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THURSDAY, - - - JULY 25, 1895

DOLPH AND THE SUPREME COURT.

In yesterday's Oregonian ex-Senator Dolph criticises a decision of the supreme court in the case of Schmidt vs. the Or. Gold Mining Co., and the Oregonian, as usual, backs the ex-senator and echoes his sentiments. The statements of Mr. Dolph and the comments of the Oregonian make it to appear that the supreme court have committed a most grave error and established a precedent unjust and contrary to all equitable and legal rules, and rendered a most outrageous decision. Believing that there must be some explanation of the matter, we interviewed some of the attorneys of this city concerning these criticisms and learned something of the history of the decision complained of.

It seems that the circuit court for Union county, Judge Clifford presiding, rendered a decree in the case decreeing the sale of the mortgaged premises and that the proceeds of the sale be applied in satisfaction of $5500, adjudged to be a reasonable attorney's fee, and certain costs which appear to have aggregated $939.14, and directing that the attorney's fees be a preferred lien upon the proceeds of the sale, and that either of the several attorneys among whom the fee was divided might enforce payment by an execution.

Upon its face the decree appears to be an outrage, and as the learned ex-senator says in his brief, and the Oregonian repeats, "a scandal upon the administration of justice;" and had they rebuked the circuit judge who permitted such an outrage no one could or would answer them; it appears from the report of the decision of the supreme court that this outrageous decree was entered by consent of plaintiff and defendant; had the ex-senator and the Oregonian gone so far as to suggest that the decree had the appearance of jobbery between the attorneys and circuit judge we would not have seen a very good defense to such an insinuation; we should certainly have joined them in criticising the circuit court. But as we understand the decision of the supreme court, as shown us by local attorneys, it was helpless in the matter. The court says:

"It has been held by this court that by consenting to the rendition of a judgment against himself the defendant, in effect, waives his answer and thereby leaves no issue to be tried, and that from such a judgment no appeal lies. * * * The recitals in the decree show that the defendant gave its consent * * * and *there being no evidence in the record* to guide it in determining what would be reasonable, we conclude that the parties intended that the court should ascertain the amount in its own way and that they should be bound by the result. * * * So we have here a decree which the plaintiff, through his attorneys specifically requests the court to make, and the defendant has *upon the record* consented to every feature of it. * * * Now the party making the request appeals to this court, and demands that the decree be roused in part without so much as moving the lower court to modify its findings * * * or calling its attention to errors or irregularities."

Among the attorneys interviewed by THE CHRONICLE it seems to be the unanimous opinion that the proper course would have been for the learned ex-senator to have moved the lower court to modify the decree, make a showing that the parties had not consented to it and that it was contrary to their wish; then had the lower court refused to modify the decree, the question could be raised in the supreme court. The latter court takes the record as it is sent up from the circuit court and in the absence of a showing to the contrary assumes its recitals to be true. In this case, we are told, the attorneys for the appellant made the mistake of appealing from a decree assented to without having shown that it was not assented to; the supreme court has not, it appears, settled the law that an attorney can, in a case like the one referred to, take a decree in favor of himself and against his client and that such a decree is not appealable, as the distinguished ex-senator and his echo suggest, or anything of the kind; it has simply reiterated a well known rule of practice which the learned ex-senator should have known that consent decrees cannot be appealed from; and that parties desiring to raise the question as to whether they are consent decrees must first in the lower court show that there was no consent, a rule well established in the supreme court of this and other states, and a rule recognized to be the only safe and just one.

As we understand the situation the supreme court was helpless to undo the wrong of the circuit court, because the appellant's attorney, who now criticises it, did not bring his case into the supreme court in such condition as to present the question. Should the supreme court do what the omniscient daily insists it should do—reverse this decision—it would have to sit at naught the best authorities as well as its own precedents. It did not establish the precedent complained of; it dismissed an appeal which presented no question which it had the right to pass upon.

Astoria is rejoicing over the prospect of the immediate construction of its long desired railroad; we rejoice with them and hope they will not be again disappointed. The interests of every town on the Columbia are, in many particulars, identical with those of the city by the sea, and we rejoice with her now both on her own account and because her prosperity is ours also.

The Horr-Harvey contest should be transferred to The Dalles. All they use is wind and we have plenty of it.