LAW ON RELEASE IN AN ACCIDENT CASE EXPOUNDED

Judge McGinn's Instructions to Jury Exhaustive—Woman Had Accepted $10—Jury Disagrees at Trial.

The question of what effect a signed release has in personal injury cases was covered last week in the instructions given by Judge Henry McGinn to a jury in the circuit court in the case of Margaret Champer against the Portland Railway, Light & Power company. In instructing the jury the judge dwelt at length upon the conditions under which a release can be given, saying that no false representations must be made by the agent in having an injured person sign away rights for recovery.

Margaret Champer was dragged by a street car last March at Twenty-fourth and Roosevelt streets. A few days after her accident, an agent of the street car company secured her signaure to a release. The company contended this absolved it from all action for damages. Attorneys John Logan and I. N. Smith argued the woman did not know what she was signing. The jury disagreed, standing seven to five for the woman.

Woman Accepts $10.

The release stated the $10 received by the woman was "for damages done by reason of her skirt being caught on the street car." Attorneys Logan and Smith contended the company took advantage of her excited condition in securing her signature to the release. When Judge McGinn instructed the jury on the law he said in part:

"Was this release given by Miss Champer with the intention to relinquish all claim for damage which she had against this defendant, the Portland Railway Light & Power company, or was it given in payment for the clothing which she lost at that time, and which has been introduced in evidence before you?

"Whenever people come together and have agreed to a given statement of facts, especially in business affairs, and have agreed to put their understanding in writing, that writing is strong evidence of what their understanding can possibly be. There can be no additions or substractions, or anything of the kind. Whenever they have come together and put them in writing,

Are Bound to It.

"I say, that is the strongest evidence of what their understanding is. It is made as a perpetual memorial, to be perpetuated in aftertimes as to what they have agreed, and, though there may be times when a person does not know what is in the document the law requires him to exercise his powers of hearing, seeing and reading, to do this, as a reasonable and prudent person ought to do to ascertain what is contained in the writing.

"If they fail to do this, they fail at their own peril. Although they may not entirely know what is contained in the writing, they are bound by it if they have means of ascertaining what is in the writing, and fail to exercise those means. And yet there is a time and a place in the law when this writing does not have this force. There is a time in the law and a place, too, when this prudent person who is called upon to exercise this care, such as I have indicated, is excused in a way from not exercising it.

Now, what are the occasions which take from this writing its force and power? What are the times which excuse a prudent person from exercising this care which otherwise devolves upon him?

Exceptional Cases.

"Whenever people deal at arms length, and upon an equality of terms—I use this term 'at arms' length,' because it is a homely term used by law—it is expected that each one is looking out for himself, and the law says when they have agreed to what their dealings are, or shall be, that that is the end of it.

"And, if in this case, between Miss Champer and this young man who conducted the negotiations for the company, they were dealing at arms' length, and what they were doing in the way I have indicated to you, then the plaintiff, Miss Champers, is bound by it and your verdict should be for the defendant.

"But, there is a time when there is a confidence begotten between people, when one must not suppress the truth, or suggest anything that is false. And, where that relation, confidential in character, begets a confidence, the violation or abuse of that confidence may deprive this written document of the force and value which it would otherwise have.

What Were Relations?

"Was there any relation of confidence between these two parties?

"Did the agent of the defendant know more about this accident than Miss Champers did? Was the defendant in a position to realize what the consequences of this accident might be—did it's agent suggest anything false, or did he suppress anything which he should, or could have told her?

"I have no right to tell you, because you are the judges of the testimony in this case, and you are to say in what relation they dealt, whether there was that honest and fair dealing between them that would characterize fair dealings between people. And, if in this case you find, in the dealings, there was a clear understanding that Miss Champers was to part with whatever right of recovery she had for her injuries, and there was no confidence begotten by reason of their relations, and by reason of what had happened, and that there was no suppression of the truth, and no suggestion of anything false, then Miss Champer is bound by this release, and your verdict should be for the defendant in this case.

"If Miss Champer was led to believe she was only getting compensation for her clothing, and nothing else, by reason of any suppression of the truth, or any suggestion made to her of anything that was false, then this writing would not be entitled to that force which we give to writings of this character, and she would not be bound by it."

Canal Nearly Finished.

West Stayton, Or., June 17.—The West Stayton irrigation canal was virtually completed today and the crews are now at work on the main laterals. Construction was commenced late in January. It is confidently expected that the laterals will be completed, the finishing touches put on and water in the canal in a week or ten days, in ample time for this summer's crops.

CAME WEST BY WAY OF PANAMA 57 YEARS AGO

Samuel Hilman Carter.

Samuel Hilman Carter, who died at his residence on the peninsula Wednesday, was born in Zanesville, Ohio, November 18, 1843. January 30, 1866, he married Miss Lydia A. Buckman, who survives him.

The following year they started west, by way of the Isthmus of Panama, over the Nicaragua route, traveling on the Moses Taylor from Panama to San Francisco, and from the latter place to Portland on the steamer Ajax, where they arrived March 19, 1867.

Carter lived ever since in Oregon, for 24 years in Clackamas county, where he was engaged in farming, and for nearly 20 years at Peninsular, where he was engaged in business for 12 years. He was a member of the grange for about 37 years.

Three sons were born, Melvin Hilman, Frank Buckman and Loyd Rosco, of which the former survives, the latter two being buried in the Oswego cemetery, where the deceased was buried Saturday, June 17.

TELLS OF BEAUTY OF SWITZERLAND

Consul at Portland Has Literature on His Country for Free Distribution.

While there is plenty of scenery in Oregon and other parts of the Pacific coast, the state annually contributes many tourists to the European trails. Usually a trip to the towering fastnesses of Switzerland is included, and those who contemplate such a journey may find much to assist and interest them by obtaining literature from the Swiss consulate.

A. C. Bigger, the consul, has recently received a supply of literature descriptive of the different cantons of his native land, with maps, hotel guides and pamphlets issued by various cities of the mountain republic. Some of the most valuable publications come from the publicity department of the federal railways, the railroad lines of Switzerland, or most of them, being owned by the state.

Two beautifully illustrated booklets issued by the federal railways tell the story of travel as seen from the two great lines that pierce the Alps and take the tourist through great tunnels to Italy. One of these is the Simplon route, from the Lake of Geneva to Lake Maggiore, the other the St. Gothard route, from north to south through the storied land. The tunnel through the Alps on the Simplon line is over 12 miles long, and that of St. Gothard is over nine.

The government booklets describe the engineering feats in the construction of the tunnels, the towns, the valleys and the mountains, and are illustrated with fine half tone cuts in colors. They compare well with the advertising literature issued by American railroads, and the phrasing is admirably fitted to stir the anticipations of the tourist. Another little book tells of the unlimited travel tickets sold by the federal roads and the rules and regulations of the roads.

Other literature received by the consul describe Lucerne, Thermalkurort Baden, Montreux and Interlaken, Bernina-Bahn railway, Engelberg, Burgenstock and Stanserhorn, Thun, Wengernalp, Bahn, Zermatt, Schynige-Platte and Pontresina. Prospective tourists to the land of the Swiss can obtain information, guides and booklets from Consul Bigger at 311 Board of Trade building.

FLOW OF OIL STRUCK IN MALHEUR DISTRICT

Owners of oil claims in the Malheur oil belt are said to be jubilant over the striking of a substantial flow of oil just encountered at a depth of 1700 feet in the Malheur well, owned by a company in which the Miles brothers of Vale are principal stockholders. The oil appears to be plentiful, but owing to the great flow of water it is difficult to bring much to the surface.

The amount of oil averages about a third to the bail—one third sand, a third water and a third oil. It is a more refined appearing oil than that of the California fields and will command a better price than the California oil, it is stated.

Portlander Dies on Ranch.

(Special Dispatch to The Journal.)

Forest Grove, Or., June 17.—Thomas Murphy, aged 64 years, died at his home near Gaston last night after a short illness. Mr. Murphy was for several years employed by Lang & Co., of Portland. He recently bought a ranch near Gaston and moved his family there. Besides his widow and a son living at home, he is survived by two married daughters living in Portland. Funeral services will be held Sunday, with interment in a Portland cemetery.

CREMATORY TOTAL FAILURE, OPINION OF SUPT. NAPIER

Says Statistics Will Show Incinerator Too Expensive—Superintendent Points Out Other Details.

"The city will never accept that crematory if I can help it," declared City Crematory Superintendent Harry N. Napier yesterday afternoon in the presence of representatives of the press and an employe of the city health office.

"The burner is a failure, as observation of statistics that I have compiled every day for the past five months will show to any taxpayer who cares to examine my reports. The average cost of incineration from December 27 to May 27, a period of five months, was 71 cents per ton. The contractor's guarantee required that the average cost should have been 52 cents a ton."

Superintendent Napier referred to the new incinerator at Guild's lake. The Public Works Engineering company, of which A. B. Manley is president, was awarded the contract to construct the burner, the contract price being $99,900. More than $60,000 of this amount has been paid to the company on account and at the conclusion of the official six months' test of the plant, June 27, the incinerator will be up for acceptance or rejection by the health board. It has been rumored that the board would accept the plant. If the rumor should prove true the city would have to pay over something more than $40,000 to the contractor, in addition to the $60,000 already paid.

Will Fight to Finish.

"I am going to fight this thing to a finish," continued Superintendent Napier, "and I have the assurance of a number of prominent taxpayers that they will stand behind me. If the health board should accept the crematory these taxpayers will enjoin the city from paying any more money to the contractor."

While it has been known that the incinerator has so far failed to meet the requirements of the specifications, the contracting company has laid great stress on what it claims to be the economical working of the plant. During the past two months the refuse has been extremely dry and hundreds of tons of wood, paper and other highly combustible material has been delivered to the plant. Owing to these conditions the crematory has been able to show low burning cost per ton, but during the first three months of the test, when wet weather prevailed, the cost rose on some days to more than double the contractor's guarantee.

It is said that the showing made during the last eight weeks is therefore not enough to bring the average actual cost below the average actual guarantee.

Shows Other Defects.

According to figures which Superintendent Napier invites the public to peruse, the excess over the average guaranteed cost for the five months ending May 27 has been 19 cents a ton, or 88½ per cent.

In addition to large cracks in the chimney stack of the incinerator, reported previously by Superintendent Napier to the city health board, a new crack has made its appearance. Mr. Napier said he noticed this first yesterday. The crack is about 40 feet from the top of the stack.

A large crack at the base of the chimney may have been caused by the settling of the chimney. Superintendent Napier says that, so far as he knows, City Engineer Morris never took any soundings of the foundation before the chimney was erected.

Concluded Superintendent Napier: "I have reported scores of defects observed by me in detail, and if any of these reports are repudiated I will call for an investigation by a committee of taxpayers."

CAPEN DECLARES HE MADE FINAL REPORT

In answering the complaint filed in the county court against him, Frank Capen says he made a final accounting in the estate of George B. Capen & Co., and the report has been approved. The original complaint set out that Frank Capen had never made a final accounting to the court for his administration. He was cited to appear and show why.

The answer of Capen sets forth that the liabilities of the George B. Capen estate, which was a shoe manufacturing company, exceeded the assets. In January, 1896, he asserts a receipt for a full accounting was executed and approved by the county court.

A new foot warmer for automobilists utilizes the heat of both the exhaust gases and the circulation water.

M'LOUGHLIN FOUNTAIN TO BE DEDICATED TODAY

(Special Dispatch to The Journal.)

Oregon City, Or., June 17.—The fountain recently erected in McLoughlin park by the Women's club of this city, in memory of Dr. John McLoughlin, will be dedicated at 4 o'clock tomorrow afternoon. Addresses will be made by Mayor George C. Brownell and Mrs. Eva Emery Dye. Mrs. Leon De Larsee' quartet, composed of Mrs. W. C. Green, Mrs. A. E. Frost, Mrs. E. H. Cooper and Mrs. De Larsee, will render several selections. The chorus, which is under the direction of Miss Veda Williams, will also render appropriate selections.

McLoughlin park presents an attractive appearance with its well kept lawn and beautiful flowers, now in full bloom, surrounding the snow white house that was once occupied by Father McLoughlin.

WILL TAKE HONEYMOON AT K. P. GRAND LODGE

(Special Dispatch to The Journal.)

Milton, Or., June 17.—A. R. Shumway, a well known ranches living above Milton and president of the Farmers' Educational and Cooperative union, was married at Arlington on Wednesday, to Miss Delia S. Johnson. Mr. and Mrs. Shumway will attend the grand lodge of the Knights of Pythias at Astoria on June 20 and will be at home to their friends at the Shumway ranch on June 24.

M'NABB PROBABLY VICTIM OF FLAMES

Douglas Man, at First Believed Slain, Had Habit of Smoking in Bed.

(Special Dispatch to The Journal.)

Roseburg, Or., June 17.—Later investigation into the death of Alexander McNabb, who was burned to death in his home in the mountains 13 miles southwest of this city Tuesday night, tend to disprove the theory of murder. As he was an inveterate smoker and had the habit of reading while in bed, it is supposed the home caught fire while he was asleep. No inquest will be held. The body was brought to this city for interment.

NOTE OF EXPLANATION INCREASES TENSION

(United Press Leased Wire.)

Paris, June 17.—A Spanish memorandum presented to the foreign office today attempting to explain Spain's movements in Morocco, only tended to increase the tension between the two governments. The Spanish note was unsatisfactory and in reply the foreign office declared that France had already made known its Moroccoan policy and it "deemed further conversation with Spain on the subject useless."

THE PLAIN SIMPLE LINES

THIS SPLENDID BEDROOM OUTFIT SENT TO YOUR HOME ON A PAYMENT OF $3

Of this bedroom set will appeal to a person of refined taste. It is entirely free from any carving and is built along plain Colonial lines. The kind of a design that you never tire of.

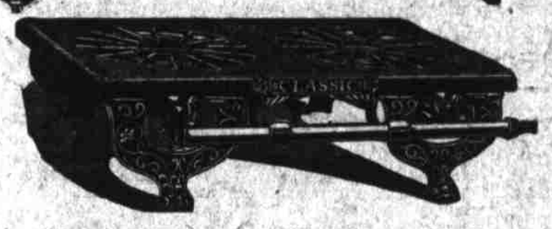
In construction it is above the ordinary. All pieces are of perfect proportion, extra strongly constructed and thoroughly finished. A three-dollar payment sends this set to your home. Pay the balance one dollar weekly. The complete outfit consisting of bed, dresser and chiffonier, on sale this week at only $37.75

EDWARDS' WILL CARPET THE BIGGEST ROOM IN YOUR HOUSE for 75c

Stop and think what this 75c carpet sale means to you. It's too important to be considered lightly.

Think of the assortment. Over two thousand patterns to choose from. Edwards is by far the biggest, most varied carpet stock on the Pacific coast. This sale is not confined to just a few patterns. Our seventy-five cent proposition gives you the choice of all carpets on our floor—without any restrictions.

Think of the economy. Edwards are noted for the low prices and high quality of their carpets. This sale gives you a chance to take advantage of these famous low prices on seventy-five cent outlay. Come tomorrow. Get first choice of the new patterns. Bring seventy-five cents. No more.



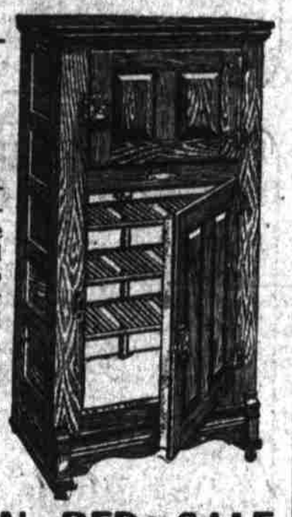
Hot Plates Under Price

$1.25 Single Burners, Nickel.....90¢
$2.25 Double Burners, Black.....$1.58
$3.00 Double Burners, Ideal Nickel.....$2.00
$3.75 Double Burners, Common Sense...$2.90
$5.00 Three Burners, Common Sense....$3.75
$6.00 Three Burners, No. 3099.....$4.50

We Undersell—$10.85

Will buy a refrigerator—not the smallest and poorest—not one that is no use to you—but a big one. Read the size, and if you want to look around mark down our offer, or cut out our ad, and ask your dealer if he can give you such a one for such a price.

45 inches high, 27 inches wide, 17 inches deep, 75 lbs. in capacity.



$3.50 Go-Carts at $2.50

Several Carts without hoods for this price.

$6.00 Carts, complete, with hoods, special at.....$4.00

A SALE OF PALMER'S Hammocks

On account of backward season we make these prices:

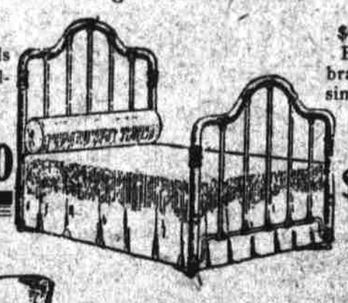
$1.50 Hammocks now.. 90c
$2.75 Hammocks now $2.15
$3.50 Hammocks now $2.80
$5.00 Hammocks now $3.75
20% special discount on all other Hammocks—20%

QUALITY IRON BED SALE

Not the cheapest Beds that can be purchased, but something worth while.

Regular $4.00 White Enamel Beds similar to illustration—$2.70

Regular $4.50 White Beds, with brass knobs similar pattern $2.95

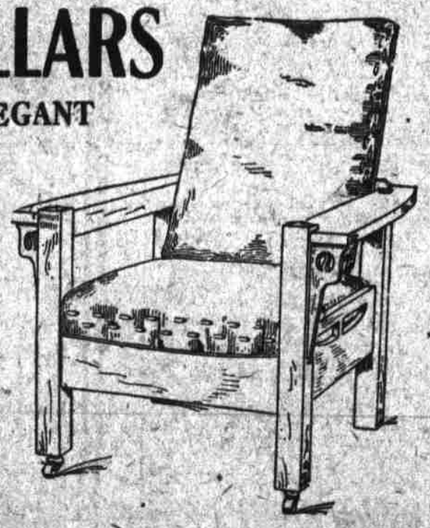


FOR TWO DOLLARS

WE WILL DELIVER THIS ELEGANT ROCKER OR CHAIR

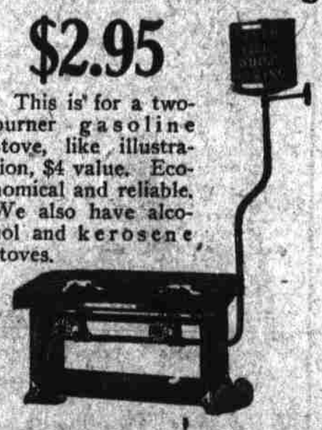
The Rocker is large and well-made, it is covered with Spanish Moroccaline, looks better and wears better than ordinary leather. $2 cash and $1 weekly. Priced at only $26.50

The Morris Chair has genuine roan skin cushions, spring seat and a mission style fumed oak frame. Built in one of the best Crafts style factories. Sold under guarantee. $2 cash, $1 weekly. Price $21.00



For Summer Cooking $2.95

This is for a two-burner gasoline stove, like illustration, $4 value. Economical and reliable. We also have alcohol and kerosene stoves.



Special Sale of Inlaid Linoleum $1 the Yard

One very desirable pattern on which we are overstocked.

A Good Place To Trade

We extend credit to all

Edwards Co.

185-187-189-191 First St

Agents for Monarch malleable ranges

Only One Bill to Pay

You can get everything here to furnish your home completely. You need only set aside a small sum each week or month to provide for all your furnishings. Therefore, we say do not buy here and there and always be running short of cash, but try our credit plan. You will find our prices reasonable.