

MADAM SHERRY SATURDAY

ONE OF THOSE RARELY PERFECT COMBINATIONS OF HARMONY COLOR, MIRTH, MELODY, BEAUTY AND MORE THAN ALL ABSOLUTELY CLEAN.

On Friday morning at the box office of the Grand Opera House seats will be placed on sale for the engagement of "Madame Sherry," which comes to that playhouse on Saturday, April 8, and judging from the advance indications, there will be a long line waiting to secure admission. No production of recent years, whether musical or dramatic, has attracted so much attention from the playgoers as has "Madame Sherry," or scored such an emphatic success wherever it has appeared. It seems to be one of those rarely perfect musical comedies which occur once in a decade or longer, and the joyous combination of mirth, melody, unique ideas and original production has resulted in a performance that simply captivates the auditor from the rise of the curtain to the final strain. In New York "Madame Sherry" registered an unequalled triumph; in Chicago, it ran all summer to record-breaking attendance. It played to a succession of the largest and most brilliant audiences across the continent, and it has just closed a three weeks engagement at the Columbia Theatre, San Francisco, which will be long and pleasantly remembered by the playgoers of the Golden Gate City. The very same big production, complete in every detail, is coming here. And above all it is absolutely free from all the objections so often hampering French creations.

X-RAYS AND SMILES.

Colonel Roosevelt, in his speech here yesterday, took a fling at "the man who sat on a tobacco box at the corner grocery and tells us how everything ought to be run." And

yet the only difference between the tobacco box and a Pullman platform is one of degree.

The Democrats of Oyster Bay slipped one over on Teddy while he is out putting salt on the tail of the presidential nomination, and took his home town into the Democratic camp.

That was good advice the colonel gave the U. of O. students yesterday. He instructed them not to permit the referendum on the appropriation for that institution, but he forgot to tell them how to stop it.

With Harrison elected mayor of Chicago for the fifth time, and his father serving five terms before him, it looks as though the Tippecanoe habit in Chicago was chronic.

Joe Smon advocates a municipal paving plant for Portland, which, reading between the lines means that olly "Little Joe" is out for the mayoralty again.

A SUIT OVER A FIRE THAT GOT AWAY

Charging that a fire started by P. C. Larden on his farm, and which, because of his negligence in caring for it, spread to adjoining property, A. G. Kutner is today in the circuit court before Judge Kelly endeavoring to secure a judgment against Larden for the sum of \$4700 for damages in the destruction of buildings and also a portion of his crop and timber.

The fire occurred last summer. Larden, it seems, was burning some brush, and, as everything was dry, and a high wind blowing, the fire soon spread and got beyond his control. Fanned by the strong wind, it spread to adjoining property and threatened for awhile to sweep over the whole neighborhood.

Gets Large Judgment.
The jury this morning returned a verdict for the sum of \$2208.67 in favor of the plaintiff in the case of Wolf & Son against Houghton & Keber. This suit was brought to recover damages for the violation of a hop contract.

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MARION AND POLK COUNTY MAIL CARRIERS

The mail carries of Polk and Marion counties will assemble in the city Sunday and hold a convention. There will also be in attendance at the convention mail carriers from adjoining counties.

Wants Bids for Bonds.

The city of Willamina is calling for bids on \$15,000 10 and 20-year optional 6 per cent bonds, bearing dates of March 1, 1910, interest payable semi-annually. Bid to be opened April 10, 1911. For further information write F. E. Sherwin, city recorder. **F. E. SHERWIN, Recorder for City Willamina, 3-7-1mo**

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A Reliable Remedy CATARRH

Ely's Cream Balm is quickly absorbed. Gives Relief at Once. It cleanses, soothes, heals and protects the diseased membrane resulting from Catarrh and drives away a Cold in the Head quickly. Restores the Emission of Taste and Smell. Full size 50 cents, at Drug stores or by mail. In liquid form, 75 cents. **Ely Brothers, 23 N. Canal Street, New York**

OWNER OF CITY PROPERTY.

(Continued from page three.)

N. W. 932. As to the other defendants the decree of the circuit was correct. It appeared from the testimony that the plaintiff was the abutting owner on both sides of the streets where this improvement was being made, and it is settled past controversy in this state that the abutting owner is also the owner of the soil of the street in front of his lot to the center of the street, subject to the right of the city to improve the same for the purpose of travel: *Parker v. Taylor*, 7 Or. 435, 447; *Lankin v. Terwilliger*, 22 Or. 97; *Huddleston v. Eugene*, 34 Or. 343. Being the owner of the soil plaintiff did not become divested of his ownership by the mere act of the defendants in excavating it in order to improve the street: *Elliott, R. & S. (2 ed.) Sec. 692*; *Smith v. City Council of Rome*, 19 Ga. 89; *City of Aurora v. Fox*, 78 Ind. 1; *Makepeace v. Worden*, 1 N. H. 16; *Fisher v. City of Rochester*, 6 Lansing 225.

The weight of authority seems to be that the city is entitled to use the earth excavated from one portion of a street to make fills required upon the same street or upon other streets embraced in the same general plan of improvement. But in the case at bar the soil excavated was not so used, and under the charter of the City of Portland there cannot be a general plan of improvement embracing several streets. Each improvement must stand alone, be petitioned for separately, and be improved under a separate ordinance: *City Charter of Portland Sec. 375 (Sp. Laws 1903, 150)*; *Oregon Transfer Company v. Portland*, 47 Or. 1.

The evidence shows that 10,000 cubic yards of earth excavated from the street was disposed of for use on other streets and for the contractors' benefit.

Without discussing the somewhat conflicting authorities, we hold the law to be this: (1) That the abutting owner on a street in Portland owns the soil to the center of the street; (2) that he still owns it when it is excavated, unless needed for the improvement of the same street; (3) that he has a right to take it away provided he does so promptly and without delaying work on the improvement; (4) that if there is a place where it is as convenient for the contractor to dump the surplus dirt as to place it elsewhere, it is the right of the owner to have it dumped at such place if he so indicates at the commencement of the work; (5) that in view of fact that dirt taken from such excavations is usually

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valueless to the abutting owner, he should be deemed to have abandoned his claim thereto, unless seasonably made as indicated above; (6) that the owner cannot require the contractor at the latter's own expense to place the dirt at a distant or inconvenient place, in which even he must remove the dirt promptly himself.

In the case at bar the evidence shows that the plaintiff needed the dirt adjoining the very place where it was excavated and that he so notified the defendants. It further shows that the place indicated by plaintiff was the easiest and most accessible place upon which the surplus dirt could be dumped. The evidence also shows that it will cost plaintiff \$2500 to procure other dirt to replace that wrongfully taken by defendants and that such dirt could not then or since be obtained for less.

Under the circumstances the decree of the circuit court will be affirmed as to defendants Connelly and Scott & McDougal, and reversed as to the City of Portland, but as the city has seen fit to thrust itself into

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