

DIVORCE IS NOT ALLOWED

Celebrated Hawley Case From Oregon City Reversed by Judge Brown

DISMISSAL ORDER MADE

Points of Disagreement With Lower Tribunal Pointed To In Opinion

Neither Willard Hawley, Jr., of Oregon City nor his pretty, vivacious wife is allowed a divorce. The supreme court yesterday, in an opinion by Justice George M. Brown reversed Judge George R. Bagley of the lower court for Clackamas county and dismissed one of the most celebrated cases in the annals of the Oregon courts. It was a suit in which Marjorie Hawley, the wife, first brought action, making general charges of cruel and inhuman treatment, with many specific charges of malicious nature. In his answer, Willard Hawley, son of a wealthy paper manufacturer, filed a counter complaint, also with general charges of cruel and

inhuman treatment and specific accusations of gross misconduct. The lower court awarded the divorce to the husband and gave him custody of their young daughter. The wife appealed. Testimony Not Quoted "We believe that the public welfare does not require that the testimony heard in this ill-fated suit should be preserved in our reports, hence we have refrained from quoting therefrom," says Justice Brown's opinion.

The original complaint was filed November 21, 1919, and on December 30 the defendant filed his answer, containing a denial of all of the wife's charges and his cross complaint. On February 4, 1920 Mrs. Hawley filed an amended complaint containing additional charges of cruelty, including that of conduct toward her in an unnatural and criminal manner.

These charges were seized upon by the husband as further ground for divorce and embodied by him in a supplemental cross-complaint, charging that the accusations were "entirely false, and maliciously made by the plaintiff with knowledge of their falsity and with intent to degrade defendant in the estimation of the public and persons present at said trial." Also the supplemental cross-complaint averred that while testifying as a witness in open court the plaintiff falsely and maliciously accused the defendant of offending against morality and decency. Based on stipulation the trial judge entered an order that the allegations contained in the defendant's supplemental cross-complaint be considered as denied. The hearing was begun Febru-

ary 16, 1920, and continued until and including February 27, 1920. Fifty-one witnesses testified and numerous exhibits were offered. Judge Bagley on March 12, 1920, decreed that the husband should have a divorce and the custody of Eva Adela Hawley, the only child. Mrs. Hawley's maiden name was Marjorie Fraker. The young couple were married at Trinity church, Portland, March 11, 1916, in the presence of their immediate families. The groom was 29 years old and the bride only a month past 18. He was the son of a wealthy paper maker. She was the daughter of Mr. and Mrs. H. A. Fraker, residents of Oregon City. Mr. Fraker was a traveling salesman. Mr. and Mrs. Hawley, Sr., originally were opposed to the marriage, but finally acquiesced.

Girl Social Favorite Testimony tended to show that at the time of their marriage the plaintiff was a popular, vivacious girl of pure character, with a pleasant and sociable disposition, that the young people of her set were among the best in Oregon City and very fond of her. Young Hawley was credited with industry and business ability inherited from both his father and mother. Following the marriage they were inseparable companions and apparently happy. Little Eva Adela arrived October 30, 1917.

Unhappiness Develops Mr. and Mrs. Hawley lived together nearly four years, but at last domestic infelicity developed and on many occasions, it is said, Hawley requested his wife to leave and give him his freedom. But after each outbreak of trouble both forgave and promised to forget. The climax came in November, 1919, when a difficulty arose that led to the original divorce complaint a few days later. Then, to quote Justice Brown, "Defendant denied and counter-charged. There was crimination and recrimination by both parties. Each forgot the vow to love and cherish. Each forgot the value of a good name. Duty to the in-

fant daughter was disregarded. A mutual contest of defamation followed.

Decree Held Unequitable "At the conclusion of the trial, the court held that the plaintiff had condoned the acts complained of, and that she had failed to establish such charges by a preponderance of the evidence. Moreover, because of the plaintiff's failure to establish one particular charge against the defendant, the defendant was granted a divorce and the custody of the child, and Marjorie Hawley at the age of 22, was by decree of the lower court, divested of all interest in the property of Willard Hawley, turned out into the world penniless, and deprived of the comfort of the little child that she had went down into the valley of the shadow of death to mother. Is that decree equitable?"

Marriage Protected "The contract of marriage entered into between Willard Hawley and Marjorie Hawley cannot be canceled at the will of either or both of them. The sovereign state of Oregon has an interest in that contract. It is the policy of the state not to destroy, but to preserve, the status of marriage. The commonwealth of the state of Oregon regards marriage as a right and divorce as wrong, except for certain designated reasons established in court by clear and satisfactory proof."

Several cases are cited in support of this position. In Oregon Right Not Established "In their acts of crimination and recrimination," continues Justice Brown, "the parties hereto have overlooked the principle that a divorce is a remedy for the innocent, against the guilty, and not a relief for wrong against wrong." Again the opinion holds that "It was the duty of the plaintiff to prove the averments of cruelty alleged in her complaint, by clear and satisfactory evidence, before she would, under any condition, be entitled to a decree of divorce."

Error in Decree Cited Referring to paragraph 20 of the amended complaint, a passage frequently alluded to in the opinion, and which contained a particularly revolting crime against morality, Justice Brown concludes that the lower court very properly held that the charge was not established in the trial. But he adds "It is maintained that the plaintiff's accusation and her failure to establish the same entitled the defendant to a divorce. In this we cannot agree. The mere failure of the plaintiff to prove the truth of her assertion does not establish the allegation of the cross-complaint. In our statement we have referred to the fact that the defendant filed a cross-complaint and sought affirmative relief, based upon the allegations contained in paragraph 20 of the plaintiff's amended complaint and on plaintiff's testimony. The defendant must establish that allegation in his cross-complaint by the same degree of proof required of the plaintiff. In other words, before he is entitled to a divorce, he is entitled to the satisfaction of the court by a clear preponderance of the evidence that the alleged charge of cruelty was false and made maliciously and without probable cause."

The Oregon code is quoted in support of this stand. In conclusion the opinion says: Reverse Order Made "The record in this case does not authorize a court of equity to annul the marriage contract existing between the parties hereto. We have viewed all the exhibits and read with much care the entire record. We believe that the public welfare does not require that the testimony heard in this ill-fated suit should be preserved in our reports, hence we have refrained from quoting therefrom. "The decree entered by the lower court should be reversed

and the suit dismissed, and it is so ordered. Plaintiff shall recover her costs and disbursements on appeal and in the circuit court."

Other Opinions Other opinions were handed down as follows: State ex rel J. C. Bayer, trustee, plaintiff, vs. George R. Funk, auditor of the city of Portland; original proceedings in mandamus to compel the defendant by force of writ of mandamus to issue to issue to realtor city warrant for \$36,702.84 pursuant to two ordinances authorizing issuance of warrant. Opinion by Justice Harris, Demurrer overruled. Denny and company appellants vs. George Wolff appeal from Jackson county alleging breach of contract. Opinion by Justice Harris, Judge F. M. Calkins reversed and case remanded.

William Nelson appellant vs. Roscoe C. Nelson et al; appeal from Multnomah county; involving validity of judgments. Opinion by Justice McBride, Judge Robert G. Morrow affirmed. Vivian Hornsbeuch, mhr, by et al, appellants vs. Southern Pacific Company, et al; appeal from Multnomah county. Opinion suit to recover damages arising out of accident; opinion by Justice Johns. Judge John O'Reilly company vs. Montana Milkmaid company; appeal from Clackamas county; submitted on rehearing; former opinion sustained.

Alex Davenport et al, appellants, vs. The Justice court for the county of Marion; Pacific Railway company appellant; appeal from Crook county motion to dismiss allowed conditionally in opinion by Chief Justice Burnett. R. B. Allen et al appellant vs. H. C. Levens, Harney county judge et al; appeal from Harney county; appeal from hearing former opinion sustained in opinion by Chief Justice Burnett.

JOSEPH KLECKER STAYTON YOUTH

Man Having Important Part In Agee Trial Known In Marion County

Stayton, Ore., July 30.—Joseph H. Klecker who is playing an extremely important part in the Agee murder trial in Portland, is a former Stayton boy, most of the early years of his life having been spent here with his parents, Mr. and Mrs. Bernard Klecker. Stayton friends of the young man are taking great interest in the case. Stayton, Ore., July 30.—As a reward for diligence in publishing the Stayton Mail so long and faithfully the stork left a nice baby girl at the home of Editor C. S. Clarke and wife on July 28. The little miss weighed eight and one-half pounds, and has been given the name of Frances Eliza.

Brumberg's Eye Removed Recently in Operation

WOODBURN, Or., July 30.—(Special to The Statesman)—H. H. Brumberg has returned to his home here after undergoing a serious operation at the Salem Deaconess hospital during the past week. Due to a grave optical condition, Mr. Brumberg had one of his eyes removed. Saturday marked the end of the season at the Holverson loganberry yards. The crop has been very good, the yield being about four tons to the acre. A return of \$40 per ton is reported from this yard, allowing \$30 the ton for picking, even this price allows the owner a fair profit. All yards in this vicinity are reported to be making about the same turnover. The Graves cannery is running double time in a successful effort to protect the farmers by taking care of the crop. E. N. Barstad and J. R. Kettleman left Wednesday for Edmore, North Dakota, where they will supervise the work of harvesting crops from their properties in that state. They expect to be absent from Woodburn for about three months. Mr. and Mrs. Newt Staunton; Mr. and Mrs. Ivan Byers and son and Saul Strubor motored up the Columbia highway last week, leaving the night at Hood River before returning Thursday.

CALVIN'S GRAVE IS DISCOVERED

Protestants of Europe Interested in Recently-Made Announcement

GENEVA, July 14.—Leaders of the Protestant church throughout Europe are showing lively interest in the announcement that the burial place of John Calvin, the Swiss divine and reformer, has been revealed after having been unknown for 357 years. Calvin died in 1564 and was buried somewhere in the Plain-Centre here, but no stone has marked the spot. According to the legend, he was buried secretly from fear that his grave would be desecrated. Knowledge of the location of the grave is said to have been held by one family for more than and several centuries. The secret is said to have been handed down from father to son for all these generations. Disclosure at this time is accounted for by the statement that the last holder of the secret, Eu-

FREE TRADING BRINGS DEATH

Picture is Drawn of Dire Conditions Prevailing in South Russia

PEASANTS CROWD TRAINS

Deaths by Shooting and Accident Run Into Hundreds Every Month

RIGA, Latvia, June 20.—The chaotic conditions and daily tragedies that followed upon resumption of free trade in South Russia are described graphically by a writer for the Moscow Ivestia, who has just made a trip through the Ukraine. The peasants, he says, carrying sacks of grain or other food to the cities are literally overwhelming the railways. He thus describes the appearance of one of the trains coming into Kiev. Trains Hidden by Humanity "Along the tracks is crawling a huge grey caterpillar—a train covered all over with the grey masses of food-carriers. From beneath these masses neither cars nor locomotives can be distinguished. The grey mass covers everything, the car roofs, the steps and even the spaces between the cars. Every available nook is occupied. Everything is filled up. Only when the train begins to slow down, nearing Kiev station, it begins to shed its grey (mass). Little by little, while yet in motion, the locomotive and car roofs begin to uncover. "At Kiev all out-bound trains are literally pasted all over with people. On the locomotive cars, firewood truck, water tank and under the cars—anywhere that it is only possible—people fasten themselves to every hook, nail or crevice. Those who have been fortunate enough to get a place on a brake platform are looked upon as favorites of fortune, who are comfortable for their whole trip.

Shooting is Frequent "The departure of every train is accompanied by lamentations, walls, crying, shooting and all kinds of accidents. When the train is beginning to get in motion those who were not able to board it and those who have been forcibly removed from it, start mad rushes for it again. The military detachments, whose duty it is to maintain order during the boarding of trains, run after the trains, pulling down some of the surplus passengers who have managed to fasten on to them, while from others caps are pulled off and so on. "One of the results of this state of affairs is that porters take 50,000 to 75,000 of rubles for a 'guaranteed' place on the train. Hundreds Die Accidentally "Another result is that the Kiev railway shops have to make about 300 coffins for food-carriers who have been run over by the trains. M. Dzerzhinsky, head of the "Cheka," or committee to combat counter-revolution, known as one of the most efficient men in Soviet Russia, has been appointed by Lenin as commissary of railways to regulate this traffic of food-carriers.

gene de Speyr, has no descendant and, being 71 years old, decided to reveal the site of the grave to the Council of the Protestant church in Geneva.

Woodmen of the World Picnic at Fairgrounds

Salem Camp, W. O. W. and Silver Bell Circle N. O. W. enjoyed their annual picnic yesterday at the state fair grounds. A very enjoyable time is reported. Two hundred and fifty jolly picnickers partook of the bounteous repast served on long tables beneath the spreading oaks. Various games and amusements furnished the diversion. George Winchell and E.

Big Amount in Fees is Turned Over to Treasurer

The public service commission on Saturday turned over to the state treasurer \$20,458 in fees from the grain-inspection department in Portland for the month of July. This is the biggest turnover from the department ever made at one time.

The Well Dressed Woman

By GLORIA SWANSON. Star in Paramount Pictures.

Cross my heart, honest Injun, hope to die and any other solemn oaths you may demand in proof, I really did see it in a exclusive shop, and what is much worse, I bought and brought it away with me on the spot.



is becoming, nor that it is so smart, in fact, I think it is much more smart than any other dress I have seen. I don't believe you will ever guess why I bought it like a baby grabbing for sweets, anyway. Though grandma would have known instantly, believed in small waists, small appetites and lily complexions than we are. She wore a sunbonet and a parasol, too. Now, of course, you know. It is lovely lavender and blue organdy, sunbonet. Lovely enough in texture and color, but unmistakably a sunbonet. After seasons and seasons of thinking it ultra smart to go hatless, or to lie about the beach, or play out of door sports without adequate face protection, we are at last coming to our senses. We may still think it quite all right to look as tough and brown and leathery as an Indian in the summer, but we really do not care for that kind of skin in a winter evening frock. Some of our complexions are gone forever, others will require several seasons of care, but the first step is protection this summer. Cold cream and powder help, so will a sturdy opaque parasol, but best of all, is a good hat brim tied on. Better join me.

C. Crawford divided the honors at quoit pitching.

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Quality, Economy and Individuality

As obtained in our suits, but always been kept at an exceptionally high standard.



QUALITY — Because every suit is made from virgin wool (the first combing of the raw wool), which is carefully made under the most modern conditions and by workmen who are artists at their craft. ECONOMY — Because at this store you get the best obtainable clothing at very moderate prices, from \$30 up. INDIVIDUALITY — Because we tailor our suits to your exact measure. Taking measurements means, to us, more than mere figures—it means a suit that will fit you. Let us make your next suit—we guarantee satisfaction in all ways.

SCOTCH WOOLEN MILLS

426 State St.

Sunburned Nose Use plenty of cooling Mentholatum Heals gently, quickly and antiseptically

BY PUBLIC REQUEST we are accommodating those who were unable to purchase their needs on Saturday on account of the tremendous crowds, by permitting all prices quoted on Friday to be good on Monday as long as stock lasts. Notice—On account of the new ordinance we have all our vegetables and fruits inside. Shop With The Crowds THE PEOPLES CASH STORE There's a Good Reason

Salem's Greatest Women's Apparel Store--Third Annual Clean Sweep Sale A Sale that carries with it convincing proof that this is the center of greatest values in fashionable apparel. Not another store in Oregon can offer garments of the cleverest style and equal quality at similar prices. You'll find this a marvelous opportunity to secure stylish tailor-made and novelty Suits, Coats, Jersey Jackets, Sport Skirts, Wash Skirts, Waists, Blouses, Hats and Khaki Outfitting Garments, at one-third to one-half below regular values. We are determined to make a clean sweep of the balance of this season's merchandise, to make room for fall and winter apparel already purchased. Portland Cloak & Suit Co. (Old White Corner Building) Salem's Greatest Women's Apparel Store

Read The Classified Ads.



New Silks

Our stocks of Silks are now at their best. New fresh materials that give service and satisfaction. Chiffon Taffetas, 36 inches wide in all the wanted shades \$1.98 yard. Satin Messalines, 36 inches wide in all the wanted shades \$1.98 yard. Duchesse Satin, 36 inches wide \$2.49 yard. Crepe De Chines, 40 inches wide \$1.98 yard. Georgette Crepe, 40 inches wide \$1.79 yard. Silk Poplins, 36 inches wide \$1.00 yard. Lingerie Satin, 36 inches wide \$1.19 yard. Lingerie Satin, 40 inches wide \$1.98 yard. Imported Silk Pongee, extra quality 98c. Prices Always The Lowest GALE & CO. Commercial and Court Streets