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The Tillamook Headlight.
 Fred C. Baker, Publisher.

TOLL ROAD DECISION.
Justice H. T. Bagley Finds for the Defendant.

Hillsboro Independent.
 Justice H. T. Bagley yesterday handed in his written decision in the case of the State of Oregon vs. Fred Haford, charged with unlawfully breaking down the toll gate on the Washington county end of the Wilson river road. The trial was held last week, Thursday, before Mr. Bagley. Following is his written opinion in full. Attorney Bump appeared for the defendant:

This is a preliminary investigation into the charge against the defendant of willfully and unlawfully breaking down and removing a toll gate on what is commonly known as the "Wilson River Road" in Washington county, alleged to have been committed on August 17. The act charged is made punishable by statute. The facts in the case are few and undisputed. On the day named the defendant in company with others approached the gate on the Washington county end of the toll road named, having crossed from Tillamook. No toll was charged on the Tillamook side, as the gate had previously been destroyed. When toll was demanded, defendant offered to pay 25 cents, the sum chargeable under the lease held by McNamer, and which was entered into with the county court of Washington county. Mrs. Lee, in charge of the gate, demanded \$1.50, the amount covering the entire distance. Defendant offered to pay but demanded a receipt. He was informed by the gate keeper that he had no authority or orders to issue receipts but consented to sign one if the defendant would write it. The defendant then claimed that a receipt written or signed without authority would be of no avail and he declined to pay. He removed a wire link from the chain which bound the gate, passed through, replaced the link and again offered to pay the 25 cents toll authorized by the lease aforesaid. While both Mrs. Lee and defendant acted under a mistaken idea as to the receipt controversy I am satisfied they acted in good faith.

The evidence does not disclose my intention on the part of the defendant to avoid paying toll or to pass through the gate fraudulently. There was no disposition to be arbitrary, but he had an erroneous idea as to the value of a receipt signed by the gate keeper and in this, he was not alone.

The legal questions involved are not so easy of adjustment. The statute confers on the county court authority to lease public roads on certain conditions and grant the right to exact tolls. It is contended by counsel for the defendant that the proceedings of the county court in granting the lease to McNamer are void for want of a sufficient description in the petition and notice. I have examined this contention thoroughly and find it without merit. The authorities cited have to do only with the laying out and establishing of public roads. In such cases the court exercises the right of eminent domain and the statutory requirements must be strictly followed. In the leasing of a road, however, one already located, it is sufficient to designate the road, or portion thereof to be leased, in the notice, in any manner calculated to bring the matter to the attention of intending bidders.

There are, however, some serious questions presented by the proceedings of the county court disclosed by a thorough examination made since the case was submitted. The statute provides that when it becomes expedient and lawful to lease a public road the court shall make an order to that effect, specifying the terminal thereof in the order, and direct the clerk to advertise for bids, the manner being fully set out in the act. Section 4949 further provides, among other things, that the order of the court shall specify the number of gates to be placed on the road and the period for which it is to be let.

The order of the court under consideration simply directs the publishing of notice for bids. None of the other requirements were complied with. No undertaking accompanied the bid, but this alone would not invalidate the lease, as the contract was entered into in accordance with the bid, but one bid was submitted and the undertaking would under the circumstances have served no purpose.

Nowhere in the record of the court's proceedings is there an order that the road shall be leased, as required by law; the record omits the description entirely, also the number of gates to be placed on the road and the period for which it is to be let.

In early cases before the Oregon Supreme court where road companies constructed turnpikes or toll roads and entered into a contract of leasing with the county court, where the company's road traversed in part a county road, and the statute required that the lease or agreement be entered in the journal of the court and this was omitted, the court held that "the lease shows that the court acted, did something, concluded some matter, to the advantage or injury of somebody." (6 Or. 300.) In that case as also in 5 Or. 406, the court held that the agreement could be entered in the journal *in pro tunc*. In the above cases there was no entry. In the case of the leasing to McNamer there is a record, but not in compliance with the law governing. The lease, nevertheless, drawn by Attorney E. B. Tongue is in proper form and contains the requirements of the statute, and by it we are informed that the court acted, did something, concluded some matter. It contains the number of gates, description of the road and the term of leasing in addition to other requirements.

Assuming, without deciding, that the record of the court can be so amended by a *in pro tunc* order as to remedy the defects and irregularities noted, yet, until this is done, it is clear in the light of the authorities examined, that the lease is not competent evidence; there is no valid evidence obtainable from the record of the proceedings of the county court as to the leasing or existence of a valid toll road.

Again, I am not satisfied that where a county road has been located, opened and established, that the county court has authority to lease, except where a road under construction by a road company traverses in part, a county road.

The act under which the McNamer lease was entered into provides that "whenever a public road in any county in this state is or may hereafter be so located that there is little or no local labor along the line of said road, the county court of the county, where such road, or any portion of the same is or may hereafter be located, is authorized to lease such road or any portion of the same to any person or corporation to open, improve and keep the same in repair," etc. The succeeding sections provide that the road so leased shall be cleared of standing timber and have a track for traveling and shall be made of such grade and such materials as the contract shall specify. The order providing for the leasing shall also specify the grade of the road, the materials for the construction thereof, etc., so it appears that the act contemplates only the leasing of a road located under the circumstances mentioned to be "opened, improved and kept in repair," and that it does not grant authority to lease a road already constructed, located, opened and established.

This point, however, is not essential to the disposition of this case. The law requires me to be satisfied that a crime had been committed. In the face of the conclusion that the crime charged cannot be proved by reason of the condition of the records, even though the court had power in the first instance to enter into such a leasing, I am without authority to hold the defendant. The facts as cited also justify a discharge and it is so ordered.

H. T. BAGLEY, Justice of Peace.

Sander-Delsman Wedding.

A pretty wedding took place at the St. Matthew's Catholic church at Hillsboro, Wednesday, August 22, when Miss Clara Delsman was united in marriage to Joseph H. Sander. At 9:30 o'clock the church organist began playing the wedding march, to the strains of which, the bride and groom, attended by Miss Francis Delsman, sister of the bride, as bridesmaid, and Frank Sander, brother of the groom, as best man, marched to the altar where the immediate members of the family were assembled. Rev. J. L. Bucholzer conducted the ceremony, using the beautiful and impressive ring service. The bride was becomingly gowned in a grey traveling suit carrying a shower bouquet of white carnations. The bridesmaid wore a soft cream dress and also carried white carnations. The groom was attired in conventional black. The church was beautifully decorated in white carnations and maiden hair ferns. After the ceremony the wedding party retired to the home of the bride, where a dainty wedding breakfast was served. The home was elaborately decorated with carnations and ferns.

Mr. and Mrs. Sander spent a few days with the bride's mother at her home near Hillsboro. On Saturday evening they left for Kelso, Wash.; their future home, where Mr. Sander is engaged with his brother in the lumber business. Mrs. Sander spent the last few years in this city and was very popular, clearing herself to many during her stay with us. She has the congratulations of a large circle of friends.—Telephone Register.

Starving to Death.

Because her stomach was so weakened by useless drugging that she could not eat, Mrs. Mary H. Walters, of St. Clair St., Columbus O., was literally starving to death. She writes: "My stomach was so weak from useless drugs that I could not eat, and my nerves so wrecked that I could not sleep; and not before I was given up to die was I induced to try Electric Bitters; with the wonderful result that improvement began at once, and a complete cure followed." Best health tonic on earth. 50c. Guaranteed by Chas. I. Clough, Druggist.

Bright Outlook for Normal School.

We are pleased to note that the summer session of the State Normal School at Monmouth, which will close in another week, has been very successful. The enrollment has reached 120, and many of the eminent educators of the state have taken part in the work.

The coming regular session, which opens September 26, promises a very large increase in the enrollment. With the added apparatus and new material for the various departments, and the renovation of the entire buildings, the school has a most promising outlook. The demand for the graduates of the Monmouth Normal is extending beyond the borders of the state.

Notice.

All persons who have purchased property from B. P. Hutchins' estate communicate with the undersigned and save expense. B. P. HUTCHINS, JR., 725 Hawthorne Avenue, Portland, Ore.

Agent Wanted.

Wanted, a man to sell in this field exclusively for one of the largest nurseries in the west. Cash advanced weekly. Address Washington Nursery Company, Toppenish, Washington.

Cheesemaker Wants Position.

Wanted, a position as Cheesemaker by an experienced hand. Have made cheese in Wisconsin for several years and can give good references.—Address David Von Allmen, Nampa, Idaho.

Tillamook Ferry for Sale.

I have three acres, with new boat and cable dock and privilege of ferry land on the opposite side of the river; also 10 acres of land on the opposite side of the river, with house and barn on the same land and four acres under dyke, which yielded this year 12 ton of hay. J. F. TOMLINSON.

Virtue.

"And Jesus said, somebody hath touched me; for I perceive that virtue is gone out of me."

There are thousands of men who are dilapidated, whose body is languid, whose brain is dull, and whose heart is faint, that are unconscious of the real cause, who have a morbid appetite for some stimulant to counteract their degeneracy. I have known men who could not eat enough to satisfy, no matter how much or how often they eat, they had a tape worm, but as soon as it was removed, their appetite became normal. It is first locate the disease, then find a remedy.

One of the greatest difficulties of conveying an idea is the different meaning of a word. The word heart is applied to one of the organs of the body, but it has always been used to represent the seat of affection either in love or hatred of lust or fear of belief and impulse. I claim that the leading cause of insanity originates in the heart.

We read of a heart of stone and a heart of flesh, that God looks on the heart, &c.

Our body is fed and clothed and cleansed from our infancy, our brain is developed and tutored from the time we are old enough to know the meaning of words, but our heart is left like the garden to grow up to weeds or whatever seed infects the ground, yet our very life is exemplified by the condition of our heart, by our heart we are to be judged for heaven or hell. I have often tried to interest the popular preacher with the importance of the heart. I always found that he had a lingo that had about as much significance as the jabbering of a monkey, but no practical experience.

Repentance is the only complete remedy, but here I differ radically with the popular meaning of the term. Why be sorry for anything that I can remedy otherwise?

Repentance is for the helpless and hopeless, and there are none more so than those who suffer from the bad effect of involuntary emission of virtue. Repentance is at will, we can harden our heart or we can relent and we make our choice. The hopeless maniac is always hard hearted, his heart is petrified and devoid of feeling.

The trouble with relying on stimulants is that the system soon becomes accustomed to habit. I have known men who used cocaine until they lost their reason, cured and return to its use and die from one tenth of the dose they had been accustomed to before. Stimulants deaden our sense of our condition, but repentance makes our sense acute, strong stimulants drive men to depravity. Repentance to God's mercy.

J. C. GOVE.

Pain from a Burn Promptly Relieved by Chamberlain's Pain Balm.

Mr. James N. Nicolais, a merchant and postmaster at Vernon, Conn., makes the following statement: "A little child of Michael Strauss was recently in great pain from a burn on the hand, and as cold application only increased the inflammation, Mr. Strauss came to me for something to stop the little one's pain. From the many liniments I carry in stock, I advised him to use Chamberlain's Pain Balm, and the first application drew out the inflammation and gave immediate relief. I have used this liniment myself and recommended it very often for cuts, burns, strains and lame back, and have never known it to disappoint." For sale by Chas. I. Clough's Drug Store.

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12 quarts Crescent Rye Whiskey	7.50	2.75
12 quarts Old Port Wine	3.50	1.25
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12 quarts Old Muscat Wine	3.50	1.25
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12 quarts Sianford 3A Rye	11.00	4.00
12 quarts Rainier 3A Bourbon	11.00	4.00
12 quarts Monogram O. P. S. Rye or Bourbon	12.00	5.00
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