

MRS. FALING'S WILL OF 1915 IS INVALID

Supreme Court Reverses Lower Court's Ruling.

LONG LITIGATION ENDED

Instrument Executed on August 25, 1911, Is Ordered Admitted to Probate.

SALEM, Or., June 27.—(Special.)—The Oregon supreme court, in an opinion written by Justice Bean and handed down today, reversed Judge Stapleton of the Multnomah county circuit court and declared invalid the will executed by Mrs. Karla Faling of Portland, August 25, 1911, and directed that the will executed previously by her on August 25, 1911, be admitted to probate. Under the ruling of the court the costs incurred in the litigation shall be paid by the estate.

Litigation of the Faling estate has been in progress for several years and centered about the question of whether a will dated August 25, 1911, was the last will and testament of Mrs. Faling or whether the will bearing date of August 25, 1911, together with six codicils thereto, was her last wish as to the disposition of her property. The estate was valued at approximately \$750,000 at the time the litigation was instituted.

Requests Are Listed.

In the will executed in 1915, which Judge Stapleton held to be the last will and testament of Mrs. Faling, she bequeathed the largest share of her property to C. L. Mead and Thomas Strong, who were named as executors of the will. She referred in her will to Mr. Mead and Mr. Strong as "life-long friends."

Other bequests in this will include \$3000 to the Beaverton Children's home, \$3000 to St. Agnes Baby home, \$3000 to the children's home at Corvallis and Gains street, Portland, \$3000 to the Visiting Nurses' association, \$3000 to the Mann Old Peoples' home, \$3000 to William E. Metzger, \$3000 to Carl Schlock, \$3000 to Catherine Becker, \$3000 to Etna B. Chaffin, \$10,000 to her "so-called brother" Cornelius Barrett, and \$1 to any other persons who might claim relationship.

Requests in the will executed by Mrs. Faling August 25, 1911, which under the ruling of the supreme court shall be admitted to probate, included the Patton home, \$2500; Oregon Humane society, \$3000; Charles Jensen and wife, \$2000; Theodore Jensen and wife, \$2000; Lena Dorn, \$1000; Elsie Gray, \$1000; Sarah Gray Warnecke, \$1000; Alice Meredith Gray, \$1000; Thomas Gray, \$1000; Cornelius Barrett, \$30 a month; Salvation Army, \$1000; Portland library, \$1000; Children's home, lots 7 and 8, block 63; August Warnecke, all of the rest of the lands and real estate; Ben Selling, in trust for the Jewish hospital, \$5000; William Metzger, \$6500; all of balance of property to Children's home. Thomas N. Strong was named as executor.

Executors Are Named.

In the first subsequent codicil Mrs. Faling declared that in event of Mr. Strong's death Addison Lindsey and William Metzger should be named as executors. Codicil No. 2 named Metzger, Lindsey and W. N. Gatens as executors. Mr. Metzger and Lot G. Swetland were named as executors in codicil No. 4, while No. 5 named Gatens and Swetland as executors. Codicil No. 6 revoked all former appointments of executors and named A. L. Mills as sole executor.

"We have devoted considerable space in setting out a portion of the voluminous testimony," said the opinion of Justice Bean, "and the trend thereof. The burden of proving by a preponderance of the testimony the testamentary capacity of Mrs. Faling, at the time of the execution of the will dated August 25, 1911, was upon the proponents. In this they have failed. We are satisfied that the testimony fairly shows by a great preponderance that at the time in question Mrs. Faling did not have sufficient mental capacity to execute a valid will."

Will Never Revoked.

"It does not appear from the testimony that when the purported will of 1915 was signed Mrs. Faling was capable of understanding or knowing whether by the fifth clause of the instrument (that making the bequest to Strong and Mead) she disposed of a small balance of the bulk of her estate." Regarding the will executed August 25, 1911, Justice Bean said: "When the will of August 25, 1911, and the codicils thereto were executed, published and declared as the last will and testament of Mrs. Faling, she was of sound and disposing mind and memory, was competent and was not acting under duress, menace or fraud or undue influence of any person whatsoever. The will and codicils were never revoked by Karla Faling, and there was a revocation contained within the will of August 25, 1915."

DECISION IS SURPRISE HERE

Many Portland Attorneys at First Decline to Believe Report.

Appraised of the unanimous action of the supreme court of Oregon in reversing the decisions of Circuit Judges Tazewell and Stapleton in the Karla Faling will contest, many Portland attorneys at first declined to believe the report, so strong has been an unbroken line of decisions in the Oregon courts upholding last testaments that it has long been considered by lawyers almost impossible to break a will in this state.

Will contests have been a rarity in local courts considering the heavy amount of probate work handled, but this decision is expected to encourage many persons who otherwise would have no hope of gathering to themselves some of the bounty of relatives who have passed on.

The Faling will contest has been without parallel in local courts, the first hearing occurring 180 days. This was before Judge Tazewell, at that time judge of the county court. When he upheld the validity of the will an appeal was taken to the circuit court. For nearly two months Circuit Judge Stapleton listened to the reading of stenographic reports of the proceedings, and then well and then affirmed the decision of the lower court.

Hearing before the supreme court was held on January 18 of this year, the seven justices sitting en banc.

The children's home, a nonsectarian orphan's home, located at Corbett and Gains streets, is the chief beneficiary under the terms of the

1911 will, the validity of which was upheld by the supreme court when the 1915 will was broken. The Faling estate is valued at \$750,000.

Miss Florence Stackpole is president of the children's home. Mrs. E. L. Thompson is vice-president, and Mrs. William MacLach, treasurer. These women, with Mrs. Abe Meier, ex-president, constitute the board of trustees.

Mrs. Faling died on July 7, 1917, leaving all but \$20,000 of her \$750,000 estate to C. Lewis Mead, confidant and adviser, and Thomas N. Strong, her attorney, in equal shares, according to a will executed on August 25, 1915, at the age of 74 years. The will was probated July 9, 1917, and the contest was filed 60 days later by Dr. W. Tyler Smith, a cousin, living in Sheridan, Or., and then believed to be the son of her-at-law. When the existence of the 1911 will was learned, Dr. Smith joined force with the children's home. He died before the outcome of the suit.

Testimony in the course of the hearing showed that Mead prepared the will under which he benefited to such an extent and that Mrs. Faling signed it in Strong's office. This was the chief basis of undue influence alleged to have been used on the old woman, who was said to have been mentally unsound at that time.

The 1911 will, leaving the greater part of the property to the children's home and about \$50,000 to other beneficiaries, had been destroyed by Strong, but its existence was proved by the reading of stenographic notes of the instrument, made in his office.

Judges Tazewell and Stapleton held that the will was the last of the old woman, basing their decision on the ground that Strong and Mead had been her close friends and advisers for many years and that it was only natural that she should leave the bulk of her property to them, having no near kin. The judges also contended that the case after the 1911 will was introduced by trying to have it established as the will after introducing testimony by witnesses claiming that Mrs. Faling had been insane in 1915 and for many years prior to that time.

The unanimous decision of the supreme court justices was that Mrs. Faling did not know or understand what she was doing when she gave the bulk of her property to Mead and Strong.

A part of the gift to the children's home and the most valuable property in the estate is the Swetland building, Fifth and Morrison streets.

Mrs. Faling was an interesting character and had a turbulent life. As Miss Karla Barrett, she was married to J. D. Faling in the early '80s. He left her for a woman in San Francisco. She followed him there, and when she caught him riding with the other woman shot and killed him. Tried for murder, the first jury disagreed and the second acquitted her on the grounds of insanity. This was in 1886.

E. E. Heckbert and Coy Burnett represented the beneficiaries of the 1911 will in the case. John F. Logan, James G. Wilson and C. Henri Labbe the proponents of the 1915 will.

KIRBY APPEAL NOT FILED

TIL TAYLOR SLAYERS FACE GALLOWNS ON JULY 7.

Only Chance for Condemned Men Is That Governor Olcott Will Extend Reprieves.

THE OREGONIAN NEWS BUREAU, Washington, D. C., June 27.—No appeal has been filed in the murder case, according to the docket clerk of the United States supreme court.

SALEM, Or., June 27.—(Special.)—Unless Governor Olcott extends the reprieves granted to Elvie Kirby and John Rathie, slayers of Sheriff T. L. Taylor of Multnomah county, both men will hang in the state penitentiary here Friday, July 7. This was the ruling of the supreme court in the United States supreme court in the Kirby case had not been perfected. The time for filing the appeal expired June 21.

Kirby, under the name of James Owens, and Rathie were sentenced to hang for the Taylor murder in 1920, but later appealed their cases to the state supreme court. The latter tribunal subsequently affirmed the sentence of the lower court. The men then were resentenced and were to have been hanged here in January of this year.

A few days before the date set for the executions attorneys for Kirby filed habeas corpus proceedings in the Marion county circuit court, whereupon Governor Olcott reprieved the sentences of both Kirby and Rathie until July 7.

The circuit court refused to grant the writ of habeas corpus, however, and the case afterward was appealed to the state supreme court. The supreme court affirmed the decision of the circuit court.

Notice then was given that the case would be appealed to the United States supreme court and that the final date for making an appearance.

Although the information received to night from Washington was that the case would be taken to the United States supreme court, the United States supreme court refused to review the case for the reason that no constitutional question was involved. Attorneys for Kirby attacked the constitutionality of the Oregon hanging law on the grounds that it was not referred properly to the voters for enactment.

WATCHMAKER IS HELD

Joe Kahn Will Face Grand Jury in David's Store Looting.

Joe Kahn, a watchmaker, was held to the grand jury under \$350 bail by Judge Ekwall, in municipal court yesterday on charges of receiving property stolen from David's Jewelers, Inc., in Washington street.

Kahn was said by John Mowrey, assistant district attorney, to be involved with G. A. Krogh, ex-manager of the store, in systematic theft of gems. He was specifically charged with receiving jewelry from Krogh which he knew to be stolen.

A belief was expressed by James M. Riley, head of the local Pinkerton bureau, that a confession made by Krogh to him was false in many details. Krogh, he said, apparently was trying to implicate some women who are not connected with the thefts. Information was received by Judge Ekwall that Mrs. Krogh is seriously ill because of worry over her husband's arrest.

Bend Postmaster Quits.

BEND, Or., June 27.—(Special.)—W. H. Hudson, for more than two years postmaster at Bend, sent in his resignation to the postoffice department at Washington, D. C., today and will leave tomorrow for Rawlins, Wyo., where he is transferring as assistant. A temporary postmaster is to have charge of the local postoffice until the position can be filled permanently.

PAVING LAID FROM THE DALLIES TO SEASIDE

Last Load of Hot Stuff Laid on Highway.

CROWD WITNESSES EVENT

Whistles Blow and Horns Toot in Celebration of Completion of Last Link of Road.

THE DALLIES, Or., June 27.—(Special.)—The last load of hot stuff on the Columbia river highway between The Dalles and the Pacific ocean was dumped at Rowena shortly after 3 o'clock this afternoon. Simon Benson, one of the men responsible for the great road along the Columbia, was handed a rake by one of the workers and he assisted in spreading the mixture of melted tar and rock. A. E. Crosby of The Dalles also seized a rake and the two smoothed the steaming mass over the last few unpared yards of the road, while a crowd gathered for the occasion cheered.

As soon as the last load of paving material had left the plant at Rowena whistles were blown, automobile horns sounded and a blast was set off high on the cliff, in honor of the event. Lines of automobiles had accumulated on both sides waiting to get through, and they joined in the noise-making.

By 3:15 o'clock the hot stuff had been smoothed and rolled and the waiting cars passed through. The Columbia river highway was completed. The road is a long and troublesome detour were a thing of the past.

Among those present at the impromptu ceremony, which marked the completion of the paving were Mr. and Mrs. Simon Benson, Rupert Hauser, president of the Hauser Construction company, which did the work, and Mrs. Hauser; K. E. Kumpke, superintendent of construction for that company, and Mrs. Kumpke; J. E. Peck, resident state highway engineer, who supervised the job, and a number of business men from The Dalles.

The last unpared stretch, between The Dalles and the Hamlet pits, a short distance east of Mosier, was 12.6 miles long.

The Hauser Construction company started paving July 1, 1921, and finished 86 days ahead of its contract, which called for completion by September 1.

DREAM OF YEARS REALIZED

Road Scheme Long Held Visionary Accomplished Thing.

A visionary scheme of ten years ago materialized yesterday when the last batch of "hot stuff" was raked and rolled between Rowena and The Dalles, completing a finished hard-surface pavement from The Dalles to the Pacific ocean, a distance of 215 miles.

It was a great day for Simon Benson, his son, Amos Benson, and John B. Yeon, apostles of road building in Oregon.

Since March 9, 1914, when the first grading for the Columbia river highway was started by Multnomah county, the work has gone steadily forward; grading, rock, cuts, fills, construction of bridges and, finally, hard-surface paving.

When Multnomah county completed its section the wonderful possibilities of the highway were realized, and the state stepped in and the work was extended east and west until yesterday the final load of "hot stuff" was laid and 215 miles of pavement stretched in a ribbon from the pioneer trading point, The Dalles, to Seaside.

The first road work on what is now the Columbia river highway was at Shell Rock mountain, when Simon Benson spent \$10,000 in building a road construction camp, the labor being convicts of the "honor men" class, who were sent there by Oswald West, then governor of Oregon. The slipping, sliding, rolling rock fragments were held back by walls built by the prisoners. Then the enterprise languished, but the idea of a road along the Columbia in Multnomah was born. This slowly took shape until in 1914 the first grading was started.

In 1915, seven years ago, the grading was advanced sufficiently to permit the passage of vehicles for the first time through the Columbia gorge, along the Cascades, and a large group of officials drove through it in automobiles, astonished at the few natives of Cascade Locks.

Next came a plan to hard-surface the road in Multnomah county. Mr. Yeon for years worked without salary as roadmaster for Multnomah county, supervising construction of this highway. Simon Benson paid, out of his own pocket, for a mile of pavement in Hood River county and bought Hood River county road bonds so that county could help extend the highway.

The trip—Simon and Amos Benson and Yeon—fairly lived on the highway night and day, came next the improvement of the highway between Portland and Seaside, with its grading and paving and bridges, and at the same time the improvement was pushed through Hood River county and into Wasco to The Dalles. Eventually the highway was extended to Pendleton, where, connecting with the old Oregon trail, it reaches Idaho.

"People said we were crazy when we first talked of a paved road from The Dalles to the ocean," Amos Benson observed last night, "and prominent citizens predicted the taxpayers would rise and seep us if we attempted such a thing. Well, the enterprise is ended—215 miles of hard-surface road along the finest and most gorgeous scenery in the world."

MIXED COUPLE BALKED

Attempt to Get Married at Vancouver Meets With Difficulties.

VANCOUVER, Wash., June 27.—(Special.)—Lawrence Morrison, 27 years old, and said to be a proprietor of a large pool hall in Portland, and Miss Marie La Chance, 24, also of Portland, drove to the county courthouse today in a large automobile.

Mr. Morrison was evidently a negro and the bride-to-be white.

J. L. Garrett, county auditor, who makes a specialty of issuing marriage licenses, when he is in the office, informed the young woman

that as she was apparently white, that no minister or justice of the peace in the city would perform the ceremony.

They decided after a short consultation to get the license. They went to the office of Frank E. Vaughan, justice of the peace, where they were informed that Mr. Vaughan had scruples against marrying colored men to white women.

It was then decided by the couple, and their witness, Frank A. Junior, negro, to go to Portland, obtain a negro minister, return to Washington and there, in spite of the Vancouver Ministerial association, be married. This they started to do, but the bride's return had not been filed tonight.

SPRUCE RAILROAD SOLD

\$1,000,000 IS PAID FOR CLALLAM COUNTY LINE.

Deal Includes Disposal of Hotel and Sawmill and Government Will Get Out of Business.

WASHINGTON, D. C., June 27.—The war department announced yesterday sale of the spruce production corporation railroad No. 1 in Clallam county, Washington, to Messrs. Hill, Scribner and Lion, for \$1,000,000, the deal marking final disposition of real property of the spruce corporation and including the corporation-built hotel and sawmill at Port Angeles. The purchasers are the same as in the case of the Alsea Southern railroad, the Toledo sawmill and the Blodgett timber tract recently sold.

The sale was announced in a statement which said: "The secretary of war feels that these present purchasers will take immediate steps toward placing the Clallam county properties in operating conditions in order that logging operations in that portion of the Olympic peninsula may be resumed within a reasonable short time."

The railroad is to be operated as a common carrier to alleviate transportation conditions in the county due to the storm damage in the forests in January, 1921. With these properties disposed of dissolution proceedings for the spruce corporation will be taken before July 2 in the superior court of Washington, Secretary Weeks said today.

DRY AGENTS ARE SCORED

FEDERAL JUDGE WOLVERTON CONDEMNNS PRACTICES.

Alleged Irregular Serving of Warrant and Ignoring Court Order Are Rebuked.

Federal prohibition agents as a class came in for a sound scoring in the federal court of Judge Wolvert on yesterday during progress of a hearing on the liquor indictment against C. E. Alderice. Judge Wolvert scored the agents for their practices, aided by Allan Byrnes, assistant United States attorney.

The judge declared that the agents will be held to "strict accountability" for their acts and shortcomings, so far as his court is concerned. They must observe court regulations just as meticulously as the men they are supposed to arrest. They must understand that they are officers of the court, he said.

Byrnes cited the fact that two of the agents had ignored subpoenas to appear in court Monday and alleged that careless mistakes often were made by them.

The criticisms broke when Alderice, seeking to have the indictment against him dismissed, contended that the agents had used a mile of highway at 574 East Eighth street, on May 5, was for another address entirely. The fact that the warrant had not been returned by the agents, leaving no way of proving or disproving the arrested man's assertions, particularly incited the judge and attorney to anger.

Byrnes was instructed by Agent Grover Todd, who obtained the warrant, present in court this morning.

TOURISTS IN ACCIDENTS

Unusual Auto Mishaps Befall Two Parties Here.

Two peculiar automobile accidents befell two tourist parties in Portland last night.

C. D. Gates of Fresno, Cal., drove his car, but the rear half of a mile, side of Council Crest when he mistook some ferns for a turn in the highway. Raymond Schwabandland, 17-year-old nephew who lives in Portland at 811 East Seventh street, was injured slightly when the car turned over once and landed bottom side up against a tree. Two sailors who also were in the car, escaped unhurt.

J. L. Wilson of Alexandria, La., who is stopping at the Seward hotel, sustained a broken cheek bone when the taxicab in which he was riding ran into a sand pile about midnight in the middle of East Burnside street.

The taxicab was driven by W. E. Gingrich of 661 Multnomah street.

STRIKE COSTS \$40,849

City Figures Up Expense Due to Waterfront Trouble.

The longshoremen's strike cost the city of Portland \$40,849.47, according to figures compiled yesterday by H. T. Blakeley, chief clerk of the police bureau.

One hundred and sixty-two extra policemen were hired during the strike at a total salary of \$22,245.65. In addition, the dock commission hired 30 special officers at a total expense of \$240.82. Extra police badges cost \$175, and rental of a broken check book was \$10. Besides, the police bureau purchased a high-powered automobile for \$2100.

Disbarment Hearing Set.

SALEM, Or., June 27.—(Special.)—Hearing of the disbarment proceedings against George Estes, Portland attorney, has been set by the supreme court for Monday, July 10. Instead of referring the case to a referee, the court has taken the decision of the court in the past, evidence will be taken at the hearing. Proceedings against Mr. Estes were filed by the grievance committee of the Multnomah County Bar association. The court, at the same time, also will hear the disbarment proceedings filed against Albert Ridgeway, secretary of the State Bar association, by Mr. Estes.

Engine Hurts Man.

H. Crosby, 787 East Eighty-seventh street, North, was caught between the Alsea and a logging engine that was being unloaded from a steamer last night. He was taken to the Good Samaritan hospital suffering from internal injuries.

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\$35

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FEW IDLE IN PORTLAND

MOST UNEMPLOYED ARE "EXPOSITION FLOATERS."

Some Few Out of Work Hard Hit Are Men of Large Families.

City Jobs Scarce.

Recent weeks have brought unemployment in Portland nearer the normal minimum than it has been for nearly two years. There are still some unemployed men—perhaps 3000 of them—but this is voluntary, except for two or three unfortunate groups.

Heads of employment agencies were unanimous yesterday in saying that no able-bodied man willing to accept work where it is to be found, at the wages prevailing, need be idle.

A large portion of the city's unemployed men are just at present said to be "floaters," attracted here by the exposition talk, unwilling to go into the woods or to the farms, or waiting until after the Fourth of July to go to work. The smaller portion of the unemployed is composed of sundry groups unfortunately situated by the war, or by the fact that gets the most sympathy, even from the somewhat hardened agency workers, is the man of large family who cannot well leave his home and take the work offered in the woods, on the farms or highway projects. Board remains high for such a worker and the extra costs of living in this time of high prices are a great amount that he can send home, even if it is possible for him thus to leave wife and children.

The most troublesome part of this situation at present, as pointed out by A. W. Jones, in charge of the public employment agency, and corroborated by other bureau heads, is that the city just now yields few jobs. At best the city jobs listed are very temporary in nature.

Purse Snatching Reported.

Three men, each about 30 years old, last night followed Misses Myrtle and Grace Sutmeyer, 737 Hawthorne avenue, across the Hawthorne bridge, they told police last night, and two of the men attempted to snatch the girls' purses when they reached East Water street. The girls screamed and clung to their purses. The chain of the purse held by Grace broke and the robbers escaped.

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Quality Goes Clear Through

caped with it. It was valued at \$17.50 and contained \$10 in cash.

Irrigation Bonds Certified.

SALEM, Or., June 27.—(Special.)—The state irrigation securities commission, at a meeting held here yesterday, certified to \$400,000 of bonds

issued by the Eagle Point Irrigation district. The district contains approximately 6200 acres of land and is located in Jackson county. The bonds were sold previously to their certification to the G. E. Miller company of Portland at \$6.65. The construction program contemplates diversion of water from Big Butte creek through a canal 18 miles in length. Bids for development of the district will be opened within the next few days, the state engineer said.

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