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# Men of Every Notion

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SOLE AGENTS



## CASE IS NONSUITED

Damage Plea of Mrs. Neyra Reed Peremptorily Ousted.

### TEXT OF OPINION THEREON

List of Jurymen Now on Service in Ross, Higgins & Co., Versus F. M. Warren—Other Matters Settled And Dismissed.

The suit of Mrs. Myra Reed against the City of Astoria for the sum of \$2,000 damages, claimed by reason of certain public improvements made on Franklin avenue which are alleged to have disturbed the foundations of her home and property, and caused it to slide, which has been pending in the circuit court of Clatsop county for the past three days, was nonsuited, upon motion of City Attorney A. M. Smith, yesterday afternoon, Judge McBride rendering a decision upon the motion that is replete with reason and forcible conclusions, and stands alone in the courts of Oregon, as a direct ruling upon the far-reaching contention of "lateral support," for years a vexed question in all courts and which will undoubtedly stand for years to come as a cardinal text in the adjustment of similar claims and cases. Noland & Smith had charge of Mrs. Reed's interests and did all that was possible in the case, but the conclusion of law reached, and declared, by the presiding judge yesterday, without disparaging the contentions of the plaintiff, go to the very crux of the issue upon a purely impersonal hypothesis. The ruling was, in substance, as follows:

"In presenting their arguments, the attorneys have gone at length into the subject and have quoted from practically all the court decisions to be had touching on the question, so while I should like to have more time to devote to a study of the points at issue, before making a ruling, I am, perhaps, as well informed on the opinions of other courts as I would ever be. The testimony in this case showed that the plaintiff's property slid as a result of grading the street in front of her property, but does not show that the work

was through a wanton exercise of the power of the council or city officers. If the city had the right at all to excavate the street without providing lateral support to the plaintiff's property, it had the right to grade to any depth that in the judgment of the city officials seemed necessary, so long as the work was not done wantonly to injure private parties. Thus the council has the right to fix grades as it sees fit. If the right of lateral support is fixed by constitution or law, as is some states, then the property owners must be recompensed, but if not, then the property owner must suffer, where the work is done in good faith. There is a wide difference in the authorities on this question, and the court must adopt either the ruling of the New York court, which says no right of lateral support exists, or of the Washington court which takes the opposite view. In doing that, the rights of the property owners and of public policy must be considered. There is no question but what the right of lateral support exists in this state as between private owners. Now, then, when a person dedicates a street does he part with the right of lateral support? Some courts hold that he does, while others hold that he does not. The rights of air, light, lateral support and accessibility exist between individuals, and I am inclined to think they exist in the case of street improvements, unless taken away by the act of dedication. Now, what does a property owner part with in dedication? Simply the ownership or all things necessary to make a street? It is evident when streets are laid out as in Astoria without reference to the topography of the country, a man dedicating a street must recognize the necessity of grading the streets if they are to be used and he must make the dedication with that understanding. It is somewhat remarkable, if a property owner holds the right to lateral support, no law was enacted to provide for a recompense when provisions are made for ascertaining the damages for taking of property for public use. The absence of any law in this regard, shows that in the public mind at least that the right does not exist. Taking public policy into consideration, it seems to me to indicate that this is the proper interpretation of the law. If compensation for lateral support can be had in one case, it can be had in another. This case is an especially harsh one, but if compensation is allowed here, it must be allowed in all others, and the city would be restrained from making any

street improvements unless it built and maintained 'perpetually,' retaining walls. If a man owning property on a hill can collect damages because the street is cut down, the one owning a lot in a canyon can collect damages if a street is put through above him. Each would be on the same footing. I do not believe the law contemplated this. I believe that when a man dedicates a street he contemplates it must be improved and waives all rights to damages resulting from such improvement, for the reason that he dedicates the property for a particular purpose. He still owns the property to the middle of the street subject to its use by the public for street purposes. It would

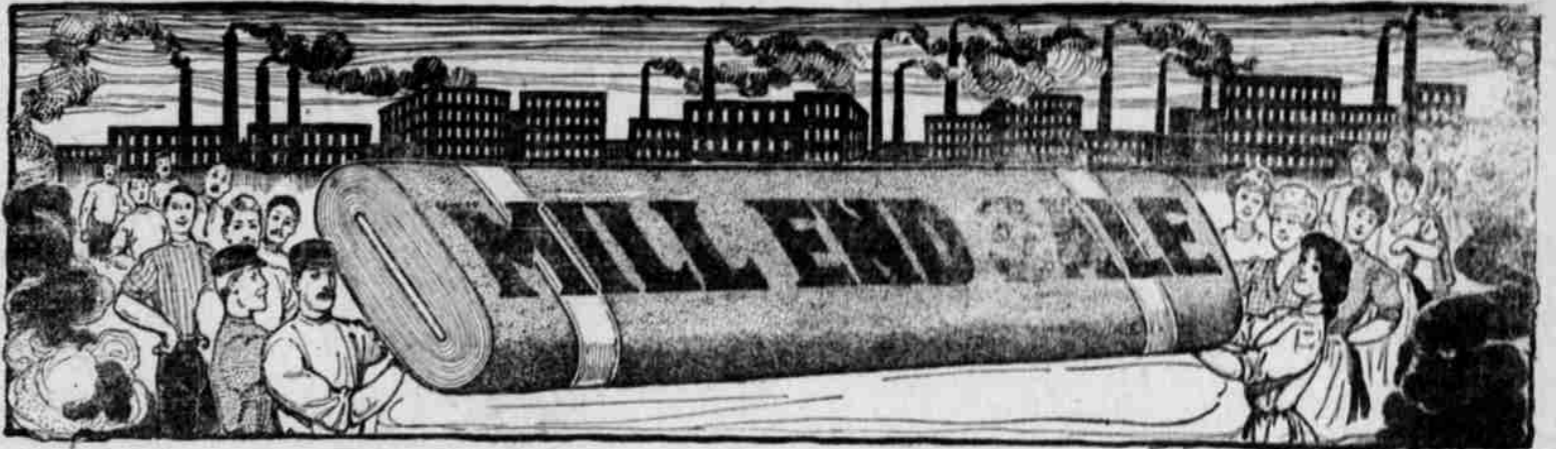
make no difference if the owner grants the property to private parties for a particular purpose, he waives the right to damages resulting from putting that purpose into effect. Not from the standpoint that no constituted right to take property exists, but that the privilege of having an improved street in front of his property is sufficient compensation to a property owner for any damages which may arise, my judgment is that the dedicator of a street parts with the right of lateral support and the city has the right to grade any or all of it, so long as it does not do this with intent to injure the owner. The motion for a nonsuit is therefore allowed."

Among other matters disposed of in court yesterday was the case of A. K. Myers versus F. Brown et al., which was settled and dismissed and an order to this effect made and entered. The case of Ross, Higgins & Company versus F. M. Warren, on open account, was before the court and jury yesterday and went over until this morning, as the testimony was not all in yesterday. The jury before whom the issues are being tried is made up of the following citizens: A. H. Sale, C. F. McDermott, L. E. Wilson, Robert McMath, Jos. Palo, N. C. Enevoldsen, H. H. Zapf, C. W. Stone, William McKeever, W. R. Hume and John E. Logan.

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Sale Ends Saturday, October 6.

<b>MUSLINS</b> 10c Lonsdale	<b>7 1-2c</b>	<b>DRESS GOODS</b> 35c quality	<b>10c</b>	<b>SATINES</b> All colors, 20c quality	<b>10c</b>
<b>Outing Flannels</b> All colors	<b>5c</b>	<b>SILKS</b> 75c Taffeta	<b>63c</b>	<b>TOOTH BRUSH</b> 20c grade	<b>9c</b>
<b>GINGHAMS</b> 7c grade	<b>5c</b>	<b>FLANNELLETTES</b> 10c quality	<b>5c</b>	<b>TALCUM POWDER</b> 20c size	<b>9c</b>
<b>Satine Skirts</b> \$1.50 quality	<b>95c</b>	<b>Men's Shirts</b> 50c quality	<b>38c</b>	<b>EIDERDOWN</b> 40c quality at	<b>25c</b>
<b>Ladies' Underwear</b> \$1.00 Quality	<b>69c</b>	<b>HOSE</b> 10c Men's Hose	<b>4c</b>	<b>TOILET PAPER</b> Fine grade	<b>4c</b>
<b>RIB INS</b> All widths at	<b>5c</b>	<b>WOOL HOSE</b> 35c quality at	<b>23c</b>	<b>Black Satine Apron</b> 50c quality	<b>39c</b>
<b>Shirt Waists</b> \$2.00 values at	<b>50c</b>	<b>TABLE LINEN</b> 40c quality	<b>23c</b>	<b>UMBRELLAS</b> from 50c to	<b>\$2.50</b>
<b>VESTS</b> 35c quality at	<b>23c</b>	<b>HANDKERCHIEFS</b> 15c quality	<b>8c</b>	<b>LADIES' COATS</b> \$15 and \$20 quality	<b>\$5.00</b>

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