

THE CAPITAL JOURNAL

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Independent Newspaper Devoted to American Principles and the Progress and Development of All Oregon.



Subscription Rates: Daily, by Carrier, per year \$6.00 Per month \$0.50

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OREGON SUPREME COURT DECISIONS

Full Text Published by Courtesy of F. A. Turner, Reporter of the Supreme Court.

Merchants National Bank v. McKewen et al, Grant County.

Decided, December 12, 1911. Merchants National Bank, appellant, v. David A. McKewen, Joseph McClerman and Thomas M. Ray, respondents.

Appeal from the circuit court for Grant county. The Hon. Geo. E. Davis, Judge. Argued and submitted Nov 2, 1911 at Pendleton. Wm. H. Packwood, Jr. and (John L. Rand, on brief) for appellant. J. E. Marks (Hicks & Marks on brief) for respondent. Eakin, C. J. Affirmed.

Eakin, C. J. This is a suit instituted to establish an adverse right to a mining claim, for which defendants have applied to the United States Land Department for a patent. The Golden Star claim is one of a group of mines originally owned by the Copperopolis Copper Company, in Grant county, Oregon, to whose title plaintiff has succeeded.

On January 2, 1908, defendants relocated it as the Argonaut Quartz Mining Claim. It is conceded that the Copperopolis Copper Company did no manual labor, as required by Sec. 2326 U. S. Statute, upon the Golden Star claim for the year 1907.

But plaintiff asserts that until June, 1906, it was performing labor in excavating a tunnel and was erecting machinery upon the Protection & Oregon Bell Claims, being patented claims in a group with the Golden Star, known as the "Home group."

Golden Star claim during that year, but that it, being a part of the "Home Group," work done and improvements made on the Protection and Oregon Bell claims, prior to 1907 which was for the development of all claims located to the benefit of the Golden Star and that the work of the watchman, above mentioned in 1907, should be taken as the annual labor for those claims.

When defendants established that no work had been done upon the Golden Star claim for the year 1907, which was admitted by plaintiff, the burden shifted and was upon plaintiff to establish the fact that work done outside of the claim was for its benefit.

The January Outing. The January Outing contains New Year articles and stories—gifts for everybody. The traveler will find in Charles W. Furlong's "The Moroccan and His Land," a serious, readable, and well-illustrated survey of this little known country.

It is not contended that there was any work done on any of the group that could constitute development work for the year 1907, other than the expense of the watchman from January 1 to June 1, 1907, and the sufficiency of that expense to constitute the annual work for the Golden Star claim depends upon the necessity for the watchman, and whether the expense was sufficient for that purpose.

Plaintiff now for the first time insists that the answer does not sufficiently allege a forfeiture, in that it does not state that work on the claim had not been resumed in 1908. Generally, forfeiture as a defense must be specially pleaded, but it is stated in 2 Lindley on Mines, Sec. 643, that this rule does not necessarily obtain in a proceeding to determine adverse claims under the United States' Rev. Stat. Sec. 2328, where the title of each party is in issue and neither can recover without proof of title.

See to the same effect: Wilson v. Cleveland, 30 Calif. 122; Trevaske v. Peard, 111 Calif. 599; Steel v. Gold Lead M. Co. 18 Nov. 80, 86. Furthermore, there is not a total absence of allegation thereof, it being alleged that on Jan 2, 1908 plaintiff had performed no work or improvements as annual labor or assessment work for the year 1907, and the same was on Jan. 2, 1908 unappropriated public domain, subject to location, and that defendants located it on that day. This may be a defective statement of the fact that work was not resumed, but not an omission. There was no contention at the trial that work was resumed in 1908, prior to defendants' location, and it is too late to raise that question in this court for the first time.

work is resumed, and that the parties do intend to resume work, in which money expended to preserve the structures will be on the same basis as money expended to create them anew. But this could not go on indefinitely. As soon as it should appear that this was done merely to comply with the law and to hold the property without any intent to make use of such structures within a reasonable period, such expenditures could not be said to have been made in work upon the mine.

The application of the expense of the keeper to the annual work in the case before us is excluded by the terms of the language quoted. Evidently the company was insolvent and had no intention of immediately resuming work, and the keeper was there to preserve the property to aid in its sale and not in the development of the mine.

When defendants established that no work had been done upon the Golden Star claim for the year 1907, which was admitted by plaintiff, the burden shifted and was upon plaintiff to establish the fact that work done outside of the claim was for its benefit.

The traveler will find in Charles W. Furlong's "The Moroccan and His Land," a serious, readable, and well-illustrated survey of this little known country. Much less serious, but no less entertaining, is Stephen Chambers' tale of his first voyage in "Footloose and Free," while J. Earl Clauson tells of a trip in "The Quest of the Newfoundland," which gave him pleasure, some information, and a dog.

The automobile and his new model fever has been remembered. "Types of Automobile Motors," by Harold Whiting Slauson; "What It Costs to Keep An Automobile," by John Earl, are both discussed authoritatively and concisely, while "The Automobile Guest," by Harvey W. Seymore, is a gentle satire on that hardest rider of all—the man who has never owned a car, but who "knows nice people, you know."

Ex-Health:—Your symptoms indicate a weak-rup-down condition of the nervous system, probably due to indigestion, late hours or overwork. This condition is accompanied by such symptoms as timidly, downward cast eyes, lack of confidence, lost memory and vigor, cold extremities, dizziness, heart palpitation, trembling limbs, shortness of breath, sleeplessness, discontent, irritability and a general inability to act naturally at all times.

Such symptoms as are mentioned amongst the following indicate a hereditary scrofula or a condition of blood poisoning. The disease can be eliminated by a regular and thorough course of treatment. The symptoms are sores, running sores, eczema, ulcers, boils, carbuncles, bald spots, sore mouth, sore eyes, matter discharges, etc. Have the following prescription filled for both yourself and child: Syrup trifolium comp. 4 ozs., aromatic castoreum 1 oz., and comp. fluid balsamwort 2 oz. Mix. Adult dose, 1 teaspoonful four times daily. Children, one-fourth to one-half teaspoonful. Be persistent and regular in taking until the blood is altered and purified.

Young Adam:—My favorite prescription, which has frequently been given in these columns for weakness of the kidneys and bladder, can be used by a very large number, as this is an affliction visited upon scores who have disobeyed in some way natural laws. Anyone who has such symptoms as lame back, headache, feverishness, puffs under the eyes, inflamed eyelids, swelling of the ankles and feet, frequent burning and profuse urination, especially at night, with pain in the bladder region, may rest assured that the following prescription will prove vastly beneficial, and all such symptoms will disappear with its use.

Protect Yourself! Get the Original and Genuine HORLICK'S MALTED MILK. The Food-drink for All Ages. For Infants, Invalids, and Growing Children. Pure Nutrition, up building the whole body. Invigorates the nursing mother and the aged. Rich milk, malted grain, in powder form.

A quick lunch prepared in a minute. Take no substitute. Ask for HORLICK'S. Not in Any Milk Trust.

Practical people will like "The Killing Power of Rifles," by Horace Kephart; "The Useful Alredale," by William Hayes, and "The Rising Reds," by Arthur S. Wheeler (for poultry fanciers). Excellent fiction, new photos, and an Automobile Cover by George C. Harper.

The Outing Magazine, 25 cents, all news-stands; subscription, \$3.00.

SALEM BANK & TRUST CO. GENERAL BANKING AND TRUST BUSINESS. With our assurance that we are able and willing to take care of it, we solicit your Banking Business. Open an account with us, and we will extend you every favor consistent with good banking principles. WE PAY FOUR PER CENT ON SAVINGS. Liberty Street, just off State. J. L. AHLERS, President, W. G. EAST, Cashier, S. S. EAST, Vice-Pres., DR. L. B. STEEVES, L. H. ROBERTS, Directors.



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, may address Dr. Theodore Beck, College Bldg., College-Elwood Sts., Dayton, Ohio, enclosing self-addressed envelope for reply. No questions will be answered unless full name and address is given. Initials or non de plume will be used in answers. The prescription can be filled at any well stocked drug store. Any druggist can order of wholesaler.

Goldie N.:—Your height indicates that you do not weigh enough, and an abnormally thin girl is never very attractive to the opposite sex. If you wish to be plump with pink cheeks and red lips you should continue taking the tablets. One package of 3-grain hypo-nuclease tablets could not be expected to any more than start the processes in the cells and tissues necessary to increase your weight. It is a scientific process which requires time in the building up of new cell tissues, white and red blood corpuscles.

Miss M.:—The formula which you request is not one of my own, but I have learned by correspondence that it has proven very effective for some of my patients. The formula is that of a noted beauty specialist. If properly used it should prove very satisfactory and round out your figure as desired: Compound tincture cadomene 1 oz. (not cardamon), glycerine 2 ozs., rose-water 3 ozs., and a teaspoonful of borax. Mix. Shake well and apply about a tablespoonful to the neck, arms and bust, rubbing and massaging until completely absorbed. Then wash the parts treated with hot water and soap and dry thoroughly. Apply morning and night for several weeks or months, as the case may require.

Young Adam:—My favorite prescription, which has frequently been given in these columns for weakness of the kidneys and bladder, can be used by a very large number, as this is an affliction visited upon scores who have disobeyed in some way natural laws. Anyone who has such symptoms as lame back, headache, feverishness, puffs under the eyes, inflamed eyelids, swelling of the ankles and feet, frequent burning and profuse urination, especially at night, with pain in the bladder region, may rest assured that the following prescription will prove vastly beneficial, and all such symptoms will disappear with its use.

Notice of Intention to Construct a Sewer to be Known as "Lateral Sewer District No. 8." Notice is hereby given that the common council of the city of Salem, Oregon, deems and considers it necessary and expedient and proposes to construct a sewer to be known as "Lateral Sewer District No. 8," and that there shall be laid 8-inch vitrified or cement sewer pipe along the alley in block 17, Riverside Addition, crossing South street; thence through block 26, North Salem, to manhole in Norway street.

Also, along the alley through block 16, Riverside Addition to South street; thence east along South street to manhole in Liberty street.

Also, through the alley in block 34, North Salem to manhole in South street.

Also, along the alley in block 28, crossing Shipping street; thence through alley in block 27, to manhole in Norway street.

Also, through block 33, to manhole in Norway street.

Also, through block 39, crossing Shipping street; thence through alley in block 40, crossing Norway street; thence through block 41, to manhole in Jefferson street.

Also, through alley in-block 47, thence crossing Shipping street; thence through block 46, crossing Norway street; thence through block 45 to manhole in Jefferson street.

Also, along alley in block 48, crossing Shipping street; along alley in block 49, crossing Norway street; along alley in block 50, to manhole in Jefferson street.

Also, along alley in block 60, crossing Shipping street; thence along alley in block 61, crossing Norway street; thence along alley in block 62, to manhole in Jefferson street.

Also, along alley in block 1, Capital Street Addition, crossing McCoy street; thence through alley in block 2, Capital Street Addition, crossing Capital street; thence through alley in block 74 crossing Summer street; thence along alley in block 69, Wildes Addition, to manhole in Winter street.

Also, along alley in block 5, Cardwell's Addition, crossing McCoy street; thence along alley in block 4, in Cardwell's Addition, crossing Capital street; thence along alley in block 75 and 76 in Wildes Addition, and crossing Summer street to manhole in Winter street, all in the city of Salem, Oregon, as shown and designated according to the maps, plans and specifications adopted for referred to for a more detailed description of said sewer, and hereby made a part of this notice, and that the entire cost of the same will be assessed upon the property directly benefited by the construction of said sewer.

and specifications are hereby referred to for a more detailed description of said sewer, and hereby made a part of this notice, and that the entire cost of the same will be assessed upon the property directly benefited by the construction of said sewer.

Notice is hereby given that the common council of the city of Salem, Oregon, deems and considers it necessary and expedient and proposes to construct a sewer to be known as "Lateral Sewer District No. 9," and that there shall be laid 8-inch vitrified or cement sewer pipe along the alley in block 5, crossing Kansas avenue; thence along alley in block 4, to manhole in Nebraska avenue.

Also, along the alley in block 12, crossing Kansas avenue; thence along the alley in block 13, to manhole in Nebraska avenue.

Also, along the alley in block 17, crossing Kansas avenue; thence along alley in block 16 to manhole in Nebraska avenue.

Also, beginning opposite alley in block 25, thence westerly along the north side of "D" street to a point opposite alley in block 17; thence along alley in block 17, crossing Kansas avenue, thence along alley in block 16, to manhole in Nebraska avenue.

Also, along alley in block 21, crossing Kansas avenue; thence along alley in block 20, to manhole on "D" street.

Also, along alley in block 14, crossing Kansas avenue; thence along alley in block 25 to manhole in "D" street.

Also, along alley in block 26, to manhole in Nebraska avenue.

All in Englewood Addition to the city of Salem, Oregon, as shown and designated according to the maps, plans and specifications adopted for the same, and on file at the office of the city recorder, which said plans and specifications are hereby referred to for a more detailed description of said sewer, and hereby made a part of this notice, and that the entire cost of the same will be assessed upon the property directly benefited by the construction of said sewer.

Notice of Intention to Construct a Sewer to be Known as "Lateral Sewer District No. 10." Notice is hereby given that the common council of the City of Salem, Oregon, deems and considers it necessary and expedient and proposes to construct a sewer to be known as "Lateral Sewer District No. 10," and that there shall be laid 8-inch vitrified or concrete sewer pipe along the following alleys: Beginning at a point in the alley west of Commercial street, 50 feet north of "D" street; thence southerly along said alley to manhole in Union street. All in the city of Salem, Oregon, as shown and designated according to the maps, plans and specifications adopted for the same, and on file at the office of the city recorder, which said plans and specifications are hereby referred to for a more detailed description of said sewer, and hereby made a part of this notice, and that the entire cost of the same will be assessed upon the property directly benefited by the construction of said sewer.

CHAS. F. ELGIN, Recorder. 12-19-11

Call for Bids. Notice is hereby given that the undersigned will receive bids up to 5 o'clock p. m. on Tuesday, December 26, 1911, for the construction of a lateral sewer, known and designated as Lateral Sewer District No. 7, according to the plans and specifications adopted for said sewer.

CHAS. F. ELGIN, Recorder. 12-19-11

Deafness Cannot Be Cured by local applications, as they cannot reach the diseased portion of the ear. There is only one way to cure deafness, and that is by constitutional remedies. Deafness is caused by inflamed condition of the mucous lining of the eustachian tube. When this tube is inflamed you have a rumbling sound or imperfect hearing, and when it is entirely closed, deafness is the result, and unless the inflammation can be taken out and this tube restored to its normal condition, hearing will be destroyed forever; nine cases out of ten are caused by catarrh, which is nothing but an inflamed condition of the mucous surfaces.

We will give one hundred dollars for any case of deafness (caused by catarrh) that cannot be cured by Hall's Catarrh Cure. Send for circulars, free. F. J. CHENEY & CO., Toledo, Ohio.

Sold by druggists, 75c. Take Hall's Family Pills for constipation.

Great Chinese Doctor L. M. Hum. Has medicine which will cure any known disease. He makes a specialty of and guarantees to cure catarrh, asthma, lung, throat, rheumatism, debility, stomach, liver, kidney troubles, also any blackened or swollen soreness, broken limbs, smallpox epidemic; all kinds of boils, lost manhood, female weakness, hernia troubles and paralysis. Consultation free. Care of Yick Se Tong Co., Chinese drugs and herbs. Office hours from 10 to 12 a. m. and 1 to 7 p. m. Office open Sundays. 153 High street, upstairs, Salem.

FRAMES. GOOD PICTURES. Just received—everything in the Artist's Line. Also Mouldings for Picture Framing, and some beautiful ready-made pictures. W. J. PORTER. 455 COURT STREET.

HOLIDAY GOODS

Table with 2 columns: Item and Price. Items include Nice Mufflers, Neckties, Ladies' Wool Gloves, Boys' Wool Gloves, Silk Auto Scarfs, Large Silk Handkerchiefs, Men's Wool Gloves, Nice Lace Collars.

Children's Fur Sets, Muff and Boa, set \$1.25 and \$1.50. Ladies' large Pillow Muff and Collar—brown or grey, extra good quality, only \$10 Set.

LACE CURTAINS. Large assortment—especially good values at 75c pair, \$1.00 pair and \$1.25 pair.

Table with 3 columns: TOYS, CHILDREN'S, MAGIC. Items include Dolls, Doll Buggies, Toy Trunks, Toy Stoves, Toy Dishes, Toy Chairs, Toy Rockers, Tool Sets, Children's Fur Slippers, Ladies' Fur Slippers, Magic Tricks, Easy, Perform, Full Instructions with Each Set.

Rostein & Greenbaum. 240 COMMERCIAL STREET 246