

DAMAGE SUIT THROWN OUT

Nonsuit Is Granted by Circuit Judge McBride in Grimberg Action for \$5,000.

CHARTERER NOT TO BLAME

Vessel on Which Accident Occurred Remained in Possession of Owner, Who Was Responsible.

Mrs. Charlotte Grimberg's \$5000 damage suit was yesterday thrown out of court by Circuit Judge McBride, who granted Attorney Fulton's motion for a nonsuit. In substance Judge McBride ruled that the vessel remained in the possession of the owner, William D. Hume, and that the charterer, the Columbia River Packers' Association, was not responsible for the death of the husband of the plaintiff. In deciding the case yesterday the court said:

"The defendant Columbia River Packers' Association is sued in this case for negligently causing the death of Emanuel Grimberg, who, it is claimed, met his death by reason of a defective becket upon the mizzen top-gallant yard of the ship St. Nicholas while on a voyage from Nushagak river, Alaska, to Astoria, Ore. This action is brought under the laws of the state of Oregon, giving the personal representatives of a deceased person a right of action for such death. It is conceded that at common law no such action existed and that, for the purposes of this case, it can not be maintained unless the ship upon which the injury occurred is to be deemed a part of the state of Oregon.

"The tendency of the later decisions is to hold that a ship owned in any state is, while upon the high seas, a part of the soil of the state where the owner resides and subject to the sovereignty of the state the same as though she were actually within its boundaries. So the only question in this case is whether the circumstances disclosed in the pleadings and evidence, the ship St. Nicholas, at the time of this accident, was a ship belonging to the state of Oregon or a ship belonging to the state of California, it being conceded that, if she was a ship belonging to the state of California, no recovery could be had in this action.

"The evidence shows that this ship was owned by William D. Hume, a resident of San Francisco, Cal., and that by a charter-party, which was introduced in evidence, Hume leased or hired all the ship, excepting certain reserved rooms, to the defendant corporation for a voyage from San Francisco, Cal., with the option of touching at Astoria and Puget sound, to Nushagak river, Alaska, thence back again to Puget sound or Astoria, at the option of the charterer, defendant in this action, which port so chosen should be the end of the voyage. The contention of the plaintiff is that this charter makes the defendant corporation the owners of the ship St. Nicholas, pro hac vice, to the extent that she becomes a ship belonging to the state of Oregon, and, therefore, subject to the sovereignty of the state of Oregon and to the operation of its laws while on the high seas, and ceasing to be subject to the sovereignty of the state of California.

"Numerous decisions have been cited

where, under certain circumstances, and for the purpose of charging the ship itself for necessary supplies or repairs, it has been held that charterers were owners. But these seem to proceed upon the theory of necessity and upon the ground that the actual owners of the ship must necessarily have had in contemplation the fact that a ship, in order to complete her voyage and carry out the purposes for which she was chartered, have supplies and have such repairs made from time to time as will enable her to do so. But I do not think that the decisions go beyond this. In this case I can not consider this charter as an absolute leasing of the whole ship, or as an absolute turning over of the whole dominion of the ship to the defendant corporation. Hume retained the use, for his captain, of the captain's cabin, the navigation or chart room and other portions of the ship necessary for the storage of her sails. He also covenanted to keep her safe, staunch and sound while on the voyage which would be an impossible covenant if he turned over the entire dominion of the vessel to the charterer.

"Where the actual owner retains the right to navigate the ship, with the right of his agents to occupy some portion of the ship and covenants to keep her sound and staunch during the voyage, I do not think that there is such transfer of the possession as would make the charterers owners of the vessel, or transfer the sovereignty of the state where the actual owner resided to that of the state where the charterers reside, and that this ship can not, for the purposes of this action, or for any purpose connected with it, be considered as a part of the soil of the state of Oregon, or subject to its laws while on the high seas, and the plaintiff, therefore, has no remedy in this state in this sort of an action. I think that the sovereignty of the vessel is in the state of California, where the actual owner resided and where the vessel was registered and where her home port was. If I had any doubt on this question I should feel disposed to overrule the motion for a nonsuit and allow the trial to proceed; but an examination of the authorities so thoroughly convinces me this is a case that I am entirely without jurisdiction to hear that I can not see how any good result could follow by prolonging the case. The motion for a nonsuit will be allowed."

VESUVIUS AGAIN ACTIVE.

Great Stream of Lava Sent Forth, Threatening Damage.

Naples, Sept. 23.—Vesuvius is gradually becoming active. The crust around the crater has broken away. The eruption tonight was the most spectacular in 10 years. A great stream of lava was discharged, threatening wide destruction.

Modern Fishery Plant.

Seattle, Sept. 23.—The Craig Fish Products Company proposes to construct a plant at or near Port Angeles, Wash., to cost \$150,000. Machinery will be installed for the abstraction of oils from fish and the manufacturing of fish fertilizer, and a modern saltery, ice and cold storage plant and a complete cannery and evaporating plant will be installed. D. W. Craig is president of the company.

Lewis and Clark Day Observed.

St. Louis, Sept. 23.—This being the anniversary of the return to St. Louis of the Lewis and Clark expedition in 1805, Lewis and Clark day was observed at the world's fair today. The exercises were held at the Oregon pavilion.

THREE SENT TO THE PEN

Judge McBride Imposed Sentences Yesterday Aggregating Fourteen Years.

LONG TERM FOR HARRY HOGUE

Highwayman Gets Ten Years, While Walter Huber Gets Two and One-half Years for Assault.

Judge McBride yesterday pronounced penitentiary sentences aggregating 14 years, and if the court had been in position to resentence one of the prisoners he might have added a few years more to the total. The grand jury reported on four cases during the day, and the three prisoners indicted were immediately arraigned in court. The three men indicted were Harry Hogue, held for highway robbery; Walter Huber, held for criminal assault upon Pearl Bidwell, and Henry Miller, charged with having obtained money under false pretenses. A fourth man, George Hansen, was not indicted. He had been arrested for seduction on complaint of Alfrida Lornsen.

Huber is a cripple and but 20 years of age. Like a number of other young men, he had been devoting much of his time to little girls, of whom many are permitted to run the streets. When Huber was brought into court Judge McBride asked him whether or not he desired to secure an attorney. He made a negative reply. The court then passed sentence. He said that, if the prisoner were a man of mature years, he would feel disposed to impose the maximum penalty fixed by law, but that, in consideration of Huber's youth, he would sentence him to imprisonment for two and one-half years.

"What! for that?" exclaimed Huber. A look of unmistakable anger came over Judge McBride's features, and his glance at the prisoner was full of meaning. However, the court said nothing to the cripple, and a few moments later the prisoner was returned to the county jail by Sheriff Linville.

Harry Hogue, highwayman, received a penitentiary sentence of 10 years. Hogue is the man who held up L. Larson some months ago and relieved him of his watch and a small sum of money. Hogue pleaded guilty yesterday. He explained to the court that he had never before been in trouble, and that a letter from his mother urging him to return home had prompted him to employ desperate means to secure the necessary money. He asked the court to be lenient.

In passing sentence Judge McBride referred to the frequency of crimes of the kind, and expressed the conviction that most highwaymen were at least murderers at heart. The court stated that any man who would draw a gun on another would be apt to use it, and he thought it inadvisable to show leniency to highwaymen. The maximum penalty is 20 years, but perhaps because of Hogue's youth the court sentenced him to 10 years.

Henry Miller had secured a sum of money by cashing a bogus check. He also pleaded guilty, saying that he was intoxicated when the crime was committed. Judge McBride dealt leniently with him and sentenced him to 18 months' imprisonment. The three

prisoners were taken to Salem last night.

The grand jury has not yet reported on the case of the Saylor boys, arrested for robbery. The men are being held at the county jail.

DYNAMITE KILLS TWO.

Freight Train Runs Into Wagon Loaded With Explosive.

Cumberland, W. Va., Sept. 23.—A fast freight on the Baltimore & Ohio struck a wagon loaded with 75 pounds of dynamite at North Branch today. Two trainmen were killed and nine persons injured, three seriously. The driver of the wagon escaped injury, except a rupture of the ear drums. The horses were unhurt, although they were thrown over a fence. Several small buildings, a locomotive and several cars were demolished. Windows half a mile away were shattered.

Washington Canton Wins Prize.

San Francisco, Sept. 23.—The sovereign grand lodge of Odd Fellows completed most of its business today. Nothing remains but the installation of officers tomorrow. The announcement of the winners of the cash prize drills for cantons was made tonight. The prize of \$1000 was won by Washington (D. C.) canton.

Bellingham Mill Burned.

Bellingham, Sept. 23.—The Globe Lumber Company's lumber mill was destroyed by fire at midnight, with a loss of \$45,000 and insurance of \$16,000. The origin of the blaze is a mystery.

The mill was the first large lumber plant built on Bellingham bay and was a landmark.

Fire at Port Angeles Mill.

Port Angeles, Sept. 23.—Fire originating in a dry kiln at the Port Angeles Shingle & Lumber Company's mill destroyed the kiln and shingle mill today. Three cars of lumber for the deck of the battleship Nebraska were burned. The loss is \$15,000; insurance, \$4000.

Cruisers Go to Port Said.

Suez, Sept. 23.—The Russian volunteer cruisers Smolensk and St. Petersburg arrived today. They entered the canal bound for Port Said, after receiving a communication from the Russian consul.

Report Without Foundation.

Venice, Sept. 23.—The report published in the United States by a news agency that an attempt was made to assassinate Don Carlos, the Spanish pretender, is without foundation.

What is Life?

In the last analysis nobody knows, but we do know that it is under strict law. Abuse that law even slightly, pain results. Irregular living means derangement of the organs, resulting in constipation, headache or liver trouble. Dr. King's New Life Pills quickly adjusts this. It's gentle, yet thorough. Only 25c at Chas. Rogers' drug store.

Notice to Taxpayers.

The county board of equalization will convene at the county clerk's office on September 26, 1904, and continue in session daily thereafter for a period of one week, for the purpose of publicly examining the assessment roll for the year 1904 and correcting all errors in valuation, description or quality of land, lots or other property, and all interests are notified to appear at the above time and place for the purpose of lodging objections, if any there be, to said assessment.

T. S. CORNELIUS,
Assessor of Clatsop County, Oregon.
Dated Astoria, August 29, 1904.

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Go to Chicago or New York City, to Boston or St. Louis and the stylish young men of today wear the new and nobby

NUT BROWN

Suits and Overcoats.

The first shipment of these swell Brown's in both single and double breasted sack suits have just arrived by express. Our price for these suits (hand tailored)

\$22.50

HERMAN WISE

The Reliable Clothier and Hatter.

Just Call For It!

EL CIELO 10-CENT CIGAR

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The El Cielo Cigar may be had at any of the following places of business:

THOS PETERSON D. B. ALLEN JOHNSON & COOK P. S. KENNEY
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The following East Astoria houses carry the El Cielo:
WILLIAM NYBERG GEO. LINDSTROM MRS. TYSON

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SOME NEW ARRIVALS AT THE BEE HIVE

Latest Fall Coats

We are showing the most stylish and popular priced Ladies' and Misses' garments. Our Childrens' Coats and Ladies' Jackets and Coats are correct in every particular, both in style, material, finish and prices. Come and see them

Childrens' Coats and Jackets

\$2.00 to \$15.00

Ladies' Coats and Jackets

\$2.50 to \$25.00

MILLINERY OPENING

Next Week

Friday, September 30th, and Saturday, October 1st

We will have on display a complete line of millinery, including "Gages" Fine Tailored Hats, New York and Chicago Hats and Hats of Our Own Creation.

We promise the ladies of Astoria and vicinity the largest and most extensive up-to-date millinery ever shown in Astoria.

Remember the date, Friday, Sept. 30, and Saturday, Oct. 1. Place, The BEE HIVE. You are invited.

Just remember if you want to buy a Suit, Coat, Jacket, Dress Goods or Trimmings, that you can always buy them cheaper at THE BEE HIVE.

Another large shipment of

Ladies' Tailor Made Suits

have just arrived. They are the latest, the workmanship is perfect, as well the style and last but not least the price is LOW.