OREGON SUPREME COURT DECISIONS

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State of Oregon, respondent, v. J. page, deputy district attorney, and legal custody of such original." Cameron, district attorney, and J. J. Fitzgerald, deputy, on brief) for respondent. McBride, J. Affirmed.

Defendant was convicted or the Hassing, his wife. The defense, so far is disclosed by this appeal, was in-

The defense offered in evidence a mmunication from the chief alienist the public insane hospital near Aarhus, Denmark, which appears to be a reply to an official letter of inquiry from the ministry of foreign affairs Denmark. This communication states that it is disclosed, from the ecords of the asylums and from the family history of these persons, com-piled from the above sources, are ized. The Ministry of Foreign Affairs, Copenhagen, January 27, 1911. For the Minister, H. A. Bernhoft," with seal of state attached. Accompanying this document is a certifi-cate of the Danish minister to the United States, which is as follows:

It is hereby certified that in Denmark registers of birth, marriage and death are kept by pastors of the Dansh Lutheran church, who are state officers; that transcripts of parish registers serve as certificates of birth. narriage and death; that the insane asylum near the city of Aarhus is a state institution, and that the chief alienist is keeper of asylum records. It is finally certified that legalization made by the Danish ministry of for-

tified that he became acquainted with house to listen to murder trials where the defense was insanity; that in his judgment he was sane. The state also the weight of authority is against the called J. C. Tally, jailer, who had doctrine that a defense of an irreststate in charge of the prisoner for ible impulse to kill can be upheld in nearly four months. He testified that any case where there exists sufficient mentality to know the wrongfulness of the act.

The mast assignment to the testimony of the testimony of the witnesses Nicholson and Tarly, the first of whom had seen him the first of whom h

can find the accused guilty you must if he did commit it, and sufficient capacity to be conscious that the said sufficient will power and self-control to restrain himself from the commission of such act, and unless you so find beyond a reasonable doubt in this case, you must find the defendant not guilty

You are instructed that in order to convict a person of a crime, he must have a memory and intelligence ject to punishment and reason and will be sufficinet to enable to compare and choose between the supposed ad- the law vantage and gratification so obtained, by the criminal act and the immunity from punishment which he will secure by refraining from it and having so

you must not find him guilty."

state v. Hassing, Mulinomah County, ments shall be proved "by the original or by a copy certified by the legal keeper thereof, together with a State of Oregon, respondent, v. J. legal sceper thereof, together with a M. W. Hassing, appellant. Appeal certificate under the great or principal the circuit court for Multnomab cipal seal of the country or sovereign thereof, that the document is a valid

No such certificate appears upon the copy offered in evidence nor does the communication purport to be a copy of any original document but a sumcrime of mirder in the first degree, mary of the history of certain mem-committed upon the person of Edith bers of the Hassing family, compiled partly from the records of the asylum, partly from journals of the family, and partly from oral statements

arising from mental disease or from "sudden and sufficient provocation." ournals of the Hassing family, who and one which springs from anger and been placed there, supplemented or a wicked and furious desire for and one which springs from anger had been placed there, supplemented with details from certain relatives of the Hassings, that certain relatives of defendant, both in the direct and collateral line, had been insane and confined in the asylum. The names and distinguish between right and wrong. Sec. 2408 L. O. L. is as follows: piled from the above sources, are given in the communication. It has indorsed upon it the words: "Legalincapable of knowing the wronfgulness of such acts, forms no defense to a prosecution therefor." The intent of this statute is to establish a conof this statute is to establish a con-clusive presumption that a person having sufficient mentality to know that an act is wrongful and unlawful is capable of governing his conduct by that knowledge, and of resisting one impulse to violate the law any impulse to violate the law.

The only case in which our law recognizes any irresistible impulse to kill is in Sec. 1897 L. O. L., which

provides: "If any person shall, with-

out malice, express or implied, and without deliberation, upon a sudden heat of passion, caused by a provoheat of passion, caused by a pro-cation apparently sufficient to make the passion irresistible, voluntarily kill another, such person shall be state objected to the introduction of ocaten and abused his wife, and, in these documents and they were exone instance, driven her from home; cluded. This ruling is assigned as that he had been arrested for threatering.

To rebut certain evidence offered ise to leave her alone had been alby defendant as to his insanity, the lowed his liberty; that, upon her restate called Fred Nicholson, who tested at a dark correct with the lowest first to again live with him, he waited at a dark corner and after she had tion, and a knowledge of its wrongthe defense was insanity; that in his fulness. Independent of the statute,

sed:
"You are instructed that before you ceives the moral quality of his acts, opinion respecting the mental sanity of find the accused guilty you must is unable to control them, and is urged of a person, the reasons for such find from the evidence and beyond a by some mysterious pressure to the reasonable doubt, that he had sufficement mental capacity to distinguish of which he anticipates but cannot between right and wrong as applied avoid. Whatever medical or scientific to the act he was about to commit.

The November witness to know something of the consequences what indefinite, but it should certainly extend far enough to enable the witness to know something of the consequences. the rule of responsibility, in cases of the trial court, and the rule suggested would be the cover ber and understand and to know if notion of an irresistible impulse to when his testimony was objected to, be commits the acts he will be subcommit it, where the offender has the district attorney said: "I don't mus Neumayon to the district attorney said: "I don't must never the district attorney

duty in respect to it, has no place in intimate acquaintance to permit him In State v. Knight, 85 Me. 467, the the state can introduce the same court in an exhaustive opinion reput character of evidence." The court diste the theory of an irresistible impulse associated with a capacity to mitted." The district attorney repulse associated with a capacity to mitted." The district attorney re-discern right from wrong and quote marked: "If it is understood that tescontrolling power to restrain himself with approval from Dr. Hammond as timony on the same line may be offrom committing it, and unless you follows: "Although not a test of infered by the state," to which counsel find that all these elements concurred sanity, the knowledge of right and for defendant answered: "Certainly, in the commission of the act alleged wrong is a test of responsibility. * * * we could not help it." This practiby the defendant, if he did commit it, Any individual having the capacity to cally amounted to a stipulation, that know that an act which he contem- testimony of the character then being The refusal to give these instruc- plates is contrary to law, should be discussed could be admitted, and the tions is assigned as error. tions is assigned as error. deemed legally responsible and should testimony of the two witnesses above McBride, J. There was no error in suffer punishment. He possesses what the ruling of the court, rejecting the is called by Bain punishable. " " their qualifications being as great or

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It is sold by medicine dealers everywhere, and any dealer who hasn't it can get it. Don't take a substitute of unknown composition for this medicine or snown composition for this medicine or snown composition for this medicine or snown composition. No counterfeit is as good as the genuine and the druggist who says something else is "just as good as Dr. Pierce's" is either mistaken or is frying to deceive you for his own selfish benefit. Such a man is not to be trusted. He is trifling with your most priceless possession—your health—may be your life itself. See that you get what you ark for.

the individual from understanding the consequences of his act, and the existence of a delusion in regard to a matter of fact which, if true, would ustify his act.'

In People v. Hoin, 62 Calif. 120, the court, quoting from Baron Bramwell, But if an influence be so powerful as to be irresistible, so much the more reason is there why we should not withdraw any of the safeguards tending to counteract it. There are three powerful restraints existing, all tending to the assistance of the person who is suffering under such an influence—the restraint of religion, the restraint of conscience the restraint of law. But if the influence itself be held to be a legal excuse, rendering the crime dispun-ishable, you at once withdraw a most powerful restraint—that forbidding and punishing its perpetuation'. We must, therefore, return to the simple question you have to determine-did the prisoner know the nature of the act he was doing; and did he know he was doing 'what was wrong.' conclusion the court say: "Whatever may be the abstract truth, the law of members of the family. It was clearly inadmissible,

The instructions requested were reasoning powers—including the capture and

by a large majority of the courts of the United States, including Oregon:
State v. Murray, 11 Or. 413; People v. Hoin, supra; Mackin v. State, 59
N. J. L. 495; State v. Miller, 111 Mo. 542; Ford v. State, 73 Miss, 734; State v. Miller, 111 Mo. State, 59
N. Hoin, supra; Mackin v. State, 59
N. J. L. 495; State v. Miller, 111 Mo. on the property directly benefitted by the construction of said sewer.

This notice is published for ten, State, 34 Tenn, 106; Flanagan v. People, supra; State v. Mowry, 37 Kan. and the date of the first publication said stewer and other valuable articles stolen. In this case said sewer, end that the entire away, for they did not take several things of value which were at hand. Thursday night the home of Ralph S. Vance was entered and quite a little clothing stolen. Entrance was gained by forcing the woodshed door on the date of the first publication said sever, and hereby referred to for a more detailed description of the robbers were evidently scared away, for they did not take several things of value which were at hand. Thursday night the home of Ralph S. Vance was entered and quite a little clothing stolen. Entrance was gained by forcing the woodshed door and although several people were and thereby referred to for a more detailed description of the robbers were evidently scared away, for they did not take several things of value which were at hand. Thursday night the home of Ralph S. Vance was entered and quite a little clothing stolen. Entrance was gained by forcing the woodshed door and although several people were evidently scared away. State, 44 Fla. 32

The foregoing list does not by any 1911 means exhaust the authorities holding to the theory that a knowledge of right and wrong as to the particular act charged is the proper test of legal responsibility. On the other hand a few courts have admitted with some reservation the theory that an uncontrollable impulse, superinduced by nental disease, even though accompanied by capacity to distinguish between right and wrong, is a defense

the passion irresistible, voluntarily by his ancestors and no one can elude, street between blocks 2, 3 and 4 and block 1 another, such person shall be deemed guilty of manislaughter." This of proper Danish authority.

"Minister of Denmark to the United States.

"Washington, D. C., March 8, 1911." And also a certificate of P. C. Knox, secretary of state, as to the official character of the Danish minister. The state objected to the introduction of these documents and they were excluded. This ruling is assigned as error.

To rebut certain evidence offered by his ancestors and no one can elude, by his ancestors and no one can elude, street between blocks 2, 3 and 4 and block 1 and certain acreage property in the pleasant Home Addition to the jury in the general charge, and the subject that these writers and the judges who have adopted their opinions, have deatt with man's moral responsibility of the case was fully presented that these writers and the judges who have adopted their opinions, have deatt with man's moral responsibility of the city of Salem, Oregon; also along the city terminable. While one of the inci-dental objects of the law is to reform (10) days by order of the common People" is an interesting novelty. defendant about two weeks before the fallen in an attempt to escape from offenders, where they are reformable, shooting; that he was with him about him, shot her to death and afterwards its principal object is to protect so three times a week for two weeks expressed satisfaction at the deed. The and talked with him on all kinds of selection of the place, the instrument subjects; that, at his suggestion, he and the time to consummate the act came twice with him to the court showed deliberation and premeditathe right and avoid the wrong.

defendant did not act differently from other prisoners and expressed the opinion that he was sane. The admission of this testimony is also assigned as error.

The court was requested by defendant proceeds upon the theory that dant's counsel to give the following instructions, both of which were residual and unitary to know the wrongfulness weeks before the crime and talked with him on a great variety of substent on two occasions, at his jects, and on two occasions, at his jects, and on two occasions, at his got some of Foley's Honey and Tar court house to listen to criminal trigour the following the following instructions, both of which were residual and unitary to know the wrongfulness weeks before the crime and talked with him on a great variety of substent or coughs and colds. I got some of Foley's Honey and Tar court house to listen to criminal trigour the following the following the following instructions, both of which were residual to know the wrongfulness of the crit.

The court was requested by defendent and unitary to know the wrongfulness which him on a great variety of substent to coughs and colds. I got some of Foley's Honey and Tar court house to listen to criminal trigour the court have the court have the court have the court hav deranged that a man, though he per- an "intimate acquaintance" to give his it has not been accepted by courts of habits, temperament and general men-law. The vagueness and uncertainty tal characteristics of the party whose of the inquiry which would be op-ened, and the manifest danger of in-inite term, the admission of such tes-troducing the limitation claimed into timony is largely in the discretion of

the rule suggested would be the cover In addition to this, defendant had gruesome story of a friend of his for the commission of crime and its called a witness having less intimate who was "Buried Alive by a Lion." ability to discover his legal and moral think he has shown a sufficiently to testify, but I have no objection if communication of the chief alienist of The only forms of insanity which, in greater. Counsel cannot induce the insane asylum to the Danish min-my opinion, should absolve from recourt to adopt an erroneous rule of istry of foreign affairs. Section 766 sponsibility * * * are such a degree of L. O. L. requires that as foreign docu-idlocy, dementia, or mania as prevents tates against him. If he makes it the law of the case, he must abide the consequences: Trickey v. Clark, 50

Counsel for defendant has adverted to the sad consequences and injustice of executing a man in defendant's mental condition, but the jury has found that he knew right from wrong, and understood the nature and quality of the act, and we must assume, the absence of error by the court that they found correctly. The duty of condemning any human being to suffer the extreme penalty of the law is one which every court approaches with regret. But if the prayers of his innocent and helpless wife were not ufficient to prevent the defendant from sending a bullet through her brain, as she lay fallen and defenseess before him, no mere considerations of sympathy or pity ought to away a Cold in the Head quickly. Restorms induce the ministers of justice to bend the Senses of Taste and Smell. Full size

the law to spare him.

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Notice of Intention to Construct

Oregon, deems and considers it nec-essary and expedient, and proposes to construct a sewer to be known as "Lateral Sewer District No. 4." and The instructions requested were properly refused. They present the "Irresistible Impulse" doctrine at its very worst, and entirely ignore the difference between an impulse to kill, disease or from the difference between an impulse to kill. can courts."

plans and specifications adopted for the power to discriminate between the same, and on file at the office of

thereof is the 24th day of October ..

Notice of Intention to Construct a Sewer to Be Known as "Lateral Sewer District No. 2."

Notice is hereby given that the very striking common council of the city of Salem, ion of Gold" Oregon, deems and considers it necessary and expedient and proposes to Mr. Schooling bases his article on a construct a sewer to be known as single cent placed out at five per champion of this theory, remarks:

"There is a destiny made for a man by his ancestors and no one can elude,

offenders, where they are reformable, council of the city of Salem, Oregon, its principal object is to protect so- and the date of the first publication thereof is the 25th CHAS. E. ELGIN, City Recorder.

Though we may never have lost any, most of us are looking for money

The November Wide World Magn-

zine. The Wide World magazine for Noember contains a number of interesting articles and stories dealing with different parts There is a fully illustrated paper on "The Troglodytes of Dieppe," on "Wild Boar Hunting in New Zealcrime, may well cause courts to i with opinion that the testimony admitted before assenting to it. Indulgence in is within the rule announced in State evil passions weakens the restraining v. Murray, 11 Or. 413; and State v. Captain G. D. Haigh, late of the Matabach and conscience; and Hansen, 25 Or. 395. E. D. Burrowes describes "On the Trail of the Shovel-Nosed Shark" and Dr. Maximus Neumayer continues the account of his life "Among the Indians of Bolivia." "The Trials of a Tender-foot" is amusing and "The Story of mander J. Macnab, full of mystery Altogether the contents Wide World are of the November fully up to the mark and continue to bear witness to the undoubted fact that "Truth is Stranger than Fic-

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TEAM LOSES ZIMMERMAN

University of Oregon, Eugene, Oct 27.- In debate circles at the university, great anxiety is felt over the failure of Howard Zimmerman, s former Salem boy, to turn out for debate. Owing to his Y, M. C. A. work and his studies. Zimmerman has refused to participate this year Zimmerman last year was a mber of the debating team that won the championship of the Pacific Coast, defeating both Washington and Stanford. Both of these colleges are after Oregon's scalp strong this Notice is hereby given that the common council of the city of Salem, bregon, deems and considered in debate during the coming the common council of the city of Salem, bregon, deems and considered in debate during the coming the common council of the city of Salem, bregon, deems and considered in debate during the coming the common council of the city of Salem, bregon, deems and considered in debate during the coming this season, and the Oregon students are

SYSTEMATIC BURGLARY GOING ON IN SALEM

That there is a systematic band of robbers operating in the city is little doubted by those who have been in close touch with the police departday the home of Mr. Ross Moores was entered some time in the evening or right and wrong, as a test of crim-inal responsibility, has been adopted and specifications are hereby referred quantity of silverware and other val-

were awakened

Police Chief Hamilton and Officer CHAS. F. ELGIN City Recorder. Burkhart are working on the cases, 10-24-11t and although there is but little to go on they hope to apprehend the felons in the near future

> The November Strand Magraine. The November Strand very striking article entitled "A Vis by the well-known English statistician, John Holt Schooling be found in Dickens' works. The "Character Studies of Well Known

Kicked by a Mad Horse. Samuel Birch, of Beetown, Wis., had a most narrow escape from losing his leg, as no doctor could heal the frightful sore that developed, but A Household Medicine that Gives at last Bucklen's Arnica Salve cured

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\$80 Per Acre

The west half of the place, 160 acres, which includes the improvements, at

\$90 Per Acre

The east half, 175 acres, which is fine clear land, but unimproved, at

\$75 Per Acre

There is no better land than these two pieces in the valley, and these are bottom prices.

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