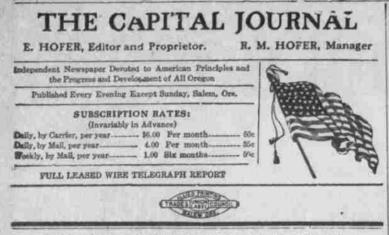
PAGE TWO



COMPLAINT THAT WE ARE A LITTLE SLOW.

At the Board of Trade luncheon, given E. P. McCornack upon his return, that gentleman gaveutterance to some criticisms. He said, in substance, "How Slow We Are, How Slow We

Are," to the tune of "How Dry I Am, How Dry I Am." He deplores the fact that no progress has been made in good

roads legislation since he left for his trip.

He expresses regret that nothing has been done to get public ownership of water since he left for his trip.

He deplores that while the people put up the money for a library site, nothing has been accomplished in that matter.

But in spite of all this Salem has made some progress, and is today the most promising city in the interior of the state.

It does a community good at times to jar it hard with a little cold, frozen truth.

CREATE A SPECIAL PARK FUND.

The Capital Journal has a suggestion to the gentlemen of the city council.

The city council seems to be composed mostly of men who are progressive, and want to see the city go ahead.

Now we all know this city in the future will need some public parks, and there is even talk of playgrounds for the children. Now there are a number of special lines of business that could

stand a higher license tax, and that would create a park fund.

The editor of this paper served as alderman for the short period of one year, and in that time he found one way to get money.

He got a bill through which made the banks city depositories and they pay two per cent on daily balances, a nice little income to the city.

There are many ways to get revenues on these lines, and there are business men who could create a park fund in this way.

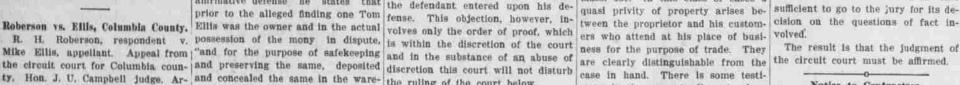
Come, gentlemen, rack your brains a little, that the pipe flowing into the cistern is bigger than the one flowing out.

SUPREME COURT PASSES UPON TREASURE

AFFIRMS DECISION GIVING OWN. owner was unknown; that the plain-TRUE OWNER.

R. H. Roberson, respondent v. possession of the mony in dispute, is within the discretion of the court ness for the purpose of trade. They Mike Ellis, appellant. Appeal from "and for the purpose of safekeeping and in the substance of an abuse of are clearly distinguishable from the the circuit court must be affirmed. the circuit court for Columbia coun- and preserving the same, deposited discretion this court will not disturb case in hand. There is some testity. Hon. J. U. Campbell judge. Ar- and concealed the same in the ware- the ruling of the court below. and submitted February 24, house of this defendant at Rainier, 1911. Dan. J. Malarky and E. B. Oregon, to which warehouse no one Seabrook, for appellant. W. H. other than said Tom Ellis and this that the court instructed the jury brother for whom he professes to act Powell, for respondent. Burnett J. Affirmed.

ERSHIP OF MONEY FOUND IN tiff is the finder, discoverer or owner objection that can be urged against 249; Loucks v. Gallogiy 23 N. Y. from this. WAREHOUSE TO PARTY FIND. or entitled to the possession of the the admission of this evidence is that Sup. 126; Lawrence v. State, 1 ING IT AGAINST ALL BUT THE money and denies that he agreed to it was properly rebuttal testimony Humph. 227; Kincaid v. Eaton, 98 circuit court were substantially corkeep the money for the plaintiff. For which should be heard only in case affirmative defense he states that the defendant entered upon his de-



DAILY CAPITAL JOURNAL, SALEM, OREGON, TUESDAY, MARCH 21, 1911.

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THE N. K. FAIRBANK COMPANY CHICAGO

he said that he had not. Witness then asked him if he had ever put any money away. He said he had not, and asked: "Why" Plaintiff told him he had found some money. Ellis then asked him how much he had found and where. Plaintiff did, not state the amount, but said he had found it in the warehouse. Ellis asked him how much he found; five or 10 dollars. Plaintiff answered: "Yes, I found that much all right enough; and he said 'Twenty dollars?' and I said there was \$20 all right enough, and that's all I said, and turned and walked away."

because he was not present at that on that ground was not admissable pleaded here, which is, in substance, the benefit of the owner, all because ant's warehouse. The defendant thus assumed to act as the agent or bailee Ellis as detailed by the witness goes, it tends to show an admission by fendant his agent for the purpose of the affirmative defense) the admission of the principal would certainly bind the agent and the doctrine of hearsay would not apply. The only Allen 548; State v. McCann, 19 Mo.

the result would be the same whether thereupon deposited the money with the plaintiff proved his allegation of the landlord to be given to the guest ownership by one means or the other. or returned to her if it was not the There are circumstances in the case property of the guest. It proved to from which the jury would be author- be not the property of the guest and ized to conclude that the property the court sustained the maid in her had been abandoned. The defendant action to recover the money from the alleges that he and his brother were landlord, holding, in substance, that the ony ones who had access to the the landlord owed no duty to anyone warehouse in question and there is not his guest and that the place of testimony tending to show that both finding, although in his hotel, condisclaimed any interest in the money | ferred no right in his favor as against in question. There is other testimony the chambermaid respecting property Rosin hardens and breaks the tending to show that many people lost by a stranger. The testimony is stored furniture and household goods abundant on the question of this in the warehouse and that roving money being treasure trove for, in steamboat hands and fishermen had the language of Danielson v. Roberts, access to it. The jury have conclud- 44 Or. 108, "It was money or coin washes woolens and flannels ed that some of these translent peo- found hidden or secreted in the earth

without the least danger of ple left the money there designedly or other private place, the owner beshrinking, and colored goods and having gone away to sea or to ing unknown." It seems to be the some distant part of this or another principle respecting treasure trove, country had found it inconvenient to owing to its peculiar nature of being return for the money and so had coin, that the present property is in abandoned it. It is possible to aban- the finder as against everyone but the don property anywhere, even in a true owner provided that the true warehouse, and it is only when noth- owner is unknown, and it matters not ing else is shown except the place of where or when the same is found, so finding that attention must be given that it is secreted in the earth or othto the distinction of its being found er private place. This court laid upon the ground instead of in some down this rule in the above case: place of deposit. Hence there was "The fact that the money was found testimony from which the jury might on the premises of the defendants, or have concluded that the property that the plaintiffs were in their serwas abondoned and so to instruct vice at the time, can in no way affect the plaintiffs' right to possession, or upon that question was not error. It is also urged by the appellant their duty in reference to the lost treasure." The defendant seeks to that the court below erred in overruling his motion for nonsuit at the avoid the effect of that case as apclose of the plaintiff's case on the plied to the case in hand by the fact ground that the plaintiff had not that the coin in question there had proved a cause sufficient to be sub- been in the place where found for a mitted to the jury. The question is, great length of time. This, however then; was there any evidence in the only affects the weight of the testicase which the jury had a right to mony concerning the circumstances consider? The defendant contends of the finding and the condition of It is claimed by the appellant that that the plaintiff was his employe and the money when found. There is testhat his taking possession of the timony in this case that the comb conversation it was purely hearsay money was in law and effect the de- cases in which the money was found fendant's possession. The allegation were mouldy and covered with dust,

against him. This contention leaves of the answer is. In substance, that indicating that the money had been out of consideration the defense the plaintiff was employed by the de- placed where found within no very fendant to remove from the ware- recent period. We cannot say as a that the defendant took the money house certain goods, wares and mer- matter of law how ancient the depofrom the plaintiff and retained it for chandles which the defendant had on sit must be in order to include it storage there. This was the scope of within the rule of Danielson v. Robthe money was found in the defend- the employment of the plaintiff. The erts or how recent it must be to take handling of the property of other it out of the operation of that decipeople not connected with the defen- sion. It is sufficient to say that there of Tom Ellis, whom he claims to dant was not in the line of the plain- is evidence on that question which have been the owner of the money, tiff's employment and would neither must be left to the jury as against So far as the conversation with Tom impose responsibility nor confer the motion for nonsuit. The case is distinguished from Ferguson v. Ray. privilege upon the defendant. The defendant also contends that 44 Or. 557, 77 Pac. 600, 1 L. R. A. (N. Tom Ellis that he was not the owner the money having been found in the S.) 477, 1 A. & E. Ann. Cas. 1, 102 of the money in question. If Tom warehouse of which he was the ten- Am. St. Rep. 648. That case was con-Ellis was the principal and the de- ant, that fact establishes a qualified cerning gold bearing quartz which property in the defendant as against had been mined and buried on the holding the money for the account of the plaintiff. In support of this con- property of the landloard who, when Tom Ellis, (which is the substance of tention he' cites sundry cases where nothing else was shown was declared customers casually left property in to be entitled to its possession as

such places as barber shops, stores against his tenant. The quartz was and banks. McAvoy v. Medina 11 not treasure trove, which alone would serve to distinguish that case Mass. 139. In this class of cases a rect. There was evidence in the case

quasi privity of property arises be- sufficient to go to the jury for its de-The result is that the judgment of

Children Cry for Fletcher's

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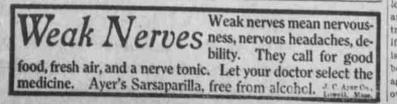
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Columbia County, Oregon on a visit "that on or about the 14th of May, and representative to care for and old rubbish from a certain old warehouse in Rainier, Oregon, he discovered and found in said warehouse 22 his property in Columbia County, gold coins of money of the coinage of Oregon. That during the absence fendant desiring to remove from value of \$10 each, which money had been lost prior hereto; that the own- said warehouse certain goods, wares er and loser of said money prior to and merchandise he had on storage there, hired and employed the plainthe date of the finding by plaintiff. tiff to remove the same gave plainwas at said date of finding, at all tiff access to said warehouse for that times prior thereto and at all times since has been unknown to the plainment the plaintiff took from its place tiff and all other persons whomsoever; that the plaintiff was and is the of deposit in said warehouse the said gold coins and delivered 21 thereof finder and discoverer of said money, to defendant. That at said time de- under an allegation of general ownand he is now and ever since the date fendant did not know who was the ership the plaintiff was entitled to of finding aforesaid has been the owner thereof, but, as the owner of owner thereof as such finder and disthe warehouse where said coins had upon the property in question, the coverer, and entitled to its immedibeen deposited and left, defendant ate possession; that on the same day retained the said coins for the benefit of finding of said money aforesaid of the owner thereof. That thereafthe defendant took and received from plaintiff 21 of said gold coins of ter upon the return of said Tom Ellis money of the value of \$210 upon the to Rainier, defendant discovered and learned that he, the said Tom Ellis, express understanding and agreewas the owner of said coins and de- 267. The history of how the plaintiff ment and not otherwise that defenfendant paid and delivered the same came to be the owner of the money dant would keep it for plaintiff until to said Tom Ellis, who has ever since called for by him, unless the loser and original and true owner thereof retained the same." should before such call be found and the answer. As the result of a jury in this action it cannot concern the claim said money; that the said loser and original or true owner of said trial there was a verdict and judg- defendant whether the plaintiff money has never at any time been ment for plaintiff for the full amount found or known by either the plain- claimed, from which judgment the of the rules relating to treasure trove tiff or defendant or any other person defendant appeals. or persons whatsoever." He further alleges in substance a demand upon of error relied upon by the defendant mous, or whether he makes out an the defendant for the return and re- is based upon the ruling of the court absolute ownership through the dispayment of the money, the defen- in admitting the testimony of the covery of abandoned property. If dant's refusal and the defendant's plaintiff about a conversation which the property is purposely abandoned continued wrongful and unlawful dehe claimed he had with Tom Ellis, in by the original owner thereof, it is tention of the money from the plain- substance as follows: After the re- restored to the common stock and aftiff in the sum of \$210.

turn of Tom Ellis from a trip away terwards becomes the property of The defendant denies the finding or from home, the witness asked him the one who first discovers and takes loss of the money; denies that the if he had ever lost any money, and It into his possession. If it is really

The reply denies the new matter in



The appellant further complains that both the defendant and his

laid down in Reinstein v. Roberts, 34

Or. 87. In that case it was held that

show that he had a chattel mortgage

condition of which was broken in

that the debt for which it was secur-

ity was overdue and unpaid. The

rule is also laid down in general

terms in Weeks v. Hackett 19 L. R.

A. (NS) 1201, 71 Atl. 858, 104 Me.

is evidential only, or a matter of tes-

timony, the allegations concerning

which might have been stricken out

or lost property, which the modern

Burnett, J.: The first assignment authorities make practically synony-

mony in the case tending to show

defendant had access. That a short about abandoned property as well as disclaimed any connection with the at the office of H. A. Johnson, clerk time prior to May 14, 1907, the said about lost property and he contends money in the first instance. More- of school district No. 24, Salem, Ore-In this case the plaintiff alleges Tom Ellis departed from Rainier, and that because the complaint alleges over it was a private place to which gon, for th erection of an addition that the money was lost the jury is the defendant alleges only he and his to the Salem high school building, 1907, while the plaintiff was engaged and before doing so appointed and precluded from the consideration of brother had access. These circum- according to plans and specifications in removing goods, merchandise and named this defendant as his agent abandoned property. However, it stances are sufficient to take the case prepared by F. A. Legg; architect. must be remembered that the gist of to the jury as against the contention Bids to close at 7:30 o'clock p. m., have the custody and control of all this action is in trover and to recover of the defendant that the money hav. March 25, 1911, and then publicly damages for the detention of the ing been found in his warehouse by Opened. A certified check of 5 per money in question in breach of the his employe would give the defendant cent of bids, made payable to the the United States of America of the from Rainier of said Ellis, this deties. To sustain the action it was money. The case is rather like the of the board, must accompany each incumbent upon the plaintiff to al- case of Hamaker v. Blanchard, 90 Pa. bid. Plans and specifications may be lege and prove some property in the St. 377. In that case a chambermaid had of the architect. money. In support of the allegation found \$60 on the parlor floor of the that he was the owner of the coin hotel in which she was employed. On reject any or all bids,

he would be at liberty to prove either reporting it to the landlord he said purpose. That during said employ- a general property or a special prop- perhaps the money belonged to a cer- 3-16-3t-eod erty within the meaning of the rule tain guest of the hotel. The maid



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lost property which has become sep arated from the' possession of the true owner without his knowledge or If it is treasure trove where money is secreted and found by another it becomes the property of the finder as against everyone except the true owner. For the purpose of this case