

OREGON SUPREME COURT DECISIONS

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Brooks v. N. P. Ry. Co., Multnomah County.

John T. Brooks, respondent, v. Northern Pacific Railway Company, appellant. Appeal from the circuit court for Multnomah county. Hon. W. N. Gatens, judge. Argued and submitted March 22, 1911. Wm. A. Williams, for respondent. Omar C. Spencer, for appellant. Moore, J. Affirmed.

This is an action to recover damages for the delay occasioned by defendant's failure promptly to transport trunks and their contents. The complaint states in effect that defendant is a corporation engaged as a common carrier for hire between the places hereinafter named; that on or about April 8, 1908, plaintiff purchased from defendant a ticket entitling him to a passage over its lines of railway from Forsythe, Montana, to Billings in that state, from whence he had a ticket over such line to Butte Montana; that on April 8, 1908, at Forsythe, he paid to the defendant the necessary and proper charge required by defendant for transporting two sample trunks containing shoes and belonging to said plaintiff, and requested the agent of said defendant to check the said trunks containing said samples for transportation by next train from Forsythe, Montana, to Butte, Montana, but that said agent carelessly and negligently checked the said trunks for transportation to Billings; and that during all the times herein mentioned plaintiff was a traveling salesman for the Brockton Co-operative Shoe company, journeying at his own expense and receiving as compensation a commission on his sales; that he arrived at Butte on the morning of April 9, 1909, but in consequence of the defendant's negligence in checking his trunks they did not reach that city until late in the day of April 11, 1908, and could not be used in his business until the following morning; that his employment required of him a solicitation of business from patrons by exhibiting samples of shoes which he carried in such trunks and by reason of their non-arrival at Butte for three days he was deprived of their use for that period; that during that time he incurred expenses of board, lodging, etc., to the amount of \$16 and his services were reasonably worth \$20 a day, or \$60; and that in conse-

quence of such negligence he had been damaged to the extent of \$76, for which sum judgment was demanded.

The answer admitted the incorporation of the defendant and the business in which it is engaged, but denied all other averments of the complaint. The cause was tried without a jury and findings of fact and of law were made consistent with the averments of the complaint, except that plaintiff was deprived of the use of trunks and samples only two and a half days and his expenses during that time were at the rate of \$5 a day, and having rendered a judgment against defendant for the sum of \$62.50, it appeals.

Moore, J.: It is maintained that the complaint does not aver the giving of any notice to defendant's agent in Forsythe of the contents of the trunks when they were delivered for transportation, and such being the case, the pleading does not state facts sufficient to constitute a cause of action and an error was committed in basing a judgment thereon. It is not expressly alleged in the complaint that the baggage man was notified by plaintiff that the trunks contained shoes. The mere statement in the pleading of "sample trunks" does not necessarily imply that defendant's agent knew these receptacles contained anything more than plaintiff's personal baggage. *Rossier v. Wabash R. Co.*, 31 S. W. 1018.

It will be remembered that the term "sample trunks" as first used in the excerpt quoted is qualified by the phrase "containing shoes," and, as thereafter employed, the words "said trunks" are limited by the designation "containing said samples." The sufficiency of the complaint was not challenged by demurrer. Objections, however, were interposed to the admission of testimony tending to show that when the trunks were checked defendant's agent was notified that they contained shoes. When the averments of a complaint are tested by a demurrer, they are to be construed most strongly against the pleader, but on questions relating to the admissibility of evidence, all intentions are to be invoked in support of the allegations of the pleading. *Cederson v. Or. Navigation Co.*, 38 Or. 343. Measured by this rule,

though the averments of the complaint respecting these facts are quite informal, it is believed the pleading is sufficient, as its allegations were not contested by a demurrer. It was the duty of the railway company promptly to transport the trunks and if its agents, with knowledge of their contents, checked them, the defendant is responsible for the delay. *Oakes v. N. P. R. Co.*, 29 Or. 392; *Wells v. Great Nor. R. Co.*, — Pac. —. The complaint in the absence of a demurrer, being adequate as to the averments of notice of the contents of the trunks, no error was committed in permitting plaintiff to testify that he told the defendant's agent the sample trunks were filled with shoes.

The remaining question is the standard of indemnity for the loss which plaintiff sustained. The measure of a passenger's damages for a carrier's delay in forwarding his trunks is the value of the use of the property in the meantime. *Gulf, etc., R. Co. v. Vancil*, 21 S. W. 303; *Texas, etc. R. Co. v. Douglas*, 30 S. W. 487.

The plaintiff's testimony is to the effect that without samples he could not secure orders and that during his stay in Butte competitors were in the field, at which time and place his average commission would have been \$20.00 a day. The complaint alleges as special damages the expenses incurred by plaintiff on account of board and lodging for three days. He testified that he lived at Ocean Park, Washington, and that the delay postponed, to that extent his arrival home, and that while waiting for his trunks his expenses were \$15.00. If he were at his domicile it is possible that his living expenses might have been less than at a hotel, and as he was required to pay the cost of his meals at his residence it would seem that he is entitled to recover the difference between such cost and the sum paid out at Butte as expenses. But however that may be, the difference is not disclosed by the testimony and as the court did not allow the sum demanded, we believe no prejudicial error was committed in awarding the \$12.50 for that purpose.

Other errors are assigned, but deeming them unimportant, the judgment is affirmed.

To Cure a Cold in One Day.
Take **Laxative Bromo Quinine Tablets.** Druggists refund money if it fails to cure. E. W. Grove's signature is on each box. 25c.

Baker has started a whirlwind campaign to raise \$45,000 for a Y. M. C. A. building.

STARTING THE RACE FOR PRESIDENT

LA FOLLETTE IS NAMED AS FIRST CHOICE OF PROGRESSIVES, WITH OUR JONATHAN BOURNE NAMED AS BEING GOOD PRESIDENTIAL TIMBER.

[UNITED PRESS LEASED WIRE.] Chicago, April 17.—"La Follette for president" is the slogan of a movement started here today by the Illinois branch of the National Progressive Republican League, which is being fathered by Alderman Merriam.

Others mentioned for endorsement by the league, in case La Follette finally proves to be unavailable timber, are Senators Bourne, of Oregon; Cummins, of Iowa, and Bristow, of Kansas.

It is reported that behind the movement is Charles R. Crane, who was appointed minister to China by President Taft, and was afterwards "turned down" because he "talked too much." Crane is said to be willing to spend big money to prevent Taft's re-nomination.

STATE NEWS.

The fare from Portland to the Dalles has been cut by the steamer Teal to 50 cents. She makes three trips a week, while the regular line runs a daily boat, and charges \$1.00.

A hundred men quit work on the Medford hotel building Saturday, on account of the employment of non-union labor.

Culver Junction is now on the railroad map, passenger trains commencing the run to that point Saturday.

Nine steamships arrived in Portland Sunday—one a 10,000-tonner.

The boss trout caught in an Oregon stream this year was landed by Jack Sweasey, auditor of Walla Walla county, Wash., Sunday. It measured 24½ inches.

Bedrock has been found on a new damsite for the Umatilla reservoir project, about a mile above the old site.

East Portland is to have a grand spring jubilee April 24, with all kinds of free amusements.

THE OPEN FORUM

The Capital Journal invites Public Discussion in This Department—Let Both Sides of All Matters Be Fully Brought Out—It Is Not the Purpose of This Newspaper to do the Thinking for Its Readers.

A Word for Mr. Lafky.

Ed. Journal: You have several correspondents who referred to Alderman and School Director Lafky, but none have done the gentleman justice. I am a neighbor of his, and will say that he is one of the hardest workers in the city. He is putting in more time on our city and school district affairs than any man we ever elected. He has mastered all the details of the water problem. Mr. Lafky is a good engineer and surveyor, and has showed up the reports of the engineers, who appraised the water company's plant, and he has found a number of mistakes and made corrections in their report. Mr. Lafky is not a lawyer, but he knows enough law to be able to show weak places in the ordinance that is before the city council to buy the property. He has a great deal of experience in farm real estate, and in the hearing before the council has been best able to show several weak places in the title I understand that some of the lawyers overlooked. Such a man, giving his time free gratis, is valuable to the city, not for what is accomplished, so much as for blocking bad work by others, who are paid for their work. We will always be under great obligations to Mr. Lafky if half his abilities are not recognized as they should be. I see no talk about including him in the recall of the school board that is threatened. He is too careful a man to get caught. He has not accomplished much, on account of the stubbornness of some of his associates on the council.

THIRD WARD.

THE TWO COUNTRIES CONTROL WORLD'S PEACE

[UNITED PRESS LEASED WIRE.] New York, April 17.—"The relations between Great Britain and the United States is the real key to the peace of the world," Sir Joseph Ward, premier of New Zealand, who is en route to London to attend the imperial conference and the coronation of King George, said today.

WEAKNESS OF THE MEXICAN GOVERNMENT IS SHOWN BY ITS CALLS FOR VOLUNTEERS, AND ITS PROMISES OF BIG PAY

[UNITED PRESS LEASED WIRE.] Mexico City, April 17.—Indications that the rebellion against the Diaz regime is growing beyond the control of the government is seen here today in notices posted calling for volunteers. All men between the ages of 18 and 45 are called to the colors. They are offered the high pay (for Mexico) of 1 peso (50 cents) a day, besides clothing and equipment.

The call is prompted, it is said, not alone by the activity of the revolutionists near the American border, but by the smaller uprisings all through the country.

OFFERING BIG PAY FOR SOLDIERS

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The Doctor's Question

MUCH SICKNESS DUE TO BOWEL DISORDERS.

A doctor's first question when consulted by a patient is, "Are your bowels regular?" He knows that 98 per cent of illness is attended with inactive bowels and torpid liver, and that this condition must be removed gently and thoroughly before health can be restored.

Rekall Orderlies are a positive, pleasant and safe remedy for constipation and bowel disorders in general. We are so certain of their great curative value that we promise to return the purchaser's money in every case when they fail to produce entire satisfaction.

Rekall Orderlies are eaten like candy, they act quietly, and have a soothing, strengthening, healing influence on the entire intestinal tract. They do not purge, gripe, cause nausea, flatulence, excessive looseness, diarrhoea or other annoying effect. They are especially good for children, weak persons or old folks. Two sizes, 25c and 10c. Sold only at our store—The Rexall Store, J. C. Perry's.

Try a Journal Want Ad.

CAVALRY ARRIVES AT DOUGLAS, ARIZONA

Washington, April 17.—Reports to the war department that troops D and L of the First cavalry had arrived at Douglas, Arizona, were received today. Troops K and T of the same regiment are due there before night.

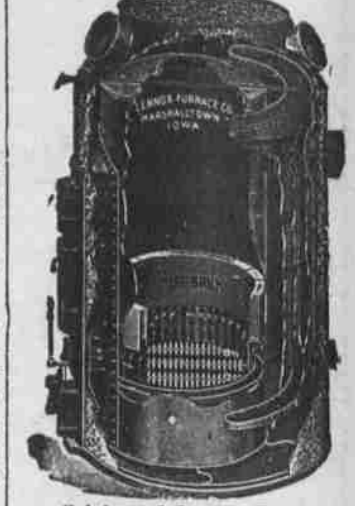
CASTORIA

For Infants and Children. The Kind You Have Always Bought Bears the Signature of *Chas. H. Watson* Get it at Dr. Stone's Drug Store

Salem Fence Works

Headquarters for Woven Wire Fencing, Hop Wire, Barb Wire, Poultry Netting, Shingles, Malthoid Roofing, P. & B. and Ready Roofing, Screen Doors and Adjustable Window Screens. All at the lowest prices.

CHAS. D. MULLIGAN
250 Court street. Phone 114



The Best Heater

It will save you money every day you own it. I sell and install the best. Let me give you figures.

See Me

About an individual lighting plant for your home. The best thing in the market for cooking and lighting.

A. L. Frasier
Phone 135. 25A State Street

"RICHMOND" THE NEW ADDITION

WILL Open about April 24. The best yet. Sewer Assessments Paid. Streets Graded. Cement Sidewalks Laid. 15-Minute Car Line. Lots from \$300 to \$475 on Easy Terms: \$10.00 Down and \$10.00 a Month. Beautiful Building Sites, or Good Investments. This Tract is High and Dry. Building Restrictions, \$1,200. South of State Street, between 22nd and 24th. Go out and see it. The Streets are being Graded now.

THE OREGON REALTY CO.,
MILLS & GRABENHORST, Are the Agents, 275 State Street