SURFACE CATTLE-GUARDS

Interesting Tests at Brightwood Before a Party of Railway Officials.

None of Them Proves a Complete Bar to the Passage of Hungry Live Stock—Western Traffic Association's Rate Rulings.

Superintendent Wells, of the Indianapolis division of the Big Four, yesterday afternoon furnished a special train for a party of seventy-five railroad men, comprising superintendents, engineers of maintenance of way, supervisors and roadmasters, to witness a test at Brightwood of surface cattle-guards. The only surface guards now on the market, namely, the National, the Kalamazoo, the Seymour, the Short Hill and the Brush, were placed side by side, together with the standard pit-guard. Twenty cows which had been collected were placed on one side and very inviting piles of green cornstalks on the other, to tempt the cattle to cross these guards. For five minutes the cattle gave the several guards a good looking over. When one ventured to cross the Seymour guard caught its foot, and was two or three minutes in releasing itself; the animal then crossed over to the side on which was the green corn. Two others then crossed the Brush guard, after which gates were put up at both the Seymour and Brush guards. Two cows then crossed, with but little trouble, the Kalamazoo guard. A gate was then put up. For several minutes the cattle hesitated about crossing either of the remaining guards. Finally one crossed the Short Hill guard. The interest among the railroad men then became intense, there being only the National guard, the pet guard of engineers of maintenance of way, and the standard pit-guard left to cross. The cattle which had crossed the other guards were driven around to the inclosure with the other cattle. Fresh corn-stalks were placed on the other side of both guards, and soon a cow gave a jump over the pit-guard, struggled in it for a little time, and sprung over to the side on which the corn lay. Shortly, to even up things, seemingly, a cow made a break and crossed the National guard. A second then crossed the pit-guard, and also another over the National guard. The friends of the latter seemed satisfied with the test, as the National guard was the last one crossed. But the test demonstrated that the guard which would prevent tramp cattle crossing had yet to be invented, and that of the surface guards so far tested, the National came the nearest accomplishing this object. While there was a division of opinion as to which of the guards—the pit or the surface—was the best preventive of cattle crossing, it was conceded by all that yesterday the National guard was the most effective of the surface guards. There is a great desire among trackmen to get a surface-guard which will be so effective as to come into general use on the grounds of economy, if nothing more. The pit-guard is clumsy, rots quick, is apt to hold cattle which get into it and wreck trains, and is also a temptation to malicious persons to pile cross-ties in it to wreck trains—all of which would be done away with in the use of surface-guards. Of the guard which was the most effective—the National—several thousand are in use on some of the leading roads of the country. The test yesterday, in some respects, was made under unfavorable conditions, such as are not likely to occur on the main lines of railways. Among those who witnessed the tests all were disposed to give each a fair trial. While some who witnessed the test were disappointed that the cattle would cross either of the surface-guards, they admitted that a long stride had been made toward a desirable surface-guard. The National guard consists of parallel steel slats, four inches apart, saw-teeth on top of slat, short steel barbs thrown out from sides of slats to inflict sufficient punishment to turn stock. The depth of the pit-guard was forty inches, which would be a depth hardly practicable on a majority of roads.

Rate Rulings.

Decisions in five cases appealed to the board of commissioners of the Western Traffic Association were given out yesterday by Chairman Walker. The first of these is in reference to the application of Mississippi river, Peoria and Chicago rates. On traffic to and from the Missouri river it provides that Mississippi rates shall apply on and west of a line commencing at Dubuque, thence via the Burlington & Northern road to Savannah, thence via the Chicago, Burlington & Quincy to Fulton, Barstow, Alpha, Denrock, South Gladstone, Carthage Junction, Dallas, Carthage, Quincy and East Louisiana; thence via the Chicago & Alton to Roodouse and East St. Louis. Peoria rates are to apply on a line commencing at but not including Fulton, thence via the Chicago & Northwestern to Dixon, thence via the Illinois Central, thence via the Vandalia line to, not including, East St. Louis. Ancona, on the line of the Atchison, is also included. Chicago rates are to apply at points east of the Peoria line, and on and west of a line extending from Chicago southward via the Illinois Central to Effingham; thence via the Vandalia road to but not including Vandalia, and also taking in Hammond, East Chicago and Whitings, in Indiana.

The second decision disapproves of a proposition to allow lake-and-rail lines connecting with the association roads at the Lake Superior and Lake Michigan ports the same share of the through transcontinental rates that the all-rail lines are allowed, with the understanding that, if the lake-and-rail lines charge less than this share, the difference shall be absorbed by the transcontinental lines.

The third circular orders the cancellation of division rate sheet No. 64, under which inequalities exist in proportionate rates between Chicago and lower Mississippi river points, applying on freight to and from Missouri, Kansas, Nebraska and Colorado. Another decision is in the form of a resolution, adopted by the commissioners, alluding to reports that commissions are being paid on shipments of freight destined to points in the territory of the association, and ordering the guilty lines to discontinue the practice at once or take the consequences of violating the agreement.

The fifth decision sustains the appeal of the Rock Island road from the action of the Transmissouri Association, which, at its September meeting, refused to authorize rates established by that company from Lincoln, Neb., to points in Nebraska and northern Kansas.

Fortunate in the Selection of Its Officials.

But few systems of railways so invariably secure good men for official positions as are found on the Pennsylvania lines. C. D. Law, superintendent of the Pittsburg, Fort Wayne & Chicago road, has just completed his twenty-fifth year in railroad service, and is now but forty-seven years of age. He is a Pennsylvanian by birth. He graduated from the Polytechnic Institute at Philadelphia in 1863, and the same year enlisted with the United States engineering corps, serving two years in the army of the Cumberland. At the close of the war he joined the engineer corps of the Philadelphia & Trenton railroad, now a part of the great Pennsylvania system. Several years later he was engaged in the same capacity with a Connecticut railway company. In April, 1873, he was appointed civil engineer of the western division of the Pittsburg, Fort Wayne & Chicago, with headquarters in Fort Wayne. Seven years later he was appointed to the position of roadmaster of the same division, and Nov. 15, 1881, he was made superintendent of that part of the road lying between Chicago and Crestline, with its immense shops and thousands of employes.

P. S. O'Rourke, superintendent of the Grand Rapids & Indiana road, is another capable railroad man, but further advanced in years than is Mr. Law. He has lived in Fort Wayne fifty-two years. When about twenty years old he began his long railroad career, first as a laborer on a construction train, then as a conductor. This was in 1856. The following year he was given charge of a freight train, and three years later was promoted to a passenger conductorship. In 1866 he became master of transportation, which position he faithfully and efficiently filled until 1871, when he was appointed assistant superintendent. In 1872 he assumed his present position on the Grand Rapids & Indiana railroad. Mr. O'Rourke is past sixty years old, but is hale and hearty and has the appearance of a man much younger.

Rate Changes Discussed.

A meeting of the freight officials of the Northwestern lines was held at Chairman Midgeley's office, in Chicago, yesterday, to consider the effect of recent changes in rates from Western Ohio river points to St. Paul and Minneapolis. The matter that received the most attention, however, was the action of the Canadian Pacific, in announcing a rate of 20 cents on sixth-class freight from Boston to St. Paul. Although this applies to all rail shipments it is as low as the Western lake-and-rail rate between those points, and, of course, it would be impossible for the Chicago and St. Paul roads to meet it if they had the inclination to do so. The meeting was without results.

Personal, Local and General Notes.

The assessment board of Illinois assessed Pullman palace-car stock at $156 per share.

The Lake Shore is in the market for thirty first-class locomotives, to be delivered within four months.

Wm. R. McKeen, president of the Terre Haute & Indianapolis road, is in Lexington attending the races.

J. F. Webster has been appointed superintendent of bridges on the Michigan Central road, vice E. L. Lilley, resigned.

The Chicago & Eastern Illinois has just let contracts for seven hundred cars, three hundred of which are coal cars.

The Evansville & Terre Haute road has introduced the heating of its passenger coaches by steam on some of its trains.

The sale of the Kentucky and Indiana bridge and its terminals, including the New Albany street-railroad and ferry, says the New Albany Ledger, has placed Col. Bennett Young in the front rank as a negotiator. He has devoted eight years to getting this enterprise on to a more solid footing.

M. P. Ramsey, jr., general manager of the Cincinnati, Wabash & Michigan road, was in the city yesterday on official business.

The Ohio Falls car-works, at Jeffersonville, Ind., has increased its force to 1,200 men, and the works are running nine hours daily.

Orin Ott, who has just resigned as purchasing agent of the Illinois Central road, had been in the service of that company forty years.

E. W. Westlake has been appointed superintendent of the dining-car service on the Chicago & Alton system, vice W. E. Myer, resigned.

The Louisville, New Albany & Chicago delivers all of its business for the Louisville Southern road via the Kentucky & Indiana bridge.

Next Sunday the Royal Blue train service of the Baltimore & Ohio road will be extended to Cincinnati over the Baltimore & Ohio Southwestern.

The Western lines are experiencing hard times in arranging their winter tourist rates. The Missouri, Kansas & Texas road is the disturbing element.

M. E. Ingalls, president, and Joseph Ramsey, jr., vice-president of the Cincinnati, Wabash & Michigan, will to-day make an inspection trip over the line.

It is expected that the Louisville, Evansville & St. Louis road will, on the 20th of this month, commence using the Kentucky & Indiana bridge to get into Louisville.

Assistant Grand Chief Conductor Wilkins was in Pittsburg on Sunday and organized a lodge of the Order of Railway Conductors on the Pittsburg & Western road.

J. T. Johnson, chief clerk of Purchasing Agent J. H. Garachty, of the Big Four, who has been ill for several weeks in Cleveland, is much better, and expects to return here next week and take his desk.

James Adams, sr., the oldest retired locomotive engineer in Pennsylvania, died at Chambersburg on Sunday last, aged 81 years. For forty-two years he run an engine on the Cumberland Valley road.

William Green, late general manager of the Big Four, will soon return to railroading. He has two high positions open to him. The one which he will accept will be decided on within a few days.

The Illinois Central, in connection with the Vandalia, will, on Sunday, put on another train each way between St. Louis and Chicago, the equipments to be first-class. It is to be known as the Diamond special.

The Logansport division of the Brotherhood of Telegraphers on Sunday last reorganized as a lodge of the Order of Railway Telegraphers. The Supreme Council is to admit this lodge two weeks from last Sunday.

The extension of the Knightsville branch of the Terre Haute & Indianapolis road five miles, to Center Point, Clay County, is about completed. As soon as opened for business it bids fair to be an excellent feeder for the Vandalia.

Increasing the mail service over the Vandalia, New Albany & Chicago road necessitated the company borrowing two postal cars from the Michigan Central road until the new ones the company is building are out of the shops.

Thomas Follen, formerly with the Indianapolis, Peru & Chicago road, but for some years past chief operator and assistant ticket agent of the Wabash at Logansport, has been promoted to full charge of the Wabash office at Peru, Ind.

The new engines which the Vandalia is receiving from the Schenectady locomotive-works are purchased for the St. Louis, Vandalia & Terre Haute company, and will be used on the western division. The engine alone weighs 116,000 pounds.

Five construction trains on the Vandalia main line are now at work improving the road-bed for winter service. Some are distributing gravel, others cleaning ditches, and others hauling dirt from points where the grade is being cut down to fill low places. Work of this character on the main line and the T. H. & L. division this summer has been extensive.

The officials of both the Atchison and the Chicago & Alton express themselves as satisfied with the proposition of Chairman Walker regarding divisions with the Three I's road. The Burlington, however, has not yet given its approval, though it will probably agree to give the plan a trial, provided the original order of the joint rate committee is canceled.

It is rumored in railway circles at Fort Wayne that Superintendent R. C. Harris, of the Lake Shore road, has tendered his resignation, to take effect Nov. 1. Mr. Harris has had charge of the Fort Wayne branch of the Lake Shore road only a short time, but has become very popular with the men. His headquarters are at Hillsdale, Mich. The resignation is said to have been tendered on account of Mrs. Harris, who is in poor health and in need of removal to a warmer climate.

An impression exists that the Big Four is not doing so much this year in improving its road-bed as in years past. Inquiry shows this to be a mistake. More money has been expended in new steel rails, cross-ties, bridges, stations, etc., than in any former year, and next year the improvements will be even more extensive. Already eight hundred thousand cross-ties and several thousand tons of steel rails for next year's delivery are under contract, it is stated officially.

When asked concerning the reported disturbance between the lines in the Central Traffic Association territory, which is affecting rates from points in central Ohio to Chicago, General Passenger Agent Scull, of the Baltimore & Ohio road, yesterday stated that, according to his information, the trouble was precipitated by the action of the Pennsylvania lines in cutting the established rate from Columbus to Chicago without conferring with other lines in that territory whose Chicago rates would be affected by the reduction. The difficulty, Mr. Scull said, is not one of any magnitude or of much importance, and it will probably be remedied in a few days through the medium of a joint conference of all the lines interested.

HYDE HOLDS HIS PLACE

Famous Oil Inspectorship Case Finally Set at Rest.

In the famous suit of Yancy versus Hyde for the State oil inspectorship, the Supreme Court yesterday overruled Yancy's petition for a rehearing, thus setting forever at rest this great fight. On June 16 last the Supreme Court decided in favor of Hyde, and Yancy filed a petition for a rehearing. Hyde is in undisputed possession of the office.

The Court Record.

SUPREME COURT OPINIONS.

15229. Martin Bariden, Administrator, vs. Mark H. Bariden. Howard C. C. Affirmed. Elliott, J. 1. In an action to foreclose a mortgage, where the defendant filed a cross-complaint to quiet title, and the real contention is whether the mortgage had been released, the plaintiff, if defeated, is not entitled to a new trial as of right. 2. The court was not bound by the special verdict returned, nor by the facts stated therein: for the suit was one for trial by the court. 3. A defeated party is not entitled to a new trial of right where only a part of the decree is erroneous; the course is to move a modification of the decree.

14644. John Halloran et al. vs. Midland Railway Company. Clinton C. C. Appeal dismissed. Opinion by Olds, J.—Halloran and Ingerman sued the Midland Railway Company. That company filed a cross-complaint against Halloran, Ingerman, and also made Fiorella and Frisco parties defendant. The court made a special finding and May 15, 1888, rendered final judgment jointly against Halloran, Ingerman and Fiorella. Halloran and Ingerman filed a motion for a new trial, which was overruled, and an appeal taken. The transcript was filed in the Supreme Court Nov. 16, 1888. Fiorella did not join in the appeal. March 20, 1891, the Midland company filed a motion to dismiss the appeal, for the reason that Fiorella was not a party to the appeal. Oct. 5, 1891, Halloran and Ingerman filed, in the clerk's office of the Supreme Court, the written consent of Fiorella and Frisco to appear and to decline to join in the appeal, together with their motion for leave to amend their assignment of errors. Held, That the motion to amend the assignment of errors must be overruled and the appeal dismissed.

14998. Mary E. Noll, Administratrix, vs. Louisville, etc., Railroad Company. Orange C. C. Petition overruled. Opinion by McBride, J.—One who has the authority to call section men of a railroad, the bridge-builders, the freight-handlers and the laborers from the gravel-pit and gravel train, and requires of all that they unite in averting a threatened destruction of a bridge, is in such matter more than a fellow-servant with those thus subjected, and he acts for the master. 2. When a master orders a servant to do something which involves encountering a risk not contemplated in his employment, although the risk is equally open to the observation of both, it does not necessarily follow that the servant either assumes the increased risk or is negligent in obeying the order, unless the danger is so great that an ordinary man would not assume the risk; but unless it is such as to deter a man of ordinary prudence from encountering it, the servant will not be compelled to abandon the service or assume all additional risk, but may obey the order, using care in proportion to the risk apparently assumed.

16126. State ex rel. Simeon T. Yancy vs. Nelson J. Hyde, Marion C. C. Petition for rehearing overruled.

APPELLATE COURT.

395. Skips Dutton vs. State. Porter C. C. Affirmed. Robinson, J.—Under Section 1994 of the Revised Statutes of 1881, in an indictment charging that defendant kept a house of ill-fame, to which divers persons of immoral character resorted, whose names are unknown to the grand jurors, it is not necessary to prove the fact that the grand jurors did not know the names of such persons.

232. David B. Conet et al. vs. Henry L. Snyder. Elkhart C. C. Affirmed. Reinhard, J.—1. Where the sale is an executed one, the buyer takes the thing sold with all the defects, if there be neither warranty nor fraud; and a sale for a round price implies no warranty. If there is no willful misrepresentation or artful device to disguise the character or conceal the defects of the thing sold, the vendee is bound by the contract, even though the vendor got a decided advantage in the trade and put off on the vendee a defective article. 2. The mere fact that the vendor is aware of a latent defect in an animal will not amount to a fraud if he fail to disclose it, unless he made some statement or made use of some act or device calculated to deceive the buyer, or to induce him to not make inquiry. Mere silence is not such an act.

370. Margaret J. Brown vs. Estate of James Brown. Montgomery C. C. Affirmed. New, C. J.—1. In a claim against an estate no answer is required except as to set off and counter-claim. 2. A special finding must be considered as an entirety. 3. In 1873 a wife loaned to her husband $205; in 1874 $165. This he used in his business. In 1875 she purchased a tract of land, paying in cash $1,669 of her own money, and he gave his note to a third party to raise the remainder of the purchase money, $1,331, which note was secured by a mortgage on the land purchased, signed by them jointly. At the time the mortgage was executed she requested him to apply the money he owed her on account of the loan in payment of the mortgage. The court, in a special finding, found that he paid the mortgage, and that it was released of record, but did not specifically find that he paid it by applying thereon the money he owed her. He acted as her agent in making the purchase. The title was to have been taken in her name alone, but was taken, without her knowledge, in their joint names as tenants in common, of which fact she was ignorant until a few months before his death. He died in 1890. She filed a claim against his estate to recover the money she loaned him. It was held that the title to the land was not invalid, and that the facts found were broad enough to show that he had repaid her the amount loaned by paying off the mortgage at her request.

181. John Dunn v. Jeremiah Barton. Benton C. C. Affirmed. Black, J.—1. The exclusion of evidence will not be regarded as error on appeal if it can be sustained on any ground, though not expressed by a party or by the court as a reason for the rejection. 2. There is no error in rejecting evidence in support of a bad answer. 3. An answer that purports to be in bar of the entire cause of action stated in the complaint but answers only a part thereof, is insufficient. To be good for any purpose it must be good for all it purports to answer. 4. A judgment against a garnishee in an attachment does not amount to res judicata as between him and the attachment defendant so that the latter in his subsequent action against the former for the debt will be concluded thereby as to the amount of the debt. Such judgment is not a complete bar to such subsequent action for a greater amount, but is a good partial defense.

405. German Fire Insurance Company vs. John M. Deckard. Monroe C. C. Reversed. Crumpacker, J.—1. In a suit on an insurance policy the plaintiff must show a compliance on his part with all the terms of the policy, or else a waiver on the part of the defendant. 2. A condition in the policy requiring the insured to give notice at once of a loss requires him to give it within a reasonable time. 3. Specific averments in a complaint control general ones only where there is a necessary conflict between them. 4. Pleadings should be construed in such a manner as to reconcile and harmonize the various allegations when it can be done without doing violence to the language used. 5. If a policy of insurance is susceptible of two constructions, that which is most favorable to the assured will prevail. 6. The terms of a policy cannot be enlarged by an answer so as to make a defense. 7. Fraud in securing a policy of insurance, to be available as a defense, must have been such as influenced the insurer to assume the risk. 8. When an instrument is the basis of an action and is made an exhibit to the complaint, it is not necessary to set it out with an answer based upon it. 9. Converting a dwelling-house into a saloon is an increase of the hazard.

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