

SEMON DEMURRER IS OVERRULED BY PORTLAND JUDGE

That the injunction suit against the rock crusher and sand screen on North Riverside avenue will shortly come to trial on the merits of the case is evidenced by the decision of Judge Walter H. Evans of Portland, to whom the case has been referred by C. M. Thomas, presiding judge of this district, who, by reason of professional consultation before his election, prefers not to sit in the matter.

This case was filed last December by Clara R. Phipps and W. E. Phipps against C. J. Semon and the Medford Concrete Construction company and prays that the court may condemn and cause to be removed as a nuisance the rock crusher, sand screen, the elevated tramway and electric hoist installed by Semon and his company in the spring of 1924, the complaint alleging that these structures were erected in violation of city ordinances and after the city council had denied permission to build them.

The complaint has been pending several months on motion and demurrer filed by the defendants, but the decision of Judge Evans now makes it necessary for the defendants to answer and proceed to trial.

Omitting the title of the case, the following is Judge Evans' opinion: "This matter is before the court on a demurrer, which is predicated on three distinct grounds: First, that there is a misjoinder of parties defendant, and with reference this cause the court understands the rule to be that all persons concerned in the commission of a nuisance are liable. The allegation in Paragraph 1 is that C. J. Semon controls and manages the defendant corporation. Accepting for the purpose of the demurrer the statement to be true, it would therefore appear that he is concerned in the commission of a nuisance and is therefore a proper party. (23 Cyc. 1295.)

The second ground of the demurrer is that the complaint fails to state facts sufficient to constitute a cause of suit, in that it does not allege special or private damages. After alleging the manner and character of the operations conducted by the defendants and that they are being conducted in violation of the city ordinances of the City of Medford, the complaint, in paragraph 7, states "that the said objectionable structure, factory work and operations so maintained by defendants as aforesaid constitute an ever present nuisance and an irreparable injury and damage, going to the destruction of the estate of all the property of the plaintiffs described herein, and the perpetual presence, site, manipulation and noise of said nuisance disturb the peace and enjoyment of the plaintiffs and render their lives uncomfortable and burdensome." In the case of *Bains vs. Marshfield & Suburban R. Co.*, 62 Ore. 510, the supreme court, using this language, at page 415:

"It is stated in the complaint, and substantiated by the testimony, that the value of plaintiffs' property abutting upon Sheridan street was diminished and the free access to the premises was prevented by the operating of the tramway. This deprivation was different in kind from that suffered by the general public, and would undoubtedly have been sufficient for the maintenance of an action to recover damages occasioned by the nuisance. The mere decline in the worth of property, however, may not have been sufficient to warrant injunctive intervention."

And continues with the quotation from *Judge Story* as follows: "It is no every case which will furnish a right of action against a party for a nuisance which will justify the interposition of courts of equity to redress the injury or remove the annoyance, but there must be such an injury as from its nature is not susceptible of being adequately compensated by damages at law, or such as from its continuance or permanent mischief must occasion a constant or recurring grievance which cannot be otherwise prevented but by injunction."

The allegations of the complaint seem to bring this case fairly within the ruling in the case last referred to. So the court is of the opinion that the second ground of demurrer is not well taken.

The third ground of demurrer is that the court is without jurisdiction, in that the matters complained of, if they constitute a nuisance at all, would be a public and not a private nuisance, and that this court has no right to determine the question raised as to the violation of the city ordinances without the presence in court of the City of Medford as a party. In the case of *State ex rel. Ruid v. Ringold*, 102 Ore. 401, the court defines a public nuisance and a private nuisance in this language, reading from page 404:

"A nuisance is public where it affects the rights enjoyed by citizens as a part of the public, that is, the rights to which every citizen is entitled. A private nuisance is anything done to the hurt, annoyance or detriment of the lands or hereditaments of another. The court then continues as follows:

"The difference between public and private nuisances does not depend upon the nature of the thing done, but upon the question whether it affects the general public or merely some private individual. Therefore the same act or structure may be a public nuisance to the person who is hereby caused a special injury other than that inflicted upon the general public."

Having already determined that the complaint shows particular or peculiar or special damages, the fact that the nuisance, if it exists at all, may be a public nuisance also becomes immaterial. In the latter phase of the last ground for demurrer the court refers to the case of *Hagan vs. Smith*, 34 Ore. 394, an interesting case, which

A Curious Animal



This is a picture of Blackie the freak cub dog. Her mother was an Australian bear and her father a Belgian dog, which makes it a rare freak in animal breeding today. Blackie is 12 weeks old, weighs a pound and one-fourth, acts like a bear and barks like

a dog. Harry Garland, her owner, says when the dog is in the park she has a tendency to climb trees, also rolls on its back and sticks her paws. This curious animal will appear at Hunt's Craterian with its master, Harry Garland, on the Orpheum Jr. Vaudeville bill tonight.

Automobile manufacturers tell us that the oil in the motor should be changed every thousand miles. A locomotive is cleaned after each run. Man, poor fool, thinks he can run forty years without a cleaning.

It would seem, then, that defendant's contention in this respect must be denied, so the demurrer is overruled and ten days may be had in which to further plead.

The Screen

By Ye Press Agent.

"One Year to Live." What would you do if you had but one year to live? Ask yourself that question and then see "One Year to Live," which opens at the Rialto theater today.

Alison Pringle, enacts the answer—in the picture, of course—Psychologists will tell you that the human mind, when confronted with inevitable death, oftentimes turns to the salvation of others nearest it.

"One Year to Live" is a great picture—great for the lavishness of its production and the excellence of its enactment; but greater still for the theme of supreme faith, even in the face of death and a worse fate, which follows it through to a happy ending.

Joseph Kilgour, Dorothy Mackall, Sam de Gresse, Rosemary Thorpe, Leo White and hundreds of supernumeraries create the big cast.

Other attractions on this bill are a mirth-provoking Harry Langdon comedy, "The Sea Hawk," the International News, and music by "Pecky" Ridley at the organ.

No. 781-C. In the Circuit Court of the State of Oregon, for the County of Jackson. In the Matter of the Seizure of one Oldsmobile automobile, motor No. B-11854, 1924, Oregon license No. 141-381.

State of Oregon, County of Jackson, ss. To W. S. Pate, Address, Medford, Oregon, and to J. Postpice, Klamath Falls, Oregon, and to whomsoever it may concern:

In the name of the State of Oregon: You, and each of you, are hereby notified and will take notice that the following described personal property, to-wit: One Oldsmobile automobile motor No. 141-381 for the year 1924, Motor No. B-11854, Serial No. 42323, was seized by the sheriff of Jackson county, Oregon, on the 23rd day of Dec. 1924, at about the hour of 10 o'clock of said day, in the county of Jackson, state of Oregon, in the vicinity of Jacksonville, Oregon; that said one Oldsmobile automobile ever since has been, and now is, in the possession and custody of said sheriff of Jackson county, Oregon, and is being proceeded against in the above entitled court for the forfeiture of the same for a violation of Chapter 29, of the General Laws of Oregon for 1923, the same being an act relating to the forfeiture of boats, vehicles and other conveyances used in the unlawful transportation or possession of intoxicating liquor within the State of Oregon; and that all persons having or claiming any interest in said Oldsmobile automobile, are hereby required to appear before the above entitled court in the county court house of Jackson county, Oregon, at Jacksonville, Oregon, by Thursday, the 25th day of June, 1925, which said day has heretofore been duly set by the above entitled court as an answer day herein, and to defend against said proceedings, and that upon their failure so to do a judgment of forfeiture of said Oldsmobile automobile will be entered.

This notice is issued and given to you, and each of you, pursuant to an order duly made by Hon. C. M. Thomas, presiding judge of the above entitled court, on the 28th day of May, 1925.

Witness my hand and the seal of said court affixed at Jacksonville, Jackson county, Oregon, this 8th day of June, 1925.

DELLILA STEVENS, County Clerk.

No. 780-C. In the Circuit Court of the State of Oregon, for the County of Jackson. In the Matter of the Seizure of one 1923 Buick motor bus 4, 1924 license No. 28-474, Motor No. 1-018-240.

State of Oregon, County of Jackson, ss. To Claude Stevens, Address Medford, Oregon, and to D. H. Cronmiller, Medford, Oregon, and to whomsoever it may concern:

In the name of the State of Oregon: You, and each of you, are hereby notified and will take notice that the following described personal property, to-wit: One 1923 Buick motor bus 4, license No. 28-474 for the year 1924, Motor No. 1-018-240, Serial No. 1078002, was seized by the sheriff of Jackson county, Oregon, on the 22nd day of December, 1924, at about the hour of 4 o'clock of said day, in the county of Jackson, state of Oregon, in the vicinity of Medford, in said county; that said 1923 Buick motor bus 4, ever since has been, and now is, in the possession and custody of said sheriff of Jackson county, Oregon, and is being proceeded against in the above entitled court for the forfeiture of the same for a violation of Chapter 29 of the General Laws of Oregon for 1923, the same being an act relating to the forfeiture and sale of boats, vehicles and other conveyances used in the unlawful transportation or possession of intoxicating liquor within the State of Oregon; and that all persons having or claiming any interest in said 1923 Buick motor bus 4, are hereby required to appear before the above entitled court in the county court house of Jackson county, Oregon, at Jacksonville, Oregon, by Thursday, the 25th day of June, 1925, which said day has heretofore been duly set by the above entitled court as an answer day herein, and to defend against said proceedings, and that upon their failure so to do a judgment of forfeiture of said 1923 Buick motor bus 4 will be entered.

This notice is issued and given to you, and each of you, pursuant to an order duly made by Hon. C. M. Thomas, presiding judge of the above entitled court, on the 28th day of May, 1925.

Witness my hand and the seal of said court affixed at Jacksonville, Jackson county, Oregon, this 8th day of June, 1925.

DELLILA STEVENS, County Clerk.

No. 788-C. In the Circuit Court of the State of Oregon, for the County of Jackson. In the Matter of the Seizure of one Ford automobile, 1924 coupe, 1925 California license No. 1078002, engine No. 9925148.

State of Oregon, County of Jackson, ss. To Leigh C. Wetmore, address Commercial Credit Co., 423 California street, San Francisco, Calif. and to whomsoever it may concern:

In the name of the State of Oregon: You, and each of you, are hereby notified and will take notice that the following described personal property, to-wit: One Ford automobile, 1924 Coupe, California license No. 1078002 for the year 1925, Motor No. 9925148, Serial No. 9925148, was seized by the sheriff of Jackson county, Oregon, on the 19th day of May, 1925, at the hour of 10 o'clock of said day, in the county of Jackson, state of Oregon, in the vicinity of Medford, in said county; that said one Ford automobile, 1924 coupe ever since has been, and now is, in the possession and custody of said sheriff of Jackson county, Oregon, and is being proceeded against in the above entitled court for the forfeiture of the same for a violation of Chapter 29 of the General Laws of Oregon for 1923, the same being an act relating to the forfeiture and sale of boats, vehicles and other conveyances used in the unlawful transportation or possession of intoxicating liquor within the state of Oregon; and that all persons having or claiming any interest in said Ford automobile, 1924 coupe, are hereby required to appear before the above entitled court in the county court house of Jackson county, Oregon, at Jacksonville, Oregon, by Thursday, the 25th day of June, 1925, which said day has heretofore been duly set by the above entitled court as an answer day herein, and to defend against said proceedings, and that upon their failure so to do a judgment of forfeiture of said Ford automobile, 1924 coupe be entered.

This notice is issued and given to you, and each of you, pursuant to an order duly made by Hon. C. M. Thomas, presiding judge of the above entitled court, on the 28th day of May, 1925.

Witness my hand and the seal of said court affixed at Jacksonville, Jackson county, Oregon, this 8th day of June, 1925.

DELLILA STEVENS, County Clerk.

The eternal question— what to eat?

here's a simple way to answer it



On picnics and motor trips—Borden's Malted Milk is convenient to carry and prepare. Take it on all your summer outings.



In emergencies—you can serve this delicious, nourishing food at a moment's notice. No cooking, no fussing. All you need is a bowl, a spoon, some milk, and Borden's Malted Milk, and you have a refreshing meal in a jiffy. If you're out of milk, mix it with water and you still have a nourishing drink.

THREE meals a day—and all those between-meal occasions, too—cease to be such a bug-aboo if you've learned to keep Borden's, the Improved Malted Milk, in the house. It's a perfect boon to housewives—especially in hot weather, when appetites are finicky, digestions easily upset, and there are so many extra unexpected demands on the larder.

Borden's Malted Milk is a refreshing summer drink, with a delicious flavor, free from the sickish sweetness of most malted milks. It has the satisfying food value of a light meal, yet puts no extra strain on your digestion—an important point in summer weather. In fact, doctors recommend it for people of all ages—children and grown-ups alike—to keep them fit.

Once you've formed the habit you'll find a thousand and one convenient uses for Borden's Malted Milk.

Get acquainted with it right away. Send the coupon below—with 10c—for a trial package. Or order some from your druggist. Be sure to ask for Borden's, the Improved. For it is actually more nourishing, more digestible, and has a more delicious flavor than any other malted milk made.

Borden's THE IMPROVED MALTED MILK

-in the square package

At your dealer's in convenient 7 and 15 ounce glass packages. Get one today.



As a light lunch—when you're too tired or hot or busy to get yourself a regular meal; mix yourself a brimming glass of Borden's Malted Milk. Nourishing enough to sustain you till dinnertime.



Between meals—a tall glass of Borden's Malted Milk will relieve that tired feeling and satisfy your hunger without overtaxing your digestion and spoiling your appetite for regular meals. Take it in the middle of the morning—after a hard day's work—at bedtime to overcome insomnia.

THE BORDEN COMPANY
350 Madison Avenue, New York, N. Y.
I enclose 10c for which please send me a trial package of Borden's, the Improved Malted Milk.
Name _____
Address _____

Name the Cake and Win \$25

CONTEST CLOSES 6 P. M. JUNE 12

The Schilling Chef, co-operating with this paper, will pay \$25 for the most appropriate name for his new Mystery Cake—\$10 second prize—five additional prizes of \$1 each. Here is the Recipe:

- 15 cups shortening
- 1 1/2 cups sugar (brown or granulated)
- 2 eggs
- 2 cups raisins
- 1 cup raisin liquid
- 3 cups sifted flour
- 3/4 teaspoon salt
- 3 level teaspoons Schilling Baking Powder
- 1 teaspoon Schilling Cinnamon
- 1/2 each Schilling Cloves, Allspice and Nutmeg
- 1 Schilling Vanilla

Cover raisins with water and simmer over a low fire 10 minutes then drain, reserving one cup of raisin liquid. Sift flour, spices, and baking powder together. Cream shortening, add sugar and mix well. Add eggs, unbeaten, one at a time, beating batter well after adding each egg. Add one-half of the flour mixture and raisin liquid alternately, beating until smooth. Add raisins to remaining flour, mix well, then add to cake batter, with vanilla. Bake in three greased layer cake pans, about 20 minutes in a moderate oven (350 deg. F.). FILLING AND ICING: 1/2 cup thin cream, 2 cups powdered sugar, 1 teaspoon Schilling Vanilla, 1/2 cup chopped walnuts. Heat cream to boiling point, add to sugar and beat until smooth. Then add vanilla. Spread on cold layers and sprinkle chopped walnuts over the two inside layers. All measurements are level.

MAIL THIS COUPON, with this paper

To the Schilling Chef, I have baked the famous Schilling Mystery Cake in accordance with the recipe, using Schilling Baking Powder, and submitted the following [] name for it: _____

Name _____
Address _____
City _____

The judges in the contest are Mrs. A. B. Cunningham, Mrs. Jonas Wold and Mrs. E. N. Vilim

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