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Sacramento Saloon ANDY TODD, Prop. The best of liquid refreshments always on tap, including imported and domestic goods.

The Eagle Market Our Meats are the best, if you are not satisfied with the place you are trading call on us. Our motto is "The Best." A pleased patron means a steady customer.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF NEVADA, In and for the County of Ormsby. Marion W. Bulkley, Plaintiff vs. Joseph W. Bulkley, Defendant.

THE STATE OF NEVADA SENDS GREETING TO JOSEPH W. BULKLEY Defendant.

You are hereby required to appear in an action brought against you by the above named Plaintiff, in the District Court of the first Judicial District of the State of Nevada, Ormsby County, and answer complaint filed therein within ten days (exclusive of the day of service) after the service on you of this Summons is served.

The said action is brought to obtain the judgment and decree of this court that the bonds of matrimony heretofore and now existing and uniting you and said plaintiff to be forever annulled and dissolved upon the ground that at divers times and places since said marriage you have committed adultery with one Kate Cottrell, and particularly that from about the 9th day of June 1900 to and including the 13th day of June, 1900, at the Charing Cross Hotel in the city of London, England, you lived and cohabited with said Kate Cottrell.

GIVEN under my hand and Seal of the District Court of the State of Nevada Ormsby County, this 2d day of December, in the year of our Lord one thousand nine hundred and five. H. B. VAN ETTEN, Cler. (SEAL). Geo. W. Keith, Attorney for Plaintiff.

Notice of Application for Permission to appropriate the Public Waters of the State of Nevada.

Notice is hereby given that on the 15th day of Sept., 1905, in accordance with Section 23, Chapter XLVI, of the Statutes of 1905, one Philip V. Mighels and Frank L. Wildes of Carson, County of Ormsby and State of Nevada, made application to the State Engineer of Nevada for permission to appropriate the public waters of the State of Nevada. Such application to be made from Ash Canyon creek at points in N E 1/4 of S W 1/4 of section 10 T 15 N R 19 E by means of a dam and headgate and five cubic feet per second is to be conveyed to points in N E 1/4 of S W 1/4 of section 11, T 15 N R 19 E, by means of a flume and pipe and there used to generate electrical power. The construction of said works shall begin before June 1, 1906, and shall be completed on or before June 1, 1907.

SCHOOL APPORTIONMENT, STATE OF NEVADA, Department of Education, Office of Superintendent of Public Instruction.

Table with columns: Counties, children, Amt. School moneys for 1905, on the basis of \$6,992,022 per census child.

Joe Platt has received samples of tailor made suits which are, without doubt the finest ever shown in this city. A number of suits have already been made and they are perfect fits in every case.

IN THE SUPREME COURT OF THE STATE OF NEVADA.

William J. Brandon, Plaintiff and Appellant, vs. N. H. West, as Administrator of the estate of B. G. Clow, deceased, Grace Clow, et al, Defendants and Respondents. Messrs Mack and Farrington, Attorneys for Appellant. Messrs. Coney and Massey, Attorneys for Respondent.

DECISION

This action was brought against the defendant, West, as administrator, and the other defendants as heirs, of the estate of B. G. Clow, deceased, to compel the execution of a deed to plaintiff for a triangular piece of land marked with three iron pins and less than one acre in extent as described in the complaint. The uncontradicted testimony of several witnesses introduced by the plaintiff shows that Clow, in the year 1901, and a considerable time before his death, sold to plaintiff a sand hill or sand pit which is identical with, or embraced in the boundaries of the parcel of land mentioned, and pointed out the boundaries to the plaintiff, put him in possession and accepted a cow in payment.

The court was in doubt as to whether the proofs showed a sale of the land on the request of the plaintiff found that "the purchase of the sand situated upon and in the sand hill described in plaintiff's complaint and the exclusive right to take sand therefrom", that Clow received and retained possession of the cow and that prior to and long after his death plaintiff was in possession of the property and taking sand.

From a judgment in favor of defendants for their costs and an order overruling a motion for a new trial, this appeal is taken. The burden being upon the plaintiff to establish clearly an executed sale and there being a doubt as to whether Clow intended to sell the land in fee, or only the sand, leaving the land for him or his estate when stripped of it, the court properly refused to enforce a conveyance of the freehold to plaintiff, but it having been plainly indicated by the evidence and the court having found that there was an executed sale of the sand by Clow to the plaintiff, the latter was entitled to relief to that extent. In principle the plaintiff has an interest in the land like the right to remove stone or cut timber or to use in a roadway or other easement, or like a lease or term for life or years, and although less than freehold, the plaintiff, after being placed in possession and making payment, became entitled upon demand to a conveyance to the extent of his purchase, which could be recovered and which would give notice of his ownership, from Clow who held that part of the title for him as a trustee, the same as Clow would have retained the whole title if the sale had been of the freehold.

This legal title having passed to its successors by operation of law, it is incumbent upon them to convey it to plaintiff. Schroder v. Gemeinder, 10 Nev. 367. Lake v. Lewis, 16 Nev. 24. Powell v. Campbell, 20 Nev. 223. 1 Tiffany Modern Law of Real Prop. Sec. 19. Thompson v. Smith, 63 N. Y. 203 and cases there cited. Kerr v. Day, 14 Pa. St. 112. 53 Am. Dec. 526 and annotation. Fitch v. Hooper, 119 Mass. 52. Masterson v. Pullen, 62 Ala. 116. Wehn v. Fall, 53 Neb. 547. Swenson v. Rouse, 65 N. C. 34. 6 Am. R. 735. Adams v. Harris, 47 Miss. 144. Carson v. Mulvaney, 49 Pa. St. 88. Morgan v. Morgan, 2 Wheaton (15 U. S.), 302. Massie v. Watts, 6 Cranch, 158. Newton v. Bronson, 67 Am. Dec. 84. W. U. v. P. C. C. Co. 137; Fed. p. 435. 5 Pom. Eq. (3 ed.) Sec. 12 to 16 and cases cited Vol. 1 id. 367.

If the proofs had indicated the sale of sand on land different from that described in the complaint there would have been a fatal variance, but when they establish that the plaintiff is entitled to an interest in, or a part of the estate, quantity or amount of land, money or personal property claimed, under the allegations and demand in the complaint, he should be given another such circumstances as exist here, relief to that extent and not be forced to further litigation. That the plaintiff may recover less than the whole of that which he demands without being relegated to another action is according to usual practice, and any other rule would tend to multiplicity of suits and occasion unnecessary delays and hardships. In Brogan v. Daughdrill, 51 Ala. 316, the bill averred a contract for the sale of more than four hundred acres, and the decree of the chancellor enforcing it as to eighty acres only was sustained, and it was said that it is a general rule of law and in equity that a plaintiff may recover a part only of what he claims. In Drury v. Conner, 6 Harris and Johns 488 cited in that opinion, the plaintiff claimed the conveyance of the whole of a piece of land, but the proofs entitled him to an undivided one-fourth only, which was decreed to him. In Vicksburg R. Co. v. Ragsdale, 54 Miss. 215; "We know of no rule of equity which denies relief to a party altogether because he has made a false claim as to a part of it. In so far as he has shown title to relief to that extent should he be redressed."

The sand is a part of the land for which plaintiff seeks a deed in his complaint, the same as ore, marble or stone before removal is a part of the realty. State v. Berryman, 8 Nev. 263. Kingsley v. Holbrook, 42 H. 319. Stevenson v. Bachrack, 175 Ill. 256. State v. Postmeyer, 33 Ind. 492. Carry v. Daniels, 8 Mete. 489. Lux v. Haggan, 69 Cal. 255. 2 Blackstone Com. 18. Lime Rock R. K. Co. v. Farnsworth, 86 Me. 130. The defendants were aware that the plaintiff demanded a conveyance of the whole of the land, and they could have avoided costs by tendering a deed for that part of it comprising the sand, and the right of its removal, in the same way that immunity from costs may be secured by an offer to allow judgment for a less sum or estate, or for a smaller quantity of land or personal property than that demanded in the complaint. In Schroder v. Gemeinder, Justice Hawley, speaking for this court said: "We are satisfied that the objection urged upon the ground that the premises described in the deed were not the same as described in the lease is not well taken for the reason that at the time the deed was presented, if that was the only objection a respondent ought to have so stated at the time of the tender. But in any view this objection could only be urged upon a question of costs and not to defeat appellant's rights. Courts of equity ought to determine the rights of the parties according to the broad principles of justice and fair dealing, and not by the technical and refined distinctions of the law." This judgment and order are reversed, and the district court is directed to decree the execution on the part of the defendants of the proper deed conveying to the plaintiff the sand on the premises described in this complaint and the exclusive right to remove the same, to which he is entitled as shown by the uncontradicted evidence and findings with his costs, if the proper memorandum thereof is filed within two days after the entry of the decree under the usual practice and Sec. 3581. Pursuant to the motion of respondents the items of expense in the lower court are stricken out of the cost bill, but the respondents' fees of \$21.00 for transcribing notes or the records on appeal and the cost of typewriting briefs are allowed to stand under Rule VI, and the decision in the recent case of Candler v. Ditch Co. Talbot, J. I concur. Norcross, J.

of the suit, because plaintiff had failed to prove defendants to have been in default. Should defendants hereafter refuse to permit plaintiff to take sand in accordance with the contract as stated in the said finding, it may be that plaintiff would have his action to enforce said contract; for then it may be that he could allege not only a contract to take the sand but also breach thereof by defendants. But as the case now stands here there is no breach of such contract either alleged in the complaint or proved by the evidence. Therefore finding no error in reference to either the judgment or the order appealed from, I think said judgment and the said order should be affirmed.

Fitzgerald, C. J. Filed Dec. 28th, 1905.

ORDINANCE NO. 112.

On Ordinance for the Licensing of Games and Gambling Devices in Carson City. The Board of Trustees of Carson City do ordain: Section 1. Each and every person, firm, company, corporation, or association within the limits of Carson City, who shall carry on as agent, manager, owner or proprietor, any game of Faro, roulette, rondo, keno, or any other game not prohibited by the statutes of the State of Nevada, or who shall carry on or operate any nickle-in-the-slot-machine, or who shall carry on or conduct any banking game played with cards, dice or other device, whether the same be played with money, checks, credit or any other valuable thing or representative of value, shall pay for and obtain a city license to carry on such game, and shall pay for each license twenty-five dollars (\$25.00) per month provided that when more than one of said games are carried on in the same room or apartment, whether by the same or different owners, each game so carried on shall be separately licensed; and provided further, that the license imposed by this Ordinance is for the revenue only, and not for the purpose of prohibition, suppression or regulation.

Section 2. The provisions of this Ordinance shall apply to all time on and after October 1, 1905. Section 3. Ordinance Number 53 and all other ordinances or parts of Ordinances in so far as they conflict with the provisions of this Ordinance are hereby repealed. President of the Board of City Trustees of Carson City, Nevada. H. B. Van Ethen, Clerk.

OFFICIAL COUNT OF STATE FUNDS.

STATE OF NEVADA. County of Ormsby, s. s. James G. Sweeney being duly sworn say they are members of the Board of Examiners of the State of Nev. that on the 29th day of Nov '05 they, (after having ascertained from the books of the State Controller the amount of money that should be in the Treasury) made an official examination and count of the money and vouchers for money in the State Treasury of Nevada and found the same correct as follows:

Table with columns: Item, Amount. Total 167,945 00. State School Fund Securities, Irredeemable Nevada State School bond 350,000 00. Mass. State 2 per cent bonds 537,000 00. Nevada State Bonds 253,700 00. Mass. State 3 1/2 per cent bonds 313,000 00. United States Bonds 215,000 00. Total \$1,866,643 00.

W. G. Douglass, James G. Sweeney. Subscribed and sworn before me this 29th day of November, A. D. 1905. J. Doane, Notary Public, Ormsby County, Nev.

ANNUAL STATEMENT

Table with columns: Item, Amount. Of The State Life Insurance Company Indianapolis, Ind. Capital (paid up) none. Assets (admitted) 3,160,083 81. Liabilities, exclusive of capital and net surplus 2,675,497 63. Income: Premiums written 3,046,907 77. Other sources 197,125 01. Total income, 1904 3,244,032 78. Expenditures: Losses 300,902 69. Dividends 65,240 11. Other expenditures 1,950,102 78. Total expenditures, 1904 1,416,245 56. Business, 1904: Risks written 23,276,143 00. Premiums thereon 805,648 06. Losses incurred 316,885 00. Nevada Business: Risks written 10,000 00. Premiums received 2,852 43. Losses paid 5,000 00. W. S. Wynn Secretary.

Large fresh Eastern oysters in bulk at Davey & Malish's

Quarterly Report.

OFFICE COUNTY AUDITOR Ormsby County, Nevada. To the Honorable, the Board of County Commissioners, Gentlemen: In compliance with the law, I herewith submit my quarterly report showing receipts and disbursements of Ormsby County, during the quarter ending Dec. 30, 1905.

Table with columns: Item, Amount. Balance in County Treasury at end of last quarter \$40023 36 1/2. County licenses 701 05. Gaming licenses 1057 50. Liquor licenses 310 20. Fee of Co. officers 531 40. Rent of county bldg. 250 00. Poll taxes 620 40. Ist. installment taxes 14924 21 1/2. Special school tax 1710 90 1/2. Slot machine license 282 00. Cigarette license 42 30. Semi-Annual Set. State Treas 531 78. Delinquent taxes 23 80 1/2. Sale of horse 10 00. Sale of pump 13 00. Keep of W. Bowen 45 00. Total 61,077 36 1/2.

Disbursements.

Table with columns: Item, Amount. State fund 6692 82 1/2. General fund 2732 32. Salary fund 2390 00. Agl. Assn. Bond Fund, Series A, \$100.00 250 00. Agl. Assn. Bond Fund, Series B \$100.00 400 00. Co. School Fund, Dist. 1 388 95. Co. School fund, Dist. 2 151 20. Co. School fund Dist. 3 20 70. Co. School fund Dist. 4 24 00. State School fund, Dist. 1 2605 00. State school fund, Dist. 2 160 00. State School fund, dist.3 120 00. State School fund, Dist 4 165 00. Special building 5850 00. School library, No. 2 86 00. Total 21,968 59 1/2.

Recapitulation.

Table with columns: Item, Amount. Cash in Treasury October 1905 40023 36 1/2. Receipts from Oct. 1st to Dec 30, 1905 21054 00 1/2. Disbursements from Oct. 1st to Dec 30, 1905 21968 59 1/2. Balance cash in County Treas. January 1, 1906 28498 77 1/2. Respectfully submitted, H. DIETERICH, County Auditor.

Recapitulation

Table with columns: Item, Amount. State fund 103 86. General fund 6917 03 1/2. Salary fund 5725 78. Co. School fund 3248 71. Co. School Dist. 1, fund 1 7638 22 1/2. Co. School Dist. 2, fund 139 64. Co. School Dist. 3, fund 190 64 1/2. Co. School Dist. 3, fund 425 55. State School Dist. 1, fund 1608 05. State School Dist. 2, fund 77 51. State School Dist. 3, fund 371 29. State School Dist. 3, fund 371 29. State School Dist 4, fund 19 22. Agl. Assn. Fund A 680 82 1/2. Agl. Assn Fund, B 86 86 1/2. Agl. Assn Fund Special 1918 94. Co. School Dist, fund - special 13735 90 1/2. Co. School Dist. fund 1, library 108 46. Co School Dist. fund 3, library 6 50. Co. School Dist. fund 4, library 6 10. Total 39108 77 1/2.

Respectfully submitted H. B. VAN ETTEN County Treasurer

MILLARD CATLIN, Hauling, Freighting, Draying, Trunks and Baggage taken to and delivered at all trains.

Ho. For the West.

Tell your friends that the colonist rates are going into effect March 1st, 1905 and expire May 15, 1905. The rate from Chicago, Ill. \$31.00, St. Louis Mo., New Orleans, La., \$39.00, Council Bluffs Ia., Sioux City, Ia., Omaha, Neb., Kansas City, Mo., Mineola, Texas and Houston Texas, \$25.00. Rates apply to Main Line points in California and Nevada.

For Sale.

Two quartz wagons, one wood and one low wheel wagon, also harness for six horses. House, barn and five lo's Apply at Adam Bay, Silver Bay, Nev.

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