. B. 8, Carnahan—To correct the law relating to Recorders' fees. *

H. B. 15, Adams—Amending charter of Athena.

H. B. 16, Hale—fixing salary of Judge of Josephine County.

H. B. 20, Edwards—To incorporate Cottage Grove.

H. B. 21, Whealdon—To appropriate $100,000 for Celilo canal right of way. *

H. B. 23, Shelley—To revive the $300 tax exemption.

H. B. 25, Whealdon—To amend charter of Dalles City. *

H. B. 26, Burleigh—To incorporate Lostine.

H. B. 29, Malarkey—Raising salaries of Circuit Judges in Multnomah County to $4000.

H. B. 31, Judd, by request—To give owners of stallions liens on mares.

H. B. 37, Gault—Relating to competency of witnesses.

H. B. 40, Galloway—Amending charter of McMinnville.

H. B. 41, Edwards—To protect Chinese pheasants.

H. B. 42, ways and means committee—To appropriate money for expenses of special session. *

## TAX LEVY OF TWO MILLS.

**Made by School Directors of Oregon City District.**

OREGON CITY, Or., Dec. 28.—(Special.)—At a meeting tonight of the taxpayers of the Oregon City School District a tax of 2 mills was voted for school purposes. The tax last year for the same purpose was 1½ mills, and the reduction in the levy this year is made possible by the doubling of the assessment roll of the county by Assessor Nelson. The Board of Directors submitted their annual report, in which the expenses of the district for the next fiscal year were estimated at $10,241. Of that amount $6570 is allotted for teachers' salaries. The estimate also includes an item of $1000 for the building of closets and the making of sewer connections at the two school buildings. The income of the district for the corresponding time is approximated at $8391, and is from the following sources: Tuition, $500; county apportionment, $6000; state apportionment, $1891, leaving a total of only $1850 to be raised by special levy.

It is the sense of the board that if the attendance increases during the coming year the building of an addition to one of the school buildings can only be avoided by refusing tuition pupils admittance to the schools.

The total indebtedness of the district amounts to $14,000, as follows: Bonded indebtedness, $12,000; floating indebtedness, $2000. With a levy of 2 mills it will be possible for the district to cancel a portion of the floating indebtedness and at the same time meet all expenses.

**Sheriff's Sale at Astoria.**

ASTORIA, Or., Dec. 28.—(Special.)—The property held for delinquent taxes on the 1902 roll was sold by the sheriff this afternoon. There were a number of bidders, some of whom were from Portland, but a considerable portion of the property was purchased by the county.

The segregation of the 1903 assessment roll completed today shows the valuation of property in the City of Astoria to be $1,808,282, an increase of $180,312 over the 1902 roll.

**Japanese Laborers Strike.**

VANCOUVER, Wash., Dec. 28.—(Special.)—It is reported that the Japanese laborers on the Portland, Vancouver & Yakima division of the Northern Pacific struck yesterday for higher wages. They refused to work for less pay than was allowed the Greek laborers. Some attempt on the part of the American employes to secure aid from the labor unions to suppress both Japanese and Greek labor is reported.

**Logger Is Missing.**

ASTORIA, Or., Dec. 28. — (Special.)—Emil Pontila, formerly a resident of this city, but who has been employed at Brix Bros.' logging camp, on Gray's River, during the past year, has mysteriously disappeared, and it is feared he has been foully dealt with. He came to Astoria Thursday afternoon, and since then no trace of him has been found, although a thorough search is being made by the police and members of his family.

**Measles Rage at Astoria.**

ASTORIA, Or., Dec. 28.—(Special.)—An epidemic of measles is raging in Astoria at the present time, and there are fully 150 cases, principally among the children. Thus far the disease has been of a mild type, and there have been no fatalities. There has been no increase in the number of scarlet fever cases for several days, and the health authorities believe that they have the spread of this disease checked.

**Sheriff Sells Frisco Mine.**

WALLACE, Idaho, Dec. 28.—The Frisco mine, one of the oldest producing properties in the Coeur d'Alenes, was bid in at Sheriff's sale today by D. M. Hyman, of New York, for $108,000. He is owner of a majority of the bonds which were secured by mortgage. The mine has not been profitable in the past two years, owing to the depth of the workings, 2000 feet. It is now idle.

**Young Outlaws Plead Guilty.**

WALLA WALLA, Wash., Dec. 28.—"Doc" McMinn and Frank Smith, the young outlaws who were caught after a terrific chase through the wild Warm Springs country Christmas eve, pleaded guilty of various depredations today. McMinn got 18 months in the State Penitentiary and Smith a county jail term. Cecil McMinn was also given a county jail term.

**Will Investigate Wrongdoing.**

BUTTE, Mont., Dec. 28.—The first session of the grand jury selected by Judge Harney to investigate the charges of wrongdoing in county and city offices, convened a little after 10 o'clock this morning in the room to the rear of Judge William Clancy's Court.

The gand jury is called at the request of the Board of Silver Bow County Commissioners.

# NEW LIST OF FEES

## County Recorders' Law Makes Some Changes.

### ACT IS ALREADY IN EFFECT

**Charges Made by County Recorders Should Be According to the New Law, Which Contained an Effective Emergency Clause.**

SALEM, Or., Dec. 28.—(Special.)—A new schedule of fees to be charged by County Recorders has been provided for all counties except Multnomah. As the new law carries an effective emergency clause, and has already taken effect, fees now being collected should be charged according to the new schedule. The act authorizing the collection of fees by Recorders is as follows, omitting the title:

"Section 1—That in every county of the State of Oregon containing less than 50,000 inhabitants, there shall be exacted and collected by the Recorder of Conveyances, or County Clerk, if there be no Recorder of Conveyances, for the benefit of such county, the following fees and no more for the following purposes and services, namely:

"First—For recording any deed, trust deed, declaration, contract, mortgage, chattel mortgage, bill of sale, or any instrument in writing required, or permitted by law to be recorded, for each folio of 100 words in such instrument, the sum of 25 cents, but no charge shall be made for the filing or indexing of such instruments, or for the official certificate attached thereto.

"Second—For entering and attesting satisfaction, assignment, or release, on the margin of the record, of any mechanic's lien, real estate, or chattel mortgage, or other instrument, 50 cents.

"Third—For filing, and making the entry of any transcript of judgment in the judgment lien docket, $1.

"Fourth—For furnishing private parties copies of records and files, for each folio 10 cents, and for each official certificate thereto, 25 cents.

"Fifth—For entering of record every declaration of intention of an alien to become a citizen of the United States, and furnishing to the declarant a certified copy thereof, $1.50; and for entering of record every naturalization od (of) an alien, and furnishing to the person naturalized a certified copy thereof, $5.

"Section 2. The fees designated in section 1 of this act, shall be collected in advance from the person requesting the service of the officer, and none of the services therein mentioned, shall be rendered, until the fee therefor has been paid to and received by the officer, and said officer shall enter an account of the fees provided for by this act, in books kept in his office, and pay all such fees to the Treasurer of the proper county, each day for the use and benefit of such county.

"Section 3. That all fees and charges heretofore received and exacted, by the several Recorders of Conveyances and County Clerks of the counties designated in this act, for the services, or any of them in this act mentioned, are hereby declared to be legal and proper charges for such services, and to have been voluntarily paid to such officers, and the money so received to be the property of the county to which it was paid by such officer, and no action, or suit for the recovery of any such fees or charges shall be maintained against any county officer, or county in this act designated.

"Section 4. Inasmuch as grave doubts have arisen as to the legality of the fees and charges heretofore exacted by the various county officers mentioned in this act, for the services herein mentioned, and the revenues of the various counties mentioned in this act, are liable to be depleted by reason of such doubts, and the public peace, health and safety of the state thereby endangered, and it therefore being necessary for the immediate preservation of the public peace, health and safety, that this act take effect immediately, as emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage and approval by the Governor."

**Track Cleared of Huge Slide.**

BONNERS FERRY, Mont., Dec. 28.—The Great Northern has cleared the track of the huge rock slide between here and Troy, which occurred last Friday, and passenger trains, which have been running over the Northern Pacific from Helena to Spokane, will run this way today. The slide was a bad one and it wrecked a freight train, the engine and four cars going into the ditch. The company will patrol the tracks the rest of the Winter to guard against slides.

**Sentenced to a Lashing.**

VANCOUVER, B. C., Dec. 28.—In view of a recent epidemic of burglaries Judge Bole today gave a severe sentence to William Page, an American, who was caught in the act of housebreaking. The sentence was ten years and 60 lashes, and an additional two years for attempting to break jail.

**$500 REWARD! FOR WOMEN WHO CANNOT BE CURED.**

Backed up by over a third of a century of remarkable and uniform cures, a record such as no other remedy for the diseases and weaknesses peculiar to women ever attained, the proprietors and makers of Dr. Pierce's Favorite Prescription now feel fully warranted in offering to pay $500 in legal money of the United States, for any case of Leucorrhea, Female Weakness, Prolapsus, or Falling of Womb which they can not cure. All they ask is a fair and reasonable trial of their means of cure.

Their financial responsibility is well known to every newspaper publisher and druggist in the United States, with most of whom they have done business for over a third of a century. From this fact it will readily be seen how utterly foolish it would be for them to make the above unprecedented and remarkable offer if they were not basing their offer on curative means having an unparalleled record. No other medicine than Dr. Pierce's Favorite Prescription could possibly "win out," as the saying goes, on such a proposition. But they know whereof they speak. They have the most remarkable record of cures made by this world-famed remedy ever placed to the credit of any preparation especially designed for the cure of woman's peculiar ailments. This wonderful remedy, therefore, stands absolutely alone as the only one possessed of such remarkable curative properties as would warrant its makers in publishing such a marvelous offer as is above made in the utmost good faith.

"I want to tell you of the great improvement in my health since taking your 'Favorite Prescription,'" says Mrs. H. S. Jones, of Forest, N. C. "When I began its use I was a physical wreck and had despaired of ever having any health again. Could not sit up all day. I noted a great improvement before the first bottle was used. Was suffering with almost every pain that a woman is subject to; had inflammation of ovaries, painful and suppressed periods, and other symptoms of female disease. After taking six bottles of 'Favorite Prescription,' I felt like a new person. Can ride horseback and take all kinds of exercise and not feel tired."

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Gold crowns $5; full set teeth, $5; bridge work, $5; gold filling, $1 up; silver fillings, 50c.

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A half to a teaspoonful in half a tumbler of water will in a few minutes cure Cramps, Spasms, Sour Stomach, Heartburn, Nervousness, Sleeplessness, Sick Headache, Diarrhoea, Dysentery, Colic, Flatulency and all internal pains.

There is not a remedial agent in the world that will cure Fever and Ague and all other malarious, bilious and other Fevers, aided by RADWAY'S PILLS, so quickly as RADWAY'S READY RELIEF. Sold by druggists. w

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| BANKERS' LIFE ASSOCIATION OF DES MOINES, IA.; F. C. Austen, Mgr. | 502-503 |
| BATES, PHILIP S., Pub. Pacific Miner | 213 |
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| BOHART, DR. M. D., Dentist | 708 |
| BROOK, WILBUR F., Circulator, Oregonian | 301 |
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