

OREGON SUPREME COURT DECISIONS

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Bayne v. Brown, Marlon County. Decided October 24, 1911.

John Bayne, appellant, v. J. P. Brown, respondent. Appeal from the circuit court for Marlon county. The Hon. Wm. Galloway, Judge. Argued and submitted October 11, 1911. C. L. McNary for appellant. Grant Corby for respondent. Eakin, C. J. Affirmed.

This is a suit to quiet title to a strip of ground lying immediately south of property conveyed to plaintiff by Mrs. Strang and being in lot 7, block 16, of the city of Salem.

Eakin, C. J. Prior to 1890, Mrs. Strang owned lots 7 and 8 in block 16, and about that time she sold and conveyed to the grantors of defendant lot 7, except a tract off the northeast corner thereof, 76 feet long, east and west, by 24 feet wide, north and south; and about February 11, 1908, she sold and conveyed to plaintiff lot 8, and also said portion of lot 7, 24 feet by 76 feet, described by metes and bounds. About the year 1890, defendant's grantor, John Hughes, erected a fence a little south of the north line of his property. Mrs. Strang has been absent from the state of Oregon continually since this fence was built, and the property has been rented for her by Mrs. Small to various tenants for residence purposes, except the last three years it was owned by her. Mrs. Small says she never knew anything about the fence as long as she was agent for the premises. Some of the tenants considered the fence to be on the line between the property of Mrs. Strang and the defendant, and occupied the lot up to the fence as they desired—

one cutting the grass up to the fence; one planting flowers against the fence in places; and one having a chicken yard extending to the fence at the east end of the lot. But it does not appear that Mrs. Strang was ever in possession of the disputed ground or ever claimed to own it or authorized her tenants to do so, and she did not convey or transfer it to plaintiff. The fact that the defendant's grantor erected the fence within his own ground, either by mistake or intentionally, does not constitute an abandonment of the land outside the fence. It was not a line or partition fence. Plaintiff's grantor had no interest therein and could not acquire title to the ground north of the fence, except by adverse occupancy for ten years under a claim of title.

It is said in Talbot v. Smith Security & Saving & Trust Co., 56 Or. 117, "If, by mistake, Watson or Beal built a fence which either supposed to be on the south line of his land, he is not thereby precluded from now claiming land outside of the fence in the absence of adverse occupancy thereof by plaintiff for ten years under a claim of title."

It is the adverse possession under the title, and the fence becomes material only when it is an element of a claim of ownership that establishes

the possession. Mrs. Strang made no use of the fence and her adverse possession must be established independently of it. It is true that the possession of the tenant may be the possession of the landlord, but the tenant cannot, without the direction or even the knowledge or consent of the landlord, effect a disseizin in his favor or originate adverse possession. A strong showing should be required to establish adverse possession of a portion of a city lot not occupied by buildings, as in such cases the boundaries of the lots are seldom conspicuously marked, and lines are not closely drawn until occasion arises to determine them accurately, and unless mutually agreed upon or possession taken by barriers erected, the owner should be presumed to occupy to the true line. There can be no taking of occupancy or possession as an element of title by adverse possession until there has been a disseizin and the adverse possession originated under a claim of ownership. In this case there was no disseizin or adverse occupancy or claim of ownership by Mrs. Strang, nor any transfer to the plaintiff by her. Therefore, plaintiff has no title to the ground other than that described in his deed.

The decree is affirmed.

COTTON CROP HURT. [UNITED PRESS LEASED WIRE.] St. Louis, Nov. 3.—With the mercury down to the freezing point at daybreak in nearly all or the cotton belt of Texas, it is predicted today that the cotton crop, which promised to be large, will be killed. A cold accompanying the drop in temperature was a heavy fall of snow, which was general in Texas, Oklahoma and Kansas. In northwest Texas the snow is six inches deep. At Tulsa and other Oklahoma points the temperature dropped suddenly to 24 above. Twenty above zero is reported at lower Ohio valley points.

TO QUICKLY CHASE AWAY WRINKLES (From Fashion Review.) The surest and quickest way to obliterate wrinkles of every description, from the finest lines to the deepest furrows, is by means of the saxolite formula, about which we've heard so much of late. Bathing the face and neck in the lotion at once tightens and tones up the skin, affecting every wrinkle, as well as creased or saggy tissue about the cheeks, neck or chin. Any druggist can supply pure powdered saxolite, which is most effective. Dissolve an ounce of this in a half pint of witch hazel, and you have as perfect a solution as any expert can make.



"HUMAN HEARTS" AT THE GRAND TUESDAY.

"HUMAN HEARTS" THE NEXT PLAY AT THE GRAND

To be transported from the strife of town to the atmosphere of the hill country, with its simple, honest people pursuing their lives of affection and trust, is in itself a refreshment. To hear the singing of the birds and those other sounds with the farm, to hear and see all things that flood the memory with pleasant experience and excite the imagination to a realizing sense of the poetry of common things, is not only a relief from the cares of the day, but a renewal of the better side of nature. In the realistic melodrama "Human Hearts" the scenes, which are chiefly among the hills of Arkansas, is found a power to charm that is marvelous. Everything has its purpose, and furthers the main intention of an all-absorbing story of love, hate, injustice and retribution. The play engages the sympathies for the sufferings visited on a family of plain, honest people, through the unfortunate marriage of the hero with an adventuress whom he thought to reform, but failed; the temptation of the old life proving too strong for her. The dark side of the story is well balanced with humor, adroitly introduced and made a necessary element in the action. To detail the plot would be to rob the readers of the pleasures of its surprises, for, like "Shore Acres" and "The Old Homestead," "Human Hearts" while on a different theme, throbs with interest true to nature, and is an ever-welcome visitor to the discriminating and thoughtful spectator. That its production will be welcomed by an overflowing house is almost a foregone conclusion. At the Grand Tuesday, Nov. 7, Seats on sale Tuesday at 9 a. m. Prices, 25c, 50 and 75c.

CANDIDATES NUMEROUS FOR THE PLACE

District Attorney John H. McNary having announced that he would not be a candidate for re-election, attorneys in the counties in the third judicial district are grooming themselves for the place, every county presenting one or more candidates, and the fight for the nomination promises to be a hot one. Among the candidates who will be in the field are Gale S. Hill, of Albany; Walter C. Winslow, of Salem; Walter E. Keyes, of Salem; and R. L. Connor, of McMinnville. All of these but Keyes are deputies to District Attorney McNary, and Keyes acted in that capacity for some time, retiring to take the position of city attorney of Salem. Each of the candidates has a certain acquaintance over the district, which includes Marion, Linn, Yamhill, Polk and Tillamook counties, this district being identical with the third judicial district. From interest, which is already being shown and from the fact that each of the candidates has a large number of friends the fight promises to be one of the strongest ever waged for the position in this district.

USE SAGE AND SULPHUR AND HAVE HEALTHY HAIR

What a pity it is to observe so many people with thin and faded hair and then realize that the most of these people might have a fine, healthy head of hair if they would but use the simple "sage tea" of our grandmothers, combined with other ingredients, for restoring and preserving the hair. No one, young or old, need have gray hair, weak, thin or falling hair, dandruff or any trouble of the sort if they would but use Wyeth's Sage and Sulphur Hair Remedy. On the contrary, it is possible to have healthy, vigorous hair, of perfect color, by a few applications of this remarkable preparation.

Wyeth's Sage and Sulphur Hair Remedy quickly removes dandruff, leaves the scalp clean and healthy, promotes the growth of the hair and restores the natural color of the hair which has become faded or gray. It is a clean, wholesome dressing, which may be used at any time and with perfect safety. Don't neglect your hair. Start today with Wyeth's Sage and Sulphur. This preparation is offered to the public at fifty cents a bottle, and is recommended and sold by all druggists. Special Agent, J. C. Perry.

NEARLY SIX MILLION CASES OF CANNED SALMON

[UNITED PRESS LEASED WIRE.] Seattle, Nov. 3.—The present has been the best year the canned salmon industry has ever known. The pack is three-quarter of a million cases larger than in any previous years and prices have been highest. Packers estimate the Alaska pack at 3,000,000 cases; Puget Sound, 1,350,000 cases; Columbia river, 500,000 cases; British Columbia, 750,000 cases; outside points, 250,000 cases.

Grand Opera House TUESDAY, NOV. 7 Beautiful, Scenic Production of "HUMAN HEARTS" With a Splendid Cast including the Cleverest Child Actress in the World Greatest Play Before the Public—Powerful and Impressive Special Reduced Prices 25c, 50c and 75c; Box Seats, \$1.00

RAILROADS. SOUTHERN PACIFIC. Southbound. No. 13 San Francisco Exp. 8:31 a.m. No. 19 Ashland Passenger 10:59 a.m. No. 17 Roseburg Passenger 6:21 p.m. No. 11 Shasta Limited 7:43 p.m. No. 27 Eugene Passenger 8:25 p.m. No. 15 California Express 9:56 p.m. No. 226 Way Freight 9:50 a.m. No. 223 Portland Frt. Frt 10:45 p.m. Northbound. No. 14 Oregon Express 6:43 a.m. No. 25 Portland Passenger 8:30 a.m. No. 12 Shasta Limited 12:35 p.m. No. 18 Portland Passenger 2:55 p.m. No. 20 Portland Passenger 7:43 p.m. No. 225 Way Freight 12:35 p.m. No. 221 Portland Fast Frt. 2:43 a.m.

foot of Trade street for Independence at the following hours daily except Sunday. Leaves Independence 8:30 a. m. Leaves Salem 4:00 p. m. A Mail Carrier's Load. Seems heavier when he has a weak back and kidney trouble. Fred Duessen, mail carrier at Atchison, Kas., says: "I have been bothered with kidney and bladder trouble and had a severe pain across my back. Whenever I carried a heavy load of mail, my kidney trouble increased. Some time ago, I started taking Foley Kidney Pills and since taking them I have gotten entirely rid of all my kidney trouble and am as sound now as ever." Foley Kidney Pills are tonic in action, and quick in results. Try them. Red Cross Pharmacy (H. Jerman).

OREGON ELECTRIC RAILWAY CO Leave Salem. Arrive Portland. Train 6, 6:30 a.m. 8:30 a.m. Train 8, 8:55 a.m. 11:00 a.m. Train 10, 11:15 a.m. 1:15 p.m. Train 12, 2:00 p.m. 4:00 p.m. Train 14, 3:40 p.m. 5:10 p.m. Train 16, 4:00 p.m. 6:00 p.m. Train 18, 6:05 p.m. 8:15 p.m. Train 20, 8:50 p.m. 10:45 p.m. Arrive in Salem. Train 1, 8:30 a.m. Train 3, 9:50 a.m. Train 5, 10:30 a.m. Train 7, 1:00 p.m. Train 9, 4:15 p.m. Train 11, 6:00 p.m. Train 13, 8:35 p.m. Train 17, 11:10 p.m.

Salem, Falls City & Western Ry Leaves West Salem for: Dallas, Falls City and Black Rock 9:00 a. m. Dallas and Falls City 1:30 and 4:35 p. m. Sunday trains for: Dallas and Black Rock 9:00 a. m. and 1:35 p. m. Trains arrive at West Salem from Dallas 8:15 a. m. Black Rock and Dallas 12:30 p. m. Falls City and Dallas 4:15 p. m.

WEST SALEM TRANSFER Passengers Baggage Connecting with all trains at West Salem for Dallas, Falls City and Salem. Leaves Journal office for West Salem at 8:40 a. m., 12 m., 1:10 p. m. and 4 p. m. every day except Sunday. Also for Independence, Monmouth and McMinnville. Leaves Sunday at 8:00 a. m., 1:00 p. m. and 5:15 p. m. Calls at hotels on request. Telephone or leave orders at Capital Journal office any day but Sunday. Phone 22. NO ORDERS TAKEN FOR CALLS MORE THAN THREE BLOCKS FROM CORNER OF STATE AND COMMERCIAL STREETS UNLESS ARRANGED FOR IN ADVANCE. J. B. Underwood, Mgr.

GIGANTIC Closing Out Sale Of the Stock of the Firm Known as the SALEM MUSIC CO. Opportunity of a Lifetime Never before in the history of Salem have the people had such an opportunity to supply themselves with a strictly high-grade piano or player piano at so small a cost. When we started we said we were going to sell the entire stock within 10 days, and we certainly are doing it. One lady remarked that our place reminded her of a busy department store as every one, even to the porter, was showing and selling goods. THE Representative of the Creditors Is Now in Full Charge and Everything is Being Sold Regardless of Cost in Order to Satisfy Creditors EIGHT DAYS MORE And every Piano, Player Piano, Violin, Mandolin, Band Instrument, Guitar, Harp; every piece of Sheet Music, every fixture and the lease will be disposed of. The old saying was never truer than now—one man's misfortune is another's gain. GUARANTEED—Every piano, player piano, organ, every instrument in this big stock is fully guaranteed to be exactly as represented by a \$2,000,000 factory. Come in, look the stock over, and if you don't feel competent to make your own selection, bring in your friends. Every One Is Cordially Invited to Call and Enjoy the Piano Demonstrations Store Open Evenings Until 10 O'clock Reasonable Terms Where Desired SALEM MUSIC CO. E. H. HOLT, Representing Creditors