WHAT THE LAW DOES

Important Ruling in the Atwood Case Regarding Wills.

BIG MINING DISPUTE HEARING.

Pacific Lumber Company Wins—Mrs. Ward Gets a Divorce—Other Successful Litigants.

Judge Merritt rendered a decision today in the Millen Atwood estate case, involving important questions relative to the proof of wills. In effect the court says that the intention of a maker of a will cannot be shown by his declarations outside of the will's contents. The suit under consideration was brought by Florence Atwood, through Amelia A. Sutton, her mother and guardian, for a share of the Millen Atwood estate. The deceased had distributed his property by will, and had failed to mention Florence Atwood. It was sought to show that he did so, intending that she should have no part of his property, for the reason that he said she was not his child. The will said nothing of this, and on its face gave no information of the deceased's intention regarding the claimant. An exhaustive hearing was had before the court, and today Judge Merritt gave his decision, reversing the ruling of the Salt Lake county probate court, which held that the claimant had been intentionally omitted from the will, and therefore had no right to any part of the estate. Judge Merritt said there was no dispute as to the claimant being omitted from the will, so there were but two questions in the case, as follows:

1. Is the petitioner a daughter and heir at law of the deceased?

2. If she is, does it appear that such omission was intentional on the part of the testator?

As to the first question, after reviewing the relations of the deceased with the mother of Florence as his plural wife, Judge Merritt said: "I have not the slightest hesitation in determining that Florence is the natural daughter of the deceased." He further pointed out that as such child she was legitimated by congressional enactment, and adds, "It is therefore my opinion that the petitioner Florence Atwood is the daughter and heir at law of the deceased Millen Atwood."

Upon the question, Judge Merritt said the oral declarations of the deceased as to his intentions as to Florence could not be legally admitted; and that from the evidence legally admissible "it does not appear that her omission from the will of the deceased was intentional, and that therefore she is entitled to intervene in the matter of the estate and as a party to the settlement thereof, and is entitled to the distributive share of her deceased father's estate as provided for by statute, and that the decree in the probate court to the contrary should be reversed and the cause remanded to that court."

A BIG MINING CONTEST.

David Keith and Thomas Kearns, of Park City, were in court today on an order to show cause why they should not be punished for contempt in the suit of Michael Shaughnessy vs David Keith, Thomas Kearns and the Silver King Mining company. In this suit the plaintiff, as owner of the Mayflower group of mines near Park City, asks for $100,000 damages from the defendants for alleged infringement upon his grounds and the wrongful extraction of ores therefrom. Upon a former showing the court granted an order permitting the plaintiff to make surveys of the defendants' property, in the underground workings, that being the only way in which the plaintiff's property could be reached in the matter in dispute.

When this order was issued, the plaintiff sent surveyors into the defendants' mines. The defendants allowed certain surveys to be made, but refused to allow others, in the 900-foot and 1,100-foot levels, for the alleged reason that said tunnels did not go toward the plaintiff's ground. At the hearing today, this position was asserted to the court, and it was stated that an offer had been made to permit the plaintiff's attorneys to go through the forbidden property, or to have the court appoint a surveyor, who should be sworn to disclose to the court alone whether the tunnels did or did not go in the direction of the plaintiff's property. To this the plaintiff insisted that he had no knowledge of any threatened suit by other parties toward whose property the 900-foot and 1,100-foot level tunnels were directed. He did understand that they went into his property, and knew that fact could be determined by a survey only; and as to the surveyor proposed, to divulge facts only to the court, the plaintiff insisted that the former order of the court was sufficient, and as it had not been conformed to, the defendants were in contempt. Upon this point the arguments and testimony were listened to at length.

The defendants claim that no point of the tunnels which they refuse to let the plaintiff's surveyors enter reaches nearer than fifty feet from the plaintiff's property. They also say that to allow the survey now made would stop 150 men from working for two days, at a cost of $3,000 per day; and further that the proposed survey is wanted to aid the Alliance company in its suit against the Silver King, and as a result of what has been done already the Alliance has changed the direction of some of its workings. The claim of the survey being in the Alliance interest is based upon the fact that two of the plaintiff's surveyors also are surveyors for the Alliance company.

The plaintiff claimed that it was not true that the defendants' tunnels did not approach nearer than 50 feet from the Mayflower property. He claimed that the evidence in the affidavit of C. F. Brooks was not true, because it did not state the whole truth, being carefully drawn to avoid doing so. Surveyor Gorlinski, on behalf of the plaintiff, testified to being denied admission to some parts, and contradicting some of the statements made by the defense. The case was not concluded at the time of going to press.

OTHER CASES CONSIDERED.

In the case of W. C. A. Smoot vs the Pacific Lumber and Building company, judgment was given for the defendant. Exception was taken and 30 days' stay allowed for plaintiff to prepare and serve statement on motion for a new trial.

The defendants were winners also in the case of Samuel Simpson vs Simon Bamberger et al, judgment being in their favor.

In the suit of O. H. Smith vs Eliza Shafer, the demurrer to the complaint was overruled, and 10 days given to answer.

The Deseret National bank secured judgment against Thomas S. Stuart et al and intervenors, and twenty days' stay was granted intervenors in their application for a new trial.

A decree of foreclosure was granted in the case of Frank Thompson, assignee, vs C. L. Hannaman et al.

Mary T. Ward got a divorce from Patrick J. Ward, who deserted her a short time after their marriage in Park City about five years ago.

APPEAL FILED.

An appeal was filed in the Third district court today in the case of Neil Campbell vs George A. Trimble and L. H. Lancaster, tried in Justice Harvey's court, where the plaintiff secured judgment for $293.35.

JUDGE KING'S BRANCH.

The announcement was made Saturday that on Monday and Tuesday those matters which would come up before Judge Bartch in regular order would be heard by Judge W. H. King, who was up from Provo. At 10 a.m. Judge King took his place on the bench, but as there appeared to be no one in sight who wanted any legal business transacted, the judge waited a few minutes and then ordered an adjournment for the day.

U. S. COMMISSIONER'S COURT.

U. S. Commissioner Sommer had a duck hunter named Hayes, who resides in Hunter, Salt Lake county, before him today. When first taken into custody on the charge of shooting ducks at an hour earlier than the law permits, the young man was released on his own recognizance until the hour appointed for trial. He repaid the commissioner by asking a change of venue, alleging that Commissioner Sommer had a grudge against him and therefore would not give him justice. At this suggestion Judge Sommer immediately ordered the case transferred to U. S. Commissioner Greenman's court, where Mr. Hayes will have a trial.

THE WALKER-BIEUVENUE CASE.

In the case of the dispute between Mrs. Walker and Mrs. Bieuvenue, in which the latter's accusation against Mrs. Walker, charging her with perjury, was promptly dismissed because there was no case, Mrs. Walker desires it stated, in reply to the published complaint of Mrs. Bieuvenue, that the charge of larceny against the latter was made by Mrs. Walker. The stolen goods were found in Mrs. Bieuvenue's house, and were returned to Mrs. Walker, who did not press the larceny case when she had secured the return of her goods.

Sunday School Union Meeting.

Remember the Sunday School Union meeting tonight at 7:30 o'clock in the Fourteenth ward assembly rooms.

OGDEN.

OGDEN, UTAH, - - OCT. 21, 1895.

Stake Conference.

The semi-annual conference of the Weber Stake convened at the Tabernacle at 10 a.m. yesterday. Of the First Presidency Joseph F. Smith was present and A. H. Cannon and John W. Taylor of the Twelve Apostles and Elder Edward Stevenson of Salt Lake City. The meetings were very unpleasantly uncrowded a number in the afternoon not being able to obtain admission. At the morning services Elder C. F. Middleton reported the stake in good condition. Stake Sunday school superintendent R. Ballantyne made a favorable report of the condition of the schools. Elder John W. Taylor occupied the rest of the time speaking on the subject of obedience to the authority of the Priesthood and the cultivation of brotherly love.

At the afternoon services Elder A. H. Cannon spoke upon the subject of brethren and sisters slandering and backbiting and lack of respect for faithful and tried servants of God. Elder Edward Stevenson dwelt upon the blessings promised Israel to receive a fulfilment in the land of America.

Conference continues today.

Saturday Night's Rally.

The Democratic rally on Saturday brought a large crowd out on to the streets to see the parade, not near all of which could get inside the Opera house. Judge Powers, John T. Caine and B. H. Roberts were the speakers.

Transfer of Property.

The B. D. Lewis property, a store room on West Washington avenue, was transferred to James R. Sparge for $15,000 cash.

LOGAN.

LOGAN, UTAH, - - OCT. 21, 1895.

Cache County Items.

Messrs. Charles Crane, Isaac Trumbo, John F. Mosses, of Salt Lake, and Prof. Lee Fairchild, of Illinois, held a grand Republican rally here on Thursday evening. They were accompanied by the "Solid Silver quartette," and drew much more than a house full. Curiosity was excited to a great extent, as it was known that the party had not been sent out by the Territorial Republican central committee, and it was believed that the party might be acting in its own interest and against the Republican party at large. This view proved erroneous, as they proclaimed only straight party principles. Prof. Fairchild is the wit of the party, and he keeps his audiences in a continual roar of laughter. On Friday evening they were in Brigham City and on Saturday evening in Hyrum.

A 15-year-old boy named McQueen received a severe gunshot wound on Wednesday last in Strawberry valley, in the road between Mill Creek and Bear Lake. He had just returned from an unsuccessful hunt for prairie chickens, and another youth said he could get more with a revolver, and reached up on the wall of the cabin to get the weapon. It fell from the scabbard, struck the floor and was discharged. The ball struck young McQueen's left knee, passed through the skin over the knee-cap and entered the inside of the right leg just above the knee. The boy was taken to his home at Preston, 20 miles distant, and Dr. Ormsby summoned. The doctor traced the course of the bullet for about two inches, up as far as the joint of the hip, but on account of the badly swelled condition of the limb could not trace it any further. It may probably have to remain and become encysted.

Bridge Foreman Lavery, of the U. & N. Ry., lost his last remaining child, a bright little girl of 8 years, on Friday morning, of hemorrhage of the bowels, caused by typhoid fever. Mr. Lavery has buried a wife and three children within three years and has the sympathy of many friends. The funeral services were held yesterday, and were attended by Mr. Lavery's entire crew and a great gathering of friends.

Prof. Fogelberg's musicale at the Agricultural College of Utah on Saturday evening attracted such a large gathering that both the large and small chapels in the College building were filled to overflowing, and the program had to be duplicated. The famous Sage Brush glee club were encored to the echo, and after the performance serenaded a number of prominent citizens.

Notwithstanding the mayor's disapproval, the city council has reaffirmed its decision to spread on the official record an indorsement of City Attorney Beavill and its condemnation of the local papers for their action in criticising that gentleman and demanding his resignation. They withdrew that part of the resolution ordering the same published in both papers.

On Thursday evening the Democrats held a meeting in the opera house for the purpose of ratifying their city ticket. The house was well filled and was addressed by N. W. Kimball, Alex. Lewis, Wm. Hyde and J. E. Carlisle, nominees on the city ticket, and Hon. David Evans, of Ogden. The Democratic band and glee club furnished music.

During the practice of the Brigham Young College athletic association last Thursday afternoon, Jacob Larsen, a student from Hyrum, and a companion engaged in a friendly wrestling bout. Larsen was heavily thrown, his companion alighting on his left arm, which was broken in two places above the elbow.

Christian Schiffman, about 62 years of age, was thrown from a load of logs while coming down the canyon on Friday. His head struck the ground first and his feet caught in a part of the brake apparatus. While his injuries are painful, they are not at all dangerous.

A 10-year-old boy named Lisle Hammond, was thrown from a horse at the Democratic parade on Thursday evening. He either fell on or was kicked on the head, and remained in an unconscious condition for several hours from concussion of the brain. He is now recovering.

Thos. W. Pike, a young man of Logan, had his hand badly mashed while unloading logs at Crowther's mill in Logan canyon on Thursday.

Mr. J. Humphreys, of Millville, had a cancerous tumor removed from the side of his nose, by Dr. Snow, on Thursday.

LITERARY NOTES.

The leading article in the November number of The Forum will be a discussion of the third-term question by Professor John Bach McMaster, the historian, entitled "The Third-Term Tradition." Mr. McMaster cites the well-known historical precedents against a Presidential third term, and thinks there is no reason to believe that the old-time antipathy to a third term is one whit less strong than it ever was. He says that while our practice of choosing Presidents, not because of their fitness, but because of their availability, is in theory all wrong, in practice no harm comes from it; for under our form of government we do not need a President of extraordinary ability; the average man is good enough, and for him two terms is ample. Mr. McMaster counsels the advocates of a third term for Mr. Cleveland to remember the doctrine of the illustrious founder of their party, that "in no office can rotation be more expedient."

The Cotton States and International Exposition at Atlanta, which takes rank among the most brilliant fairs ever organized on the American continent, comes in for conspicuous attention, both pictorial and literary, in the November number of Frank Leslie's Popular Monthly. James L. Ford contributes a delicious example of his satirical humor in a paper upon Our Exotic Nobility, which is charmingly illustrated. Mrs. Leicester-Addis discusses the traditions and customs of Allhallowtide. Some interesting glimpses of the "Immortals" of the French Academy are given in a gossipy paper, accompanied by the latest portraits of such contemporaneous celebrities as Paul Bourget, Pierre Loti, François Coppée, Dumas, Sardou, Jules Claretie, Jules Lemaître, Baunetiere, and others.

The complete novel in the November issue of Lippincott's, "In Sight of the Goddess," by Harriet Riddle Davis, deals with life at the Capital. The principal characters are a member of the cabinet, his daughter, and his private secretary, who might also be called society manager for the family; the action is chiefly between the two last. The tale is written with abundant local knowledge and striking ability. "A Romance in Late Fall" is that of an elderly spinster, whose belated affections were amusingly yet pathetically misplaced. "The Strike at Colchester," was a strike of women against domestic duties. "A Brush with Kiowas" describes a western adventure, which occurred on the Arkansas river in 1868. "With the Oyster Police," "A Dead City of Ceylon," are other interesting papers.

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[Timetable illegible]

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F. A. WADLEIGH, Gen. Passgr. Agt.

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