OREGON SUPREME COURT DECISIONS

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Vale, Ore, et al, Malheur County, Decided December 5, 1911.

T. A. Barton, appellant, v. The Recorder's Court of Vale, Oregon, Z. G. Wilson, Recorder and J. J Dolan, Marshal, of the said city, respondents. Appeal from the circuit court for Malheur county. The Hon Dalton Biggs, Judge. Argued and submitted Nov. 2, 1911, at Pendleton Geo. W. Hayes and (Brooke & Tomilinson, on brief) for any Market State of the linson, on brief) for appellant. R. M. Duncan (McCulloch, Soliss & Duncan on brief) for respondent. Eakin, Affirmed.

Eakin, C. J. This is an appeal from a judgment of the circuit court in a proceeding to review a judgment of the recorder's court of the city of Vale, Ore., wherein plaintif was found guilty of selling intoxicating liquors within the city, without hav-

ing obtained a license therefor.

It appears that prior to the general ing liquors was prohibited within the city of Vale and the result of that election was against prohibition; that, the city being without an ordinance governing the subject of the sale of intoxicating liquors, the common council on December 15, 1910, for the purpose of perfecting some plan by which the council could dis-pose of licenses for the sale of, and the traffic in, intoxicating liquors, adopted a resolution that the council proceed at once to receive open com-netitive bids for liquor licenses for petitive bids for liquor licenses for the ensuing two years and award a license to the best bidder, reserving the right to reject any and all bids. Thereupon there was introduced by Councilman H. H. High an ordinance covering "the liquor question" which covering "the liquor question" which was read before the council. The council then adjourned until 7:30 v. Chadwick, 5 Or. 152 quotes with approval from Commonwealth v. which time the mayor announced that the council was ready to receive that the council was ready to receive "That where part of a statute is until 1997."

The answer denies each and every

sale of the same in the north pre-cinct of the city of Vale. After the ordinance was read before the coun-cil, which had been submitted to it at Mayor Clark, it appears that cil, which had been submitted to it at Mayor Clarke was out of the city on a previous meeting by Councilman December 19. How long he had been H. P. Osborne, same changes and away or remained any same changes. quors and to grant a license for the essary to decide here.

referring to the one passed December 15, 1910.

Section 1 of ordinance No. 68, beside any ordinance No. 68 he was acting ing the one passed on Dec. 19th, provides: "That no person, firm or corporate illimits of the city of Vale, directly or indirectly, in person or by another, sell, barter, exchange, deliver, or give away, with the purpose of evading this ordinance * * * any spirituous, malt, or vimous liquors, without first obtaining a license therefor, as here-inbefore provided in this ordinance, and provide to this ordinance, and provide conditions: how as as times of the city of the sample of the mayor viced the ordinance and proceeds to provide for this issuing of licenses under certain circumstances and conditions: how as as and conditions: how as as and conditions: how as as and conditions; how as and provides penalties for violation of any of the provisions of the ordinance of the terms of the conducted and required and provides penalties for violation of any of the provides penalties for violation of any of the provides penalties for violation of any of the provisions of the ordinance and provides penalties for violation of any of the provisions of the ordinance and provides penalties for violation of any of the provisions of the ordinance and provides penalties for violation of any of the provisions of the ordinance and provides penalties for violation of any of the provisions of the ordinance and provides penalties for violation of any of the provisions of the ordinance and provides penalties for violation of any of the provisions of the ordinance and that the license skall be are all the state and that is understant the disease at a state of the city or the distribution and the provisions of the ordinance or the city of the provisions of the ordinance or the city of the provisions of the ordinance or the city of the provisions of the ordinance or the city of the provisions of the ordinance or the city of the provisions of the ordinance or the city of the provisions of the ordinance or the city of th

Issued for the term of two years.

The assignments of error involve four questions. First it is contended that the ordinance is void because it contains a clause declaring an emergency and providing that the ordinance shall be in force from and after it is approved by the mayor. Whether an emergency clause in a statute is valid or not affects only the time it shall go into operation, and in prover for it is an action to recover for it is approved by the mayor.

The assignments of error involve found to the decided December 5, 1911.

Decided December 5, 1911.

Decided December 5, 1911.

Decided December 5, 1911.

Jesse T. Purdy respondent, v. Judgent and improve the general health greatly by a thorough general health greatly by a thorough course of treatment with three-grain hypo-nuclane tablets. Take one afform each meal and one at bedtime. The larger drug stores can supply you with this excellent specific treatment for the stomach disorders, common to so many, such as pain under the ribs, beleding blood.

This is an action to recover for is a supply to the country of water slowly, between meals. You should not expect tween meals. You should not expect a great increase in weight quickly.

This is an action to recover for is a supply with this excellent specific treatment for the stomach disorders, common to so many, such as pain under the ribs, beleding blood.

This is an action to recover for is a supply with the ribs, beleding the country of water slowly, between meals. You should not expect.

This is an action to recover for is a supply with this excellent specific treatment for the stomach disorders, common to so many, such as pain under the ribs, beleding the country of water slowly, between meals. You should not expect.

This is an action to recover for is a supply with this excellent specific treatment for the stomach disorders.

The country of the manyor.

The definition of the treatment with three-grain happened and improve the general health greatly by a thorough the action of the country of the count statute is valid or not affects only the statute is valid one operation, and if invalid does not render the statute bor and services. The complaint allowed the cells and tissues of the body, but shortness of breath, etc. Obtain a 49 Or. 42, and the defendant's viola- labor and services for defendant in

Barton v. The Recorder's Court of after it would have taken effect without an emergency clause. Therefore, that objection is without merit. The second question is, whether

the ordinance creates a monopoly of the liquor traffic in Vale, and is there-by rendered void. The petitioner is not in a position to raise that quesdinance in selling liquor within the city without a license, and he can only question the validity of that pro-vision of the ordinance which prohibits the sale without a license

The third question is, whether the ordinance as a whole is void, because it creates a monopoly. If that provision of the ordinance is void, it does not thereby render void the independent portions thereof that are not void in themselves.

ing obtained a license therefor.

It appears that prior to the general election of 1910 the sale of intoxication of 1910 the sale only so far as its provisions are repugnant to the constitution, that one provision may thus be void and this not affect other provisions of the statute, has been frequently decided." And quoting from Fisher v. McGirr (1 Gray 22) he says: "That where a statute has been passed by the legislature under all the forms and sanctions requisite to the making of laws, some part of which is not within the competency of the legislative power, or is repugnant to any provision of

which time the mayor amounced that the council was ready to receive "That where part of a statute is unconstitutional, that will not authorize the council was received and the ordinance above referred to was passed, the city of Vale.

The foregoing is all that is disclosed by the record as to the ordinance or its terms. It was not approved by the mayor nor vetoed until at least after the 19th, of December, 1910. As disclosed by the record the council on December 19, 1910, met. conscilion of the council was ready to receive "That where part of a statute is unconstitutional, that will not authorize the council of th

council on December 19, 1910, met, cense therefor and section 9 provides pursuant to the call of H. H. High, for the punishment of every person acting as mayor, Mayor Clark being These sections are valid and enforciable in the city and cities the provisions of Sec. 1. absent from the city, and stated that ble, independently of whether the the object of the meeting was to con- provisions, placing the liquor busi-sider, pass or reject an ordinance ness in the hands of one person, are regulating the sale of intoxicating II. valid, and which we deem is unnec-

H. P. Osborne, some changes and away or remained away does not apamendments were made, and it was pear. It does not appear that the passed and approved by the acting president of the council was properly mayor. A copy of the ordinance appears in the record, and is referred to therein as ordinance No. 68.

By Sec. 36 of the charter (Laws 132). to therein as ordinance No. 68. By Sec. 36 of the charter (Laws On December 27, 1910, Mayor Clark 1905, 133) the president of the counfiled with the recorder a message to cil in the absence of the mayor has the council, vetoing ordinance No. 68, the power to perform all the duties the council, veroing ordinance No. 68, be
of the mayor. Therefore in approving referring to the one passed December of the mayor. Therefore in approving referring to the one passed December of the mayor. Therefore in approving referring to the one passed December of the mayor. Therefore in approving referring to the one passed December of the mayor. Therefore in approving referring to the one passed December of the mayor. Therefore in approving referring to the one passed December of the mayor. Therefore in approving referring to the one passed December of the mayor. Therefore in approving referring to the one passed December of the mayor. Therefore in approving referring to the one passed December of the mayor. Therefore in approving referring to the one passed December of the mayor. Therefore in approving referring to the one passed December of the mayor. Therefore in approving referring to the one passed December of the mayor. Therefore in approving referring to the one passed December of the mayor. Therefore in approving referring to the one passed December of the mayor. Therefore in approving referring to the one passed December of the mayor. Therefore in approving referring to the one passed December of the mayor. Therefore in approving referring to the one passed December of the mayor. Therefore in approving referring to the one passed December of the mayor. Therefore in approving referring ref

Lady, Baltimore Cake The Most Popular Cake This Season

By Mrs. Janet McKenzie Hill, Edilor of the Boston Cooking School Magazine

This is considered by many cooking authorities the finest cake that can be made, though in reality it is mot at all

RC Lady Baltimore Cake One cup butter; 2 cups granulated sugar; 1 cup milk; 1 teapcomful rose water; 3% cups flour; 3 level teaspoon-fuls K C Baking Founder; whites of 6 case besten den eggs, beaten dry.

Cream the butter and beat in the sugar gradually. Sift together, three times, the flour and baking powder, and add to the butter and sugar, alternately with the milk and rose water. Lastly, add the egg whites. Bake in three-layer cake pans. Put the layers together with the following frosting.

Note—The cake is a large one and sells at women's Exchanges for \$1.50.



Frosting for Lady Baltimore Cale Three cuts granulated sugar: I cosp boiling unter; whiter of I eggs; I cup chapted rations; I cup chapted national; I cup chapted national; S figs cut in their client.

Stir the sugar and water until the sugar is dissolved, then let boil without stirring until the syrup from a spoon will spin a long thread; pour upon the whites of the eggs, beaten dry, beating constantly meanwhile. Continue the beating until the frosting is cold; add the fruit and spread upon the cake.

The K C Cook's Book contains ninety just the delicions to local muffine, cake such delicious recipes.—bread, nuffins, cakes and pastry. You can secure a copy/res by sending the certificate packed in sever 23-cent can of KC Baking Powder to the Jagues Mrg. Co., Chicago. Small cans do not contain Cook's Book certificates.

\$200, and has not paid the same nor

lands in Grant county, he would pay 41. to them \$100 for each person so sent to fairly apprise plaintiff of the de-to him and by him located; that defendant and Highee sent five persons fendant should have plead especially to him, all of whom plaintiff located that the services were performed gratuitously. The brief of defendant on timber lands in Grant county, prior to January 14, 1907; and that submitted, and it must be consessed plaintiff thereby became indebted to that the evidence is exceedingly condefendant and Highee in the sum of \$500, or \$2500 each; that on or about there was evidence, sufficient to sub-unit to a jury. Which sustained plaintenant on a timber claim in Grant county, Oregon and his labor and services in doing so are those mentioned in the complaint and were the services of the services and the services of the services in the services of the servi tioned in the complaint and were rendered and performed by plainting for defendant in full payment for the services performed by defendant for plainting in procuring the five persons to enter and locate timber lands, as above set forth; that plaintiff then and there accepted the services and labor of defendant for his services; that defendant accepted the services of plaintiff for defendant's services.

PAUL SCHWAI

The reply denied the accord and satisfaction pleaded in the answer: admitted that plaintiff located defendant on atimber claim in Grant country, as alleged, and admitted that his services in so locating plaintiff were the labor and services referred to in the complaint

Defendant appeals.

McBride, J. The validity of defendant's objections to the ruling of the court excluding certain portions of his evidence hinges upon a single proposition. Could he, after pleading an accord and satisfaction, as is done here, introduce evidence tending to the court entry to make his home, and is worthy of the good things said about him:

Board of Education, Salem. Ore, Nov. 21, 1911. here, introduce evidence tending to show that plaintiff's services were This will certify that show that plaintiff's services were rendered gratutitously. It will be guainted with the qualifications, the seen that defendant does not positively deny any specific allegation of the complaint. He desies only such as he deems material and these only in so far as they are not referred to in the answer. In other words he says, "The contract was not asplainsays, "The contract was not as plaintiff states it, but as I state it." Con- ners, of thorough scholarship, and of ceding that defendant had the right unusual energy and industry. If I to plead the general issue and also can find the time I shall earol lin one

persons who desired to enter timber for them: Lawson on Contracts, Sec.

AS EDUCATOR

Following letter will be of interest to persons who are interested in the A jury trial was had and there was study of modern languages and mua verdict and judgment for plaintiff. sic. The gentlemen referred to has come to our city to make his home,

This will certify that I arm ac-

I take great pleasure in com mending Mr. Schwabe to the general public ass a man worthy in every respect of its esteem, and deserving of patromage. Very respectfuly.

JAMES M. POWEERS. Superinterndent

Teachers' Examinations.

Notice is hereby given that the county superintendent of Marior ation for applicants for state and county papers at the First M. E. church, Salem, Oregon, as follows:

For State Papers.
Commencing Wednesday, December 20th. at 9 o'clock a.m., and continuing until Saturday, December 23, at p. m. Wednesday forenoon—Writing, U

W. M. SMITH, County School Superinterndent 12-9-1 Ot-and-1 t-wkly

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Neckwear Bed Spreads Beaded Bag Hand Bags Scarfs

December Clearance of Suits and Coats

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The Doctor's Answers On Health and Beauty Questions By Dr. Theodore Beck

The questions answered below are general in character: the symptoms or diseases are given and answers will apply to any case of similar nature.

Those wishing further advice, free, ma yaddress Dr. Theo. Beck, College Bidg., Cellege-Elwood Sts. Daytos, Ohio, enclosing self-addressed savelope for reply. No questions will be answered unless full name and address is giren. Initials or nom de plume will be used in answers. The prescriptions can be filled at any well stocked drug store. Any druggist can order of wholesaler.

****** *********************

of appetite, headache, neuralgia and faint spells can be corrected by using three-grain sulpherb tablets (laxative), as per directions accompanying, and also the following: compound syrup hypophosphites 6 ors. tincture cadomene compound 1 oz. and compound full balmwort 1 oz. Mix, shake well and take a teaspoonful before meals and at bedtime. This is a valuable tonic, and will vitalize the nerves, increase the strength, calm the mind, improve the exhaustion of body and mind.

Shake well and take a teaspoonful of the first week may be increased gradually to two teaspoonfuls. This is effectual in chronic or inherited blood disorders. This treatment should continue 4 to 6 months, and sometimes longer, to thoroughly evaluate the disease.

Aged:—You say you are 45 years old and your symptoms are extrement should continue 4 to 6 months, and sometimes longer, to thoroughly evaluate the disease.

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Aged:—You say you are 45 years old and your symptoms are extrement and your symptoms are extrement

ma that I know of: Obtain a 2½ oz. ozs. Mix and take a teaspoonful hepackage of essence of mentho-laxene fore or after each meal; after the and make into a pint of syrup as per first week gradually increase the directions accompanying the package, dose to two tempoonfuls. Continue X Y Z -Your questions and symptoms two or three months. toms have been answered and explained several times heretofore in these columns, but as they may have escaped your attention I will repeat my advice, as I have for many others. Your druggist could obtain anything I have prescribed in these ad-

sarsaparilia compound 4 ozs., comp. sarsaparilia compound 4 ozs., comp. fection with syringe. Continue for a fluid balmwort 1 oz., and fluid extract month after cure is established to

void. This is the effect of the hold-leges in substance that on or about ing in Sears v. Multnomah county, January 14, 1907, plaintiff performed offective flesh producer. Susan:-Write me more fully or dinner and blue after supper. Trio

> general debility of which you com-plain. The weakness, numbruess loss aromatic fluid cascara I oz Mix. of appetite, headache, neuralgia and Shake well and take a temapoonful

quality of the blood and remove the exhaustion of body and mind.

Bronchitis:—A cough of any kind should be promptly treated. Asthmatic patients have obtained wonderful roller by the use of a splendid and cheap home-made cough syrup possessing laxative properties, in fact, this makes one of the best household remedies for colds, coughs and asthmatic household remedies for colds, coughs and asthmatic household to be a splendid and remedies for colds, coughs and asthmatic household to be a splendid and cheap home-made cough syrup possessing laxative properties, in fact, this makes one of the best household remedies for colds, coughs and asthmatic household be an obtained to be a section tires, and the limbs and body are often numb or aching Regular daily calisthenics or exercise which calls into play every mucle of the body should be followed. Also take the following: Thus readed to the body should be followed. Also take the following: Thus readed to the body should be followed. Also take the following: Thus readed to the body should be followed. Also take the following: Thus readed to the body should be followed. Also take the following: Thus readed to the body should be followed. Also take the following: Thus readed to the body should be followed. Also take the following: Thus readed to the body should be followed. Also take the following the body should be followed. Also take the following the body should be followed. Also take the following the body should be followed. Also take the following the body should be followed. Also take the following the body should be followed. Also take the following the body should be followed. Also take the following the body should be followed. Also take the following the body should be followed. Also take the following the body should be followed. Also take the following the body should be followed. circumstancers as others do

Susan:—Write me more fully or send the defendant's violation of the ordinance occurred long Grant county, Oregon, and that design the following treatment if you value good health. You need a good, mild laxative tonic and blood purifier to correct name, and that the sourced and blood purifier to correct name, and the sourced and blood purifier to correct name, and the sourced name is substantially and the sourced name and address. I never publish the correct name, always give full name and address. I never publish the correct name, and the sourced name is substantially and the sourced name.

Susan:—Write me more fully or send for you; and I will gladly do my best for you; always give full name and address. I never publish the correct name.

R. M.:—Do not delay using the following treatment if you value good health. You need a good, mild laxative tonic and blood purifier to correct name.

Susan:—Write me more fully or send start supper. Triologous and the send for my free examination chart, and disorder, help digest the food.

Susan:—Write me more fully or send should be and start supper. Triologous and is substantial to substantial the substantial to substantial the substantial to substantial the substantial that the substa