

BROKER MUST HAVE WRITTEN CONTRACT

New Phase of Commission Question Recently Decided.

LAW IS AGAIN CONSTRUED

No Matter How Efficient, or How Meritorious Services Rendered, Broker Legally Helpless.

BY W. B. SHIVELY, Chairman Legal Committee, Portland Realty Board.

Where a real estate broker having no written contract for a commission brings about an exchange of properties and the parties to the exchange in their agreement agree with each other to pay him a commission, may he recover the same?

This question was decided by our supreme court for the first time in the very recent case of *Rugh vs. Solem*, not yet reported in the advance sheets of the Pacific Reporter. The Oregon law governing the collection of real estate brokers' commissions requires that every contract of exchange in writing, and provides that if the same is not in writing the contract is void and the commission is not collectible. In construing the statute, which in legal parlance is called the "statute of frauds," our supreme court has repeatedly held that it does not matter how efficient the broker may have been in bringing about a sale or how meritorious the services of the broker may have been, if the agreement to pay a commission is not embodied in a writing signed by the party to be charged which shows the contracting parties, intelligently identifying the property involved, discloses the terms and conditions of the agreement and expresses a consideration, the broker is helpless, legally, to collect the promised commission, notwithstanding that he brought about a sale accepted by the owner. Oregon Home Builders' Association, 77 Or. 217, 170 Pac. 718, 171 Pac. 214; *Lueddeman vs. Rudloff*, 79 Or. 249, 154 Pac. 116, 155 Pac. 172.

No Written Contract Given.

The facts involved in the *Rugh-Solem* case were that the agent had no written contract of employment. Notwithstanding this, however, he had brought two property owners together who, through the broker's efforts, agreed to exchange their respective properties. Each of the two principals agreed orally to the exchange and to pay the broker a commission. The broker was not a party to the exchange, and the commission was not embodied in a writing signed by the party to be charged which shows the contracting parties, intelligently identifying the property involved, discloses the terms and conditions of the agreement and expresses a consideration, the broker is helpless, legally, to collect the promised commission, notwithstanding that he brought about a sale accepted by the owner. Oregon Home Builders' Association, 77 Or. 217, 170 Pac. 718, 171 Pac. 214; *Lueddeman vs. Rudloff*, 79 Or. 249, 154 Pac. 116, 155 Pac. 172.

All Compensation Denied Broker.

The broker argued, however, that in closing the transaction he had drawn the contract and performed other similar services, and that he was therefore entitled to some compensation for these acts. The supreme court held, however, that the contract was not a severable one; it included services within the statute of frauds; that therefore the whole contract was void and could not be enforced. "It would be an evasion of the statute of frauds," said the court, "if a real estate broker assuming to act under an oral appointment to negotiate a sale should be allowed to tack his claim for services to another demand for drawing a deed and make the latter the device by which he could recover on the agreement which the law says shall be void unless it is embodied in a writing containing certain terms."

The foregoing case is simply another warning to real estate brokers that they must comply with the Oregon statute relative to commission contracts. There have been many such warnings. It should become a settled business rule with every broker never to handle a piece of property unless he is employed in writing to do so. To do otherwise is intentionally to invite a loss, for which no one is to blame so much as the broker himself. The honorable property owner who desires to bring about a sale of his lands and who will pay a commission, notwithstanding his promise is oral, and therefore not legally binding, will have no objection to signing a written commission contract; all others should be obliged to sign. If every broker invariably enforced this rule, sellers of realty would soon come to consider the signing of such a contract just as much a matter of course as they now consider the signing of a note to a broker in consideration of a loan.

KLAMATH TO CARE FOR ELKS

Rooms to Be Listed for State Convention in August.

KLAMATH FALLS, Or., June 7.—Although the city is filled with people and more are coming in each day, making the housing of the population difficult, a systematic effort is to be put forth by the members of the Elks' lodge to accommodate thousands of visitors who will be here for the meetings of the Elks' state convention in August.

A large number have signified their intention of coming by automobile and bringing their camp kits with them. Plans are also under way to run special trains.

A house-to-house canvass will be made by a committee under the leadership of James Driscoll and George Chastain. Every available room in the city will be listed.

\$11,000 STOCK RANCH IS SOLD

Wallowa Man Purchases Cove Farm of 300 Acres.

COVE, Or., May 30.—(Special.)—T. F. Organ of Cove sold to Mr. Hartley of Wallowa last Monday his stock ranch of 300 acres, 80 under cultivation, for \$11,000. Mr. Organ and family will move to the city of Cove for the summer.

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Rev. L. K. Robinson, pastor of Calvary Baptist church of Cove, ten years after taking up residence on one of the church's own fruit tracts of five acres, set in apples and berries, had a public sale of personal effects yesterday, preparatory to moving to Arkansas. Mr. Robinson of Imbler purchased the five acres for \$5000. Mr. Robinson came to Cove in 1903, investing the proceeds of a small cotton ranch in Texas in the property just sold at twice the figure for which he purchased it.

BEAVERTON HOMESTEAD SOLD

John Walton of Portland Transfers Pike Farm.

BEAVERTON, Or., June 3.—(Special.)—A deal was closed here last week whereby Michele DiCillo of this city became the owner of the A. W. Pike homestead, one of the best farms in this vicinity. This property was purchased something over a year ago by John Walton of Portland, who held it merely as an investment.

Mr. DiCillo is one of the prosperous asparagus growers of this section and the exceptional profits possible with this crop this year have encouraged his investment in Beaverton land. On the

INSURANCE MAN BUYS HOME IN LAURELHURST.

Attractive new bungalow at 1177 Royal court sold last week for H. L. Torrey to Henry E. Smith, special agent for the North British & Mercantile Insurance company. R. H. Torrey of the Fred A. Jacobs company made the sale.

day preceding his purchase of the farm he sold \$75 worth of asparagus in the Portland markets.

HOOD RIVER TO CELEBRATE

Completion of Liberty Loan Will Herald Boy Scout Campaign.

HOOD RIVER, Or., June 7.—(Special.)—Hood River people will celebrate Boy Scout week. Tomorrow afternoon a joint meeting to celebrate the county's successful drive in the victory loan campaign and to stimulate Boy Scout interest will be held at the open air theater at Chautauqua Park.

Lieutenant R. B. Kuykendall, of the 24th field artillery regiment, the first man to arrive in Portland from the army of occupation, will deliver an address and present a victory loan banner to the members of the local committee.

County School Superintendent L. B. Gibson will address the crowd on the Boy Scouts of America. Demonstrations of scout work and activities will be given by the five Hood River teams.

PLAY AFFECTS AUDIENCE

Philomath College Literature Class Presents "Servant in the House."

PHILOMATH, Or., June 7.—(Special.)—The Philomath college literature class presented "The Servant in the House," by Charles Rann Kennedy, at the I. O. O. F. hall here last night. It is seldom that an amateur play moves an audience to tears, but there were many moist eyes last night. Great credit is due to the teacher who trained them, Miss Eisel Grosse, who has taught in the college here for seven years.

Building of Cowitz Highway Starts.

KEISO, Wash., June 7.—(Special.)—Construction of camps just south of Ostrander and north of Rocky Point is being started by the General Construction Company, which has the contract to grade and gravel seven miles of the Pacific highway from Keiso city limits north. The contract price is \$17,000. Most of the work will be done with teams, and more than 50 camps can be completed. The company will be working as soon as the camps can be completed. The company will be working as soon as the camps can be completed.

LARGEST AND BEST-APPOINTED WELFARE HUT IN PACIFIC NORTHWEST IS DEDICATED AT VANCOUVER WITH APPROPRIATE CEREMONIES.

This largest Salvation Army hut in the Pacific northwest was dedicated last Monday afternoon at Vancouver barracks.

The hut is located at the entrance of the post and near the barracks base hospital and Red Cross buildings. It is modern and well appointed with furnishings durable and handsome. The hut and its furnishings cost \$45,000. A huge cobblesstone fireplace gives a cheerful atmosphere in the reception room, which opens off a wide porch. A lunch room is at one side of the building and on the other side is the hut auditorium. There are 13 bedrooms on the upper floor.

At the dedicatory services all ministers of Vancouver participated. Rev. Charles W. Holmes, Episcopal rector, presiding. In the evening regular services were held in the hut under the direction of Colonel Scott.

STATE ELKS TO MEET

KLAMATH FALLS FOLK

Southern Oregon City Will Be Host to Antlered Herd.

BIG BARBECUE IS FEATURE

Festivities and Sight-Seeing to Be Provided in Abundance for Visiting Lodgers.

All arrangements have been completed for the entertainment of 5000 Elks and members of their families at Klamath Falls, August 14, 15 and 16, when the second annual convention of the Oregon state Elks' association will be held. Special trains will be operated from Portland to carry the antlered herds of Portland and the valley towns, and arrangements have been made to meet the Eastern Oregon "Elks" at Bend and carry them to Klamath Falls in automobiles.

E. B. Hall, past exalted ruler, and manager of the White Pelican and Hall hotels at Klamath Falls, is chairman of the convention committee.

Klamath Falls is preparing to entertain the Elks in a royal manner. Although the entire programme has not yet been worked out, Chairman Hall has announced that a barbecue will be served on upper Klamath lake, street dancing will be in vogue, sight-seeing trips will be furnished, together with some other unique entertainment, the nature of which will not be announced until convention time.

Klamath to Show All.

"Klamath Falls appreciates the honor of being host to the Elks of Oregon this year," said Mr. Hall in a letter received by Dr. W. S. Kennedy, president of the Oregon State Elks' association.

"She appreciates the significance and importance of the forthcoming convention. She is going to make a mighty effort to make good. Everyone who attends the convention will have a royal time, with pep, sparkle and wholesome fun in evidence on all sides."

"The Klamath country is more or less isolated from the rest of Oregon through lack of transportation facilities, but it is believed this condition cannot exist much longer. She is striving her best to get in better touch with the remainder of the state, and this convention should indirectly tend to make the people of Oregon better acquainted with the famous Klamath country."

In order that every visitor will be assured of housing facilities a special committee, of which W. O. Smith, past exalted ruler, is chairman, will arrange for accommodations and camp grounds for the benefit of the delegates. James H. Driscoll is chairman and George Chastain is secretary of the subcommittee on accommodations. Assisting Mr. Smith on the committee for the illumination and street decoration of Klamath Falls are George J. Walton and J. E. Swanson, and W. M. Montel-

lius is chairman of the subcommittee on arrangement of camp grounds.

Publicity for the convention is in the hands of Wilson S. Wiley, past exalted ruler of Klamath lodge, assisted by C. A. Hayden, Fred Field, C. R. Miller and E. H. Jefferson. President William S. Kennedy of the Oregon State Elks' association has appointed James D. Olson of Oregon City lodge, No. 1189, and E. Y. Lausung Jr. of Portland lodge, No. 142, to assist in securing publicity for the convention in newspapers of the state.

Sufficient money has already been contributed to the convention fund to assure one of the greatest state conventions ever held within the confines of Oregon. Charles J. Martin, trustee of Klamath Falls lodge, is chairman of the finance committee and is being aided by O. W. Robertson, Fred L. Houston and H. N. Mos.

One of the features planned in connection with the convention is a barbecue at Harriman lodge, on Pelican bay of beautiful upper Klamath lake. It is expected to barbecue elk from the Klamath herd. Arrangements for obtaining the elk were made with Charles F. Stone of the state game commission. An expert from Salinas, Cal., has been secured to handle the barbecue, just to be sure that the "sausage" is properly prepared for the visitors.

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PROGRAMME OF EXERCISES COMPLETED.

Graduation Ceremonies Will Be Held Tuesday in Men's Gymnasium Building.

OREGON AGRICULTURAL COLLEGE, Corvallis, June 7.—(Special.)—The complete programme for commencement exercises at Oregon Agricultural college has been made. The graduation ceremonies will be held Tuesday in the men's gymnasium building.

Following is the programme as arranged:

"March Celebrate" (Lachner), O. A. C. orchestra. Carl Grimes, conductor.

(Nevin), from suite "A Day in Venice" (Nevin), O. A. C. orchestra.

Invocation—J. R. Bell.

Songs—"Care Selva" (Handel), "Largo al pastor" (Bach), "The Swan" (Debussy).

Address—Benjamin Ide Wheeler, president University of California.

Violin solo—"Berenice Espagnol" (Kreisler), Carl Grimes.

Conferring of degrees—W. J. Kerr, president of the college.

Songs—"Shepherd, See Thy Flocks' Foam;" "The Swan" (Debussy).

Presentation of Clara H. Waldo prizes—President Kerr.

"Garde du Corps" (Hall), O. A. C. orchestra.

Boys under the direction of Carl James; geography exercises, pupils from Miss Wither's class. Pupils from Miss Peterson's class and Mr. Hunter's classes will give a pantomime entitled "The Peace Table."

"In Flanders Fields" will be given by Emily Westbrook and E. F. O'Neil.

Wright; "Sailor's Hornpipe," Della Welker, Pauline Behm, Delbert McDonald, John Andrus, Mary Rosenstein and Delmar Cosgrove; an essay, "Some Surprises of the War," Andrew Genier.

Diplomas will be presented by Hon. Fred E. Baldwin, chairman of the state board of control.

Coos County Dairymen to Meet.

OREGON AGRICULTURAL COLLEGE, Corvallis, June 7.—(Special.)—Dairymen are interested in a series of dairy meetings to be held in Coos county this month. Dairy production and marketing will be studied by men prominent in various organizations of the industry. Among the men who will attend the meetings are E. M. Brandt, O. A. C.; J. D. Mickle and Alma D. Katz and A. E. Westcott. The meetings will be held at Marshfield June 12, Bandon June 13 and Norway June 14.

COOS BAY IS QUITE DAMP

Authorities Have Much Trouble in Enforcing Prohibition.

MARSHFIELD, Or., June 6.—(Special.)—Prohibition is not an unqualified success on Coos bay, judging from the police records of the past week, which show several arrests for possession, finding of two stills and resistance of an officer trying to make an arrest. Hillis Short's overcoat covered six bottles of liquor on a wharf at North Bend. The jury which tried him disagreed.

Night Patrolman Brown, a special at North Bend, made an unsuccessful attempt to arrest an engineer from the Martha Buehner, from whom he took a bottle of wine on the company dock. The engineer drew a pistol and resisted arrest, leaving during the night to escape consequences of his act.

At Millington residents complained of a Sunday and Saturday night disturbance and people told of buying bonded whiskey there for \$25 a case. One man was arrested there with liquor all about his cabin.

Three revenue officers are in this territory looking for stills.

VOTER BURNED IN EFFIGY

Opponent of Road Measures in Lincoln County "Censured."

NEWPORT, Or., June 7.—(Special.)—When the Siletts Indians failed to show up for the election on Wednesday night, when the voter who opposed the Roosevelt highway and county road measures was burned in effigy at the stake in the city park, about 20 Newport residents dressed in Indian costumes did the work.

A float containing the effigy, which was guarded by Oscar Olson acting as sheriff, led a procession of 100 automobiles from all over Lincoln county. At the park Dr. Carter, government Indian physician, captured the headgear of Chief "Injun" Doc Berry, and made a speech comparing Indian trails with good roads, ending in a discourse in the Indian tongue.

Other addresses were made by Lester Martin and Carl S. Davis.

thus is chairman of the subcommittee on arrangement of camp grounds.

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