

PAGE FOUR

SALT LAKE WILL HAVE DRY SUNDAY

[UNITED PRESS LEASED WIRE.] Salt Lake City, Utah, Jan. 13.—His arrest no numerous that the city jail is overflowing and the city authorities are considering leasing the old county prison. B. F. Grant, Mormon chief of police under the commission form of government, is waging a "blue law" campaign here.

Salt Lake City is to be a closed town on Sunday as long as Grant is in power. He had put on tight today, when he issued an order closing all saloons from midnight Saturday to 7 o'clock Monday morning; closing all tobacco shops during the same hours and prohibiting drug stores or other establishments from selling liquor or tobacco in any form during that time.

Amusement places are next on the list. Grant has started a campaign to close all theaters on Sunday.

WILDE CASE WILL BE LONG DRAWN OUT

[UNITED PRESS LEASED WIRE.] Portland, Or., Jan. 13.—After spending all of yesterday afternoon and today in fruitless questioning, the selection of a jury in the case of Louis A. Wilde, is as far away in Judge Kavanaugh's department of the circuit court as when the lawyers first began to ask their intricate questions.

Practically eight hours in all have been consumed in the examination

of three men and starting the examination of a fourth, and no one eligible to serve on the case of Wilde has yet been found.

Curiously enough, the three men disqualified were not excused because of any opinion they hold concerning the guilt or innocence of Wilde. All of them were eliminated because of their opinions concerning W. Cooper Morris, cashier of the defunct Oregon Trust and Savings bank, who is jointly accused with Wilde of embezzling \$9,000 from the bank.

Fed the Gulls.

[UNITED PRESS LEASED WIRE.] Milwaukee, Jan. 13.—Touched by the pitiful condition of thousands of gulls starving in the harbor here because of the zero weather, city officials today took steps to relieve them. Refuse and garbage collected from cafes and restaurants, usually incinerated, were spread over the ice and thousands of the gulls gathered and feasted.

CARTOONS THE LATEST MAGAZINE

With the new year has appeared "Cartoons," a magazine of reproductions of the keenest cartoons and brightest caricatures from all over the world on subjects of current interest. Such a publication is the newest of modern ideas, yet its coming has been certain, for the ever-increasing attention given to cartoons in the daily papers and the public demand for more and more has indicated its field.

"Cartoons" has 64 pages of skillfully reproduced drawings by over one hundred cartoonists, is printed on heavy India paper with a handsome cover and issued on the fifth of the month, by H. H. Windsor, of Chicago.

The Portland Taft committee will begin an aggressive campaign at once.

OREGON SUPREME COURT DECISIONS

Matthews v. Matthews, Multnomah Decided January 9, 1912.
(Continued from yesterday's Daily.)

shows that the appellant is engaged in business, and much better able to support the child than the respondent, and its age and sex favor his being given such a preference. We are of the opinion, in the absence of a finding and proof, that it would have been improper to award the care and custody of the child to the appellant; the circuit court was not justified in giving the respondent the preference in that regard." Here seems to be a hiatus between the premise laid down by the court, namely: that the father was entitled to the custody of the minor, and he final conclusion reached—that the custody should be given to the grandfather. The fact seems to be that the court did what courts usually do in these cases, gave the custody of the child to the person most likely to look after its welfare. It is true that the court incidentally mentions the fact that no finding had been made that the father was an improper person to be entrusted with the care of the infant, but, as we shall presently show, such finding would have had no controlling influence if it had been made.

Barnes v. Long, 54 Or. 548, was a habeas corpus proceeding brought by the father of a minor against its maternal grandmother. The mother had been given the custody of the child in divorce proceedings, and subsequently died. The grandmother, without any order of the court, attempted to retain its custody as against the father. The court held, that, in the absence of any showing that the father was an improper person to care for the child, he was entitled to its custody. The case does not seem to be in point here.

If we take the findings here as importing absolute verity, it appears that the plaintiff is not an adulteress, and that she is a woman of good, moral character, who has been guilty of certain indiscreet conduct which age and experience will no doubt correct. The trial judge had the parties before him and heard the testimony and, in the absence of these, we must conclude that he found correctly. If defendant had desired an affirmative finding as to his qualifications to care for the child, he no doubt could have obtained it by a request to that effect. It appears that the child is a little girl under four years of age and the court no doubt concluded, and perhaps correctly, that she would, for the present, be better off in the care of her mother than anywhere else, and we are not disposed to reverse his decree.

In addition to what has already been said, we do not feel that, as a matter of law, we have any jurisdiction to pass on the matter on this appeal. Suits in equity are tried "de novo" in this court. While the findings of the lower court in an equity case may be, to some extent, advisory, in cases where the testimony is conflicting and where the circuit judge had an opportunity of hearing and seeing the witnesses and thereby judging of their credibility; yet when brought here on appeal, unaccompanied by the testimony, they present nothing from which this court can find any fact or base any conclusion of law. Upon appeal in such cases, this court must make its own findings and it cannot do in the absence of testimony. The reason for this is plain. A court may make a wrong finding or one not justified by the testimony and yet render a correct and righteous decree. In this case the court found that the plaintiff was not immoral but that she had been indiscreet. It might be that with the testimony before us we would conclude that she was both or neither. We are not concerned with the findings of the lower court but with the facts produced before it on the trial and these are not before us.

Following this view it has been many times held by this court, that an appeal, which brings up only the decree and findings of the lower court, presents only one question for review here namely: the sufficiency of the pleadings.

Howe v. Patterson, 5 Or. 353, is a case where the transcript contained

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only the pleadings and the decree and findings of fact, without any evidence accompanying it. This court, in affirming the decree of the lower court, say: "The Civil Code (Sec. 533), provides that 'upon an appeal from a judgment the same shall only be reviewed as to questions of law appearing upon the transcript; but upon an appeal from a decree given in any court, the suit shall be tried anew upon the transcript and evidence accompanying it.' This evidently means that it shall be tried over again on the facts as well as the law, and this cannot be done in the absence of the testimony."

It is insisted by appellant's counsel, that the judge, on the hearing of this cause in the court below, having found certain conclusions of fact, and having inserted them in his decree they are conclusive upon the parties on appeal. To this proposition we cannot assent. An appeal from a judgment, in an action at law, as provided for in our code, is in the nature of a writ of error at common law, because it expressly provides that a judgment can only be reviewed as to questions of law appearing upon the transcript. Thus it will be seen that on appeals in actions at law, issues of fact cannot be reviewed by this court. But, as it is provided that, on an appeal from a decree in a suit in equity, the same shall be tried anew upon the transcript and evidence, it is obvious that where testimony was taken in the court below, it must be brought here so this court may try the cause anew, as well upon the facts as upon the law.

In Wyatt v. Wyatt, 31 Or. 531, the case of Howe v. Patterson is quoted

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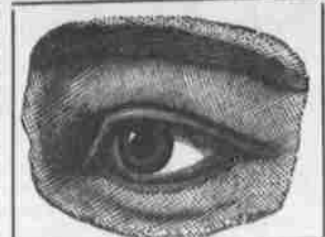
and expressly approved, Moore, C. F., saying: "It would be impossible to modify the findings of fact without having before us the evidence upon which they are predicated, or to correct conclusions of law not properly deducible therefrom." * * * This being so, the only question before us for consideration is, does the complaint state facts sufficient to support the decree." See also, Morrison's Estate, 48 Or. 612.

In many instances these orders are merely tentative and in this case if it should transpire that plaintiff has proved unfaithful to the trust committed to her or that her conduct is such that it is not for the best interest of the child to permit her to longer retain its custody, defendant has always an adequate remedy by applying to the court for a modification of this portion of its decree.

For the reasons heretofore assigned, the decree of the circuit court will be affirmed.

Stanton is having a continuous session of her city dads, wrestling with the saloon problem.

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