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All communications submitted for publication in the columns of this paper will be inserted only over the name of the writer. No non de plume articles will be published.

DISMISS SUIT FOR INJUNCTION

JUDGE COKE RULES IN COURT HOUSE CASE

Decides That the County Seat of Klamath County is Not Restructed to the Boundaries of the George Nurse Plat, Which Was Originally Incorporated as the Town of Linkville, But Includes Additions.

The decision and decree of Judge Coke of Marshfield in the injunction suit of H. F. Murdock vs. the County Court of Klamath county, reached Klamath Falls Saturday night, and was filed by the county clerk at 8 o'clock Monday morning. The decree dismisses the suit and places the costs on the plaintiff. This includes the usual court costs and an allowance of $10 for attorneys' fees. The decree is as follows:

"It is ordered, adjudged and decreed that this suit be and the same is hereby dismissed, and that the defendants have and recover off and from plaintiffs their costs and disbursements herein."

The decision or opinion of Judge Coke is as follows:

In passing upon the questions before the the court for determination in this cause, I do so with a full realization of the irreconcilable differences of opinion and antagonisms which usually accompany a legal controversy between citizens of a county over such a question as the removal of a court house, even though that removal is to be only from one block to another within the same city.

It would seem to a person viewing the question from the standpoint of an outsider that much more harm than benefit is apt to result to the city of Klamath Falls and to all sections of the same over the unprofitable differences and dissentions which naturally follow a controversy of this character, and that if these influences were to unite for the general welfare and upbuilding of the city it would not require a great length of time to develop the city to the extent that the short distance between the two proposed locations of the court house would be of small importance to any of the persons now concerned in this litigation. However, the court's duties in this matter are such that it must confine itself to the determination of the question before it upon the record, and leave it to the persons interested to decide for themselves all questions of expediency.

In 1882 the legislature created Klamath county and provided in the act creating the same, as follows:

"Section 3.—The county seat of Klamath county is hereby located at the town of Linkville, in said county, until otherwise located as provided in this act."

"Section 12.—At the first general election after this act becomes a law the question of permanently locating the county seat of Klamath county shall be submitted to the legal voters of said county, and the place which shall receive a majority of all the votes cast at said election shall be the permanent county seat of said county."

At the general election held June 2, 1884, there appears to have been submitted to the voters of Klamath county the question as to the permanent location of the county seat of said county, the record (plaintiff's exhibit D, being a copy of the record of the election for Klamath county as filed with the secretary of state) contains the following:

"For county seat. Total votes cast for:

Linkville	249
Bonanza	40
Lost River Gap	2
Haylox	1

The principal contention and question to be determined in this case is as to whether or not the site of the court house may be lawfully changed from block 35, plat of Linkville as filed by George Nurse, to block 10 of Hot Springs addition, plaintiff claiming that the term "Linkville," as used by the legislature and as intended by the people of Klamath county when voting upon the permanent olcation of the county seat, meant the platted portion only of the town of Linkville, that is to say, the George Nurse plat, that being the only plat of Linkville then of record in the office of the county clerk.

After a somewhat careful reading and consideration of the briefs, authorities, and the record submitted in this case, it is my opinion that when the legislature designated "The Town of Linkville" and when the voters of Klamath County voted for "Linkville" it was not intended that the county seat of Klamath county should be confined to the narrow limits of the George Nurse plat, but that the town or community commonly known by the people as Linkville was the "place" intended as the county seat.

Asume that either "Bonanza," "Lost River Gap" or "Haylox" was a community of people residing upon unplatted land. If such town or community had received a majority of the votes cast for county seat in 1884, no one would claim that such community would have to reside upon platted land to make the designation sufficiently definite. And assume that the successful community or town at the time had developed in importance and to the extent that it consisted of an original plat bearing its name and also of additions, known as Smith's, Jones' and Johnson's additions, and that the population of the community extended over the original plat and also all of these additions—could it be properly claimed that the voters intended to designate only the original plat as the county seat, or would it be more in harmony with reason to hold that the "place" or "community" known as "Bonanza," "Lost River Gap" or "Haylox" was intended?

The testimony shows that in 1882 there was a considerable population in the town of Linkville, and that this population was not confined exclusively to the George Nurse plat, although the greater number of the people did reside within this tract, consisting of a strip of land three blocks wide by some thirteen or fourteen blocks in length. At least one of the witnesses (Deputy Sheriff John G. Schallock) testified that he had resided in the city since 1875 (a period considerably antedating the filing of the George Nurse plat) and that in 1882, when the "Town of Linkville" was first designated by the legislature as the county seat, there was a considerable population residing in the vicinity of "Hot Springs," and beyond block 10 of "Hot Springs addition" from the present location of the court house. There was also testimony to the effect that some of the population of the town resided upon the hill, and that the school house was then situated on block 13, at the extreme east end of the platted tract, and that Linkville postoffice was for a short time near the east end of the platted portion. It is evident, therefore, that the community or population constituting the town of Linkville, as applied to the residents of community, was not confined to the narrow limits of the George Nurse plat. When the legislature designated "The Town of Linkville," and when the people of Klamath county in 1884 designated "Linkville" as the county seat, they must be held to have had in mind the community, rather than the Nurse plat. It is not likely that many of the voters had any idea as to the limits of the platted territory when voting upon the question as to the location of the county seat, but that in so voting they did have in mind the town or community composing Linkville. Under the authorities, it is not necessary that the county seat shall be situated within a platted or incorporated town or city.

The evidence in the case under consideration shows that the town population did not extend to a point even beyond block 10 in Hot Springs addition, and it is my view of the law as above indicated that the community composing the town of Linkville was intended and understood by the voters of Klamath county rather than the platted tract, and this seems to be the rule as laid down in the authorities which I shall presently quote, and it also seems to be the rule which is more reasonable as applied to the laws of this state. The statutes of this state relating to the removal of a county seat provide that: "Whenever the inhabitants of any county of this state desire to remove the county seat of the county from the place where it is fixed by law, or otherwise, they shall present a petition to the county court of their county praying for such removal, and that an election be held to determine to what place such removal must be made; provided, that the petition for removal shall set forth the names of the towns or cities to which such county seat is proposed to be removed." It is apparent that the legislature has not provided for nor did they in said enactment contemplate that a vote of the people would be necessary to change the location of the court house from one portion of a town or city to another, and under the law the power rests with the county court to build, repair or remove a court house within the county seat, without any other act of authority being specially conferred.

"Place," as used in the Oregon statute, evidently is intended to be given its usual acceptation, and as applied to population it is said: "The word 'place' in the statutes may mean city or town unless some other meaning is implied by the context. The 'place' of the county seat, as used in the constitution, requiring a selection by the qualified electors of the place of the county seat by ballot, etc., should not be construed to mean a place which is platted and has a fixed and designated exterior and topographical boundary, but is sufficiently designated if a particular settlement having a name is selected."

Fall River vs. Powell 58 N W. p. 7.

The word "town as used in the act designating Linkville as the temporary county seat, evidently should be construed in the light of the following authorities. "The word town is indeed, by alteration of times and language, now become a generic term, comprehending in it several species of cities, boroughs and common towns."

State vs. Denny, 21 N. Eastern, 274, 4 L. R. A.

"The word town is ambiguous. It may mean either a corporation, or simply a colection of people, independent of the fact of incorporation. A town is a collection of people, and it may be either an incorporated or unincorporated town, etc."

Sessions vs. State, 41 S. E., 259.

The American and English Encyclopedia of Law (2nd Ed.), Vol. 7, page 1013, lays down this rule: "When a city or town is selected as the county seat the boundaries of such city or town as they then exist, become the boundaries of the county seat, and the subsequent inclusion of more territory in such city or town does not enlarge the county seat." But this authority should not be construed to mean that the boundaries of the town plat, but rather that the boundaries of the town or the community, would be the boundaries of the town or the community, would be the boundaries which would govern. In a note to this same authority the following decision is quoted with approval: "A statute requiring the 'place' at which it is desired to re-locate a county seat should be named in the petition for a vote on the question and the order of the county court directing such vote, means that the city or town at which the re-location is desired is to be named therein, and not that the particular spot where the county buildings are to be erected should be designated. And this is true, no matter how much extent of land is covered by the boundaries of such city or town or how sparse the population may be in portions thereof."

Doolittle vs. County Court, 28 W. Va., 158.

"In the selection of a county seat the choice is not limited to existing cities or towns, but a site may be chosen for a new town and the county seat located therein."

11 Cyc., p. 368; citing with approval Fall River County vs. Powell; 58 N. W., p. 7.

The following is quoted from the Fall River County vs. Powell, 58 N. W., p. 7, above referred to, viz.:

"It is conceded on all sides that the case presents but one question: Was such court house located at the county seat of Fall River county? There seems to be no dispute about the immediate facts. Fall River county was organized in November, 1883, and the county commissioners named "Hot Springs" as the temporary county seat; and at the next general election, to-wit: in November, 1884, the qualified electors of the county selected 'the place of the county seat' by ballot. Hot Springs was again selected, and the simple question is, where is and what constitutes the place Hot Springs, thus selected? While there is some evidence to the contrary, we think it was sufficiently shown and practically established that for some time, two or three years at least, prior to the organization of the county, there was a settlement in the immediate vicinity of certain springs, several in number, known as 'Hot Springs,' and that the place or locality of this settlement was commonly called and known as Hot Springs.' Persons living in that settlement or locality were reported to live at Hot Springs, and persons going 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 conditions 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 teritory theretofore known as Hot Springs, platted 160 acres thereof, and caused the same to be recorded as a plat of the town of Hot Springs. A question was raised by respondent as to the validity of this plat, on acount of defective acknowledgment, but we do not regard this as very material. It was not necessary that the 'place' selected as the county seat should have been platted at all. The selection, if in other respects 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 designate 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 sould have been practically and reasonably fixed and determined. It was not essential that Hot Springs or Cascade, as candidates for county seat, should have fixed and definite exterior boundaries. The fact that, at the time of the election, a town of Hot Springs had been platted, whether such plat was regular or irregular, was only important as bearing upon the intention and understanding of the electors in designating Hit Springs as the place of their choice for county seat. Suppose it had been demonstrated on the trial that every elector who voted for Hot Springs did so having in mind and intending the locality formerly and then known as Hot Springs, and not the particular territory platted by Petty; would the law on acount 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 upon 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 necesarily and only the territory covered by the Petty tract, and that the court house in question, standing a thousand feet outside of said plat, but within the teritrtory and locality then and previously known as 'Hot Springs,' was and is located at the county seat."

See also Alen et al vs. Lyttle, 46 S. E., p. 238 (Ga.).

As to the general powers of the county court in relation to the removal of the court house, the following authority is quoted, viz.:

"In the absence of limitations upon such power a board of county commissioners having exclusive power over the property of the county court may remove and designate new sites for county buildings, within the limits 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. Lyttle, 40 S. E., 238 (Ga.).

Question has been raised as to the terms of the deed conveying block 10 of Hot Springs addition and the provisions requiring the county to perpetually 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 maintain the court house upon block 10.

See Colburn vs. Board of Commissioners, 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, although 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.

NARROW ESCAPE FROM DEATH BY LIGHTNING

W. Frank Arant and Charley Anderson, while traveling on the road between Dairy and Bly Friday afternoon came very near being seriously injured during the electrical storm.

The two men had stopped at a ranch house for a few minutes, as Mr. Anderson wished to speak to the owner of the ranch, while Mr. Arant held the high spirited team which he was driving. As soon as Anderson had finished his conversation with the rancher he proceeded back to the conveyance, and while in the act of climbing into the buggy a bolt of lightning struck a tree near by, stunning Mr. Anderson and striking the driver, Mr. Arant, in the left arm. The streak of lightning caused Mr. Anderson to fall to his knees in a half dazed condition. Mr. Arant said, "had we stopped where we first halted our team we may have received injuries that would have proved fatal."

The tree was shattered up considerably, peeling the bark in a circular path from the tip to its base. The team was uninjured.

TO TALK OVER SEA BY WIRELESS PLANT

NEW YORK, June 8.—Twin wireless stations to communicate directly with London will be built along the New Jersey coast within a year, according to an announcement made by officers of the Marconi Wireless Telegraph company of America. Options have been obtained in similar sites at San Francisco and Honolulu.

It is planned to construct a plant in the Philippine Islands to communicate directly with the one at Honolulu. The company will thus be able to send messages from London to the Philippines by the way of the United States, relaying the messages by land wires from the Jersey coast to San Francisco. The plants at San Francisco and Honolulu will be erected immediately, the announcement adds.

The first New eJrsey station, the announcement says, will be erected within nine months near Belmar, upon a site of 550 acres, recently purchased. The second will be erected at Tom's River or Barnegat, and will be tuned to a key different from the first, so that messages to either station may be received and sent simultaneously without interference.

The distance from the New Jersey stations to London is 3,100 miles. The estimated cost of the plants will be $750,000 each.

CALLS HENEY A CROOK AND LIAR

FULTON RESENTS CHARGES OF PROSECUTOR

Former Senator Makes Sweeping Denial of Charge That He and District Attorney McCourt Conspired to Get Taft to Pardon Jones—Says That Heney Resorted to Crooked and Infamous Methods.

United Press Service

PORTLAND, June 8.—Declaring Francis J. Heney to be a crook and a liar, former United States Senator Charles W. Fulton is out with a sweeping denial of the Heney charges that he and United States District Attorney John McCourt had conspired to get President Taft to pardon Williard Jones, who was convicted and was serving a term for land frauds.

CHARLES W. FULTON

FRANCIS J. HENEY

Fulton said that he aided Jones because Heney had resorted to "crooked" and "infamous" methods in the prosecution of the case in securing his conviction.

Awarded Contracts

D. J. Lytle has been awarded the contract for the construction of the three-story Melhase building, which is to be erected adjoining the Withrow-Melhase building on Main and Fourth. The contract for the erection of the C. E. Riley building on Main, between Fifth and Sixth, has been let to the Garrett Construction company.

Big Crowd at Spring Creek

Fifteen automobile loads of visitors went to Spring Creek Sunday to enjoy the pleasures of fishing and the outing. Many of the parties went up to select lots at Idlerest and to look at those already purchased. D. B. Campbell and W. T. Shive are camped there for several days, as are also quite a number of other Klamath Falls residents. Many outside parties are now enjoying the camping grounds and fishing at Silvies on Williamson River.

Childers-Pickett

At 1 o'clock p. m. Sunday, June 9, Rev. J. S. Stubblefield of the First Presbyterian church united in marriage Mr. Raymond I. Childers and Miss L. Margaret Pickett. The ceremony was performed at the residence of Miss Sauber, aunt of the bride. Later the couple departed by automobile for a visit at the home of the bride's parents, Mr. and Mrs. Charles Pickett, in the Tule Lake Basin, after which they will depart for Medford, the home of Mr. Childers. They were acompanied Sunday by Miss Elizabeth Pickett, who has been visiting in Klamath Falls since the beginning of the Elks' Rodeo.