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KLAMATH FALLS, - OREGON
MONDAY, JUNE 10, 1912

DISMISS SUIT FOR INJUNCTION

(Continued from Page 1)

live at Hot Springs, and persons go-
ing there from other parts were said
to be going to Hot Springs. While,
as a place, it had no set or defined
topographical boundaries, its general
locality was well understood in all
parts of the county. While these con-
ditions existed, and in January, prior
to the organization of the county,
Edmund and Jennie Petty, owners of
land comprising a part of the locality
and territory theretofore known as
Hot Springs, platted 160 acres there-
of, and caused the same to be record-
ed as a plat of the town of Hot
Springs. A question was raised by
respondent as to the validity of this
plat, on account of defective acknowl-
edgment, but we do not regard this
as very material. It was not neces-
sary that the "place" selected as the
county seat should have been platted
at all. The selection, if in other re-
spects legal, would have been good
and operative if it had designated a
certain quarter section of land, or
"John Smith Farm," if there had been
one such in the country, and that a
well known place. It is purely a
question of what place the electors
had in mind and intended to desig-
nate and select. If neither Petty nor
any other owner had ever platted his
land, the county seat would by such
vote have been located at Hot Springs
provided there was such a place,
whose situs or location could have
been practically and reasonably fixed
and determined. It was not essential
that Hot Springs or Cascade, as can-
didates for county seat, should have
fixed and definite exterior boundaries.
The fact that, at the time of the elec-
tion, a town of Hot Springs had been
platted, whether such plat was regu-
lar or irregular, was only import-
ant as bearing upon the intention and
understanding of the electors in desig-
nating Hot Springs as the place of
their choice for county seat. Sup-
pose it had been demonstrated on
the trial that every elector who voted
for Hot Springs did so having in
mind and intending the locality for-
merly and then known as Hot
Springs, and not the particular terri-
tory platted by Petty; would the law,
on account of such plat, force the
county seat into and within the limits
of such plat? We think not. Under
the evidence in this case, we think
Hot Springs, either as a well known
locality in the vicinity of the springs,
or as a platted town site, was a place
eligible for selection as a county seat;
and which place selected is a question
not of law, but of fact, depending up-
on the intention of the electors. As
a question of fact, the trial court has
passed upon it. Its judgment seems
to us supported by the preponderance
of the evidence. Entertaining this
opinion, as we do, after having
carefully gone over the whole record,
it would serve no useful purpose to
marshal and compare the statements
of different witnesses, which lead us
to the same conclusion as found by
the trial court, to-wit: that the Hot
Springs selected as the county seat
was not necessarily and only the terri-
tory covered by the Petty tract, and
that the court house in question,
standing a thousand feet outside of
said plat, but within the territory and
locality then and previously known
as "Hot Springs," was and is located
at the county seat."

See also Allen et al. vs. Lytle, 40
S. E., p. 228 (Ga.).

As to the general powers of the
county court in relation to the re-
moval of the court house, the follow-
ing authority is quoted, viz.:

"In the absence of limitations upon
such power a board of county com-
missioners having exclusive power
over the property of the county court
may remove and designate new sites
for county buildings, within the lim-
its prescribed for the county seat."

11 Cyc., p. 380.

To the same effect see Platter vs.
County of Elkhart, 2 N. E., 549
(Ind.).

Crow vs. Board of Commissioners,
20 N. E., 643 (Ind.).
Allen vs. Lytle, 40 S. E., 228
(Ga.).

Question has been raised as to the
terms of the deed conveying block 10
of Hot Springs addition and the pro-
visions requiring the county to per-
petually maintain the court house
thereon. The wisdom of accepting a

deed with such provision is a matter
for the county court to determine.
Such a provision, however, would not
bind the county to perpetually main-
tain the court house upon block 10.
See Colburn vs. Board of Com-
missioners, 61 Pac., 241.

After this suit was commenced, and
just before the trial, defendants filed
for record a modified deed, changing
the terms as to the minimum cost of
the court house required to be built,
and reducing this sum to an amount
not exceeding the fund on hand and
set aside for the specific purpose of
building a new court house. This
action on the part of defendants, al-
though after the commencement of
the suit, was within their power, and

plaintiff cannot complain that one of
the alleged causes for an injunction
has by this act been eliminated.

See 22 Cyc., p. 781, authorities
there cited.

It is my opinion that the prayer for
an injunction should be denied and
the suit dismissed.

JOHN S. COKE, Judge.

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