

ORAL OPINION BY JUDGE HAMILTON

An Interesting One Given in Case of Beard vs. Hubinger Bros., Which Was Damage Suit for \$3,000.

EMPLOYER AND EMPLOYEE

In Cases of This Character the Employer Assumes the Risk and Then It is Question of Fact For Jury.

Judge W. S. Hamilton's oral opinion in sustaining the defendant's motion for a direct verdict in the \$3,000 damage suit of Beard vs. J. C. Hubinger Bros. is an interesting one to both the employer and employee and is given in part as follows:

In this case, gentlemen, the defendant has filed a motion for a directed verdict. Upon passing upon this motion, the evidence introduced by the plaintiff must be taken as establishing the facts beyond dispute. The motion has been very ably argued, pro and con, by both attorneys for plaintiff and defendant. The question is, therefore presented to the court whether or not the facts establish, or tend to establish any negligence on the part of the defendant, or can an inference of negligence on the part of the defendant be drawn from the facts thus established, or which the evidence tends to establish. Negligence is not to be presumed, rather the presumption is that ordinary care was used, and the party claiming negligence must show that the other party either committed or omitted some duty incumbent upon him, by reason of which the first party sustains the injury complained of.

As Mr. Blood stated in his argument, the propositions of law governing this class of cases are not very much in dispute; as a matter of fact, they are not in dispute; the difficulty arises in applying the law to the different cases. An examination of the facts in the authorities cited illustrates this.

In this case, if there is any negligence, it comes in one of three ways—was the defendant negligent in failing to have the room properly lighted; was it negligent in failing to have the washer properly guarded; was there negligence in the foreman, La Ferre, giving the order to take the rope over towards the river without warning, the parties holding the rope to look out for this goose neck, or whatever you call it, on the end of that washer?

As I take the evidence, there is absolutely no evidence that establishes, or tends to establish that the lighting of this room had anything whatever to do with this accident or injury.

There is no evidence to establish, or which tends to establish that this washer was a dangerous machine, or that it was the class of machines which ought to have been guarded; even if it was, the requirement relative to the guarding of dangerous machinery could not be applied in this case. Here is a millwright, perhaps not used to this particular machine, but used to putting together and dismantling machines in different parts of this plant, and any employer has the right to remove the guards on a machine for the purpose of dismantling and repairing same from time to time as may be required; in other words, this piece of machinery was not in itself a source of peril.

For the most serious question presented is that the one so ably presented by Mr. Blood, and I must say ingeniously argued, that the foreman, La Ferre, by failing to tell the plaintiff to watch out for the arm, or goose neck at the time that he directed that the rope be moved towards the river, gave a negligent order. Now I apprehend that the rule is simply this, that where there is a changed condition of the machinery and there are some new or latent defects, then the warning would have been incumbent, at least I should have submitted this case on his negligence in failing to give that warning, if in this case I should have found any evidence to establish that there was any such changed condition, or any such latent defect as to render such warning necessary, or requisite on the part of the defendant.

In the common affairs of life, there are many things that happen that are termed accidents. An accident which occurs in the usual and ordinary course of business is one for which the party must suffer the loss himself. Then there may be accidents of such an unusual nature that it is said res ipsa loquitur; such as the familiar instance of a brick thrown from a building and striking a person on the walk below. Such unusual

A Perfect Shampoo. May be obtained by using Meritol Shampoo Paste. This prescription is highly recommended as an invigorating scalp cleanser and dandruff remover.

It is delicately perfumed and imparts its soothing properties to the scalp and leaves a refreshed feeling. Makes the hair soft and pliable and gives it a fluffy, silky effect.

Has all the qualities requisite in a prescription for a high grade Shampoo Paste. A fair trial will convince you that Meritol Shampoo Paste is unequalled.

Manufactured and guaranteed by American Drug & Press Association, City Drug Store, local representatives. For tired, aching, swollen feet, Meritol Foot Powder, City Drug Store. Meritol Chocolate Granules, a product of the American Drug and Press Association, are positively without an equal as a bowel regulator. They do the work without the slightest evil effect. Try them once and you will never be without them. City Drug Store.

and out of the ordinary happenings, or accidents call for an explanation, but an accident growing out of the ordinary course of business requires no explanation, and to my mind this case presents that condition.

I cannot follow Mr. Hollingsworth to the effect that the mere fact that a man was injured on a machine proves that that machine is a source of peril. Having all the reluctance of a trial court in directing a verdict, I conscientiously believe that it is my duty in this case to direct the jury to return a verdict for the defendant.

AMUSEMENTS

Manager Hull's Great Courtesy.

The grandstand and bleachers at the Alrdome theatre were packed to overflowing last evening when two performances were given for the benefit of the Keokuk baseball association. Hundreds of people, the majority of whom were fans, crowded into the show place and enjoyed one of the best programs of the season. The total receipts were about \$100 of which \$25 was given to the association.

Tonight there will again be two benefit performances. The fact that it will be amateur night promises to bring back many patrons present last evening.

The Payne children in their singing and dancing turn featured last night's bill and Abe Goldman put on a character impersonation act that was clever. Harvey Hull's baseball song scored a decided hit. Before the first performance the Citizens' band gave a concert.

Safe and Sane Fourth.

The Fourth of July picnic to be given by Valley lodge Anti-Horse Thief Society at Turner's Grove in the valley, will no doubt attract a large crowd of people. A large platform will be erected for the dancing, and Acme's orchestra will play. A splendid program has been arranged by the committee in charge. No intoxicating liquors will be allowed on the grounds. The public is invited to bring their baskets and enjoy the day.

High Dive Monday.

Prof. C. E. Warburton the world's greatest high diver will dive from the Keokuk and Hamilton bridge next Monday at 2:30 o'clock. Prof. Warburton has made dives like this one before. Several years ago he made a dive from the center of this bridge before a large audience. Don't fail to see him. A big free attraction.

OLD WOMAN OFF ON LONG TRIP

Mrs. Lizzie Snyder, 86 Years Old, Started to Walk to West Point in Heat of Day.

Beseeking her not to be so foolish and endeavoring to persuade her that the weather was much too hot for an old woman her age to make such a long trip by herself and on foot, the police pleaded with Mrs. Lizzie Snyder, the old lady who was locked up the latter part of last week for drunkenness, not to walk to West Point, when she was released from the city jail at one o'clock this afternoon.

But the 86 years' old white haired, thin elderly woman with the black dress and yellow straw sailor hat, sauntered through the screened door way after thanking every one for keeping her, left her determined to go to her old home, eighteen miles from here. The temperature this afternoon at 2 o'clock was 96 degrees at the government office and the officers fear that the infirmate old woman will meet with some mishap or be stricken down with the intense heat.

With her mind firmly made up however and a big faded blue apron under her arm, the aged citizen who was indignantly drunk a short time ago, began her long trip.

Mrs. Snyder refused to go back to the home of her son in Commercial Alley even though she didn't have a cent and said that she would ask nothing of the city or any one else, even though she didn't have "a copper" as she called it. Mrs. Snyder claims that she had only one glass of beer the day she was picked up drunk, and nothing else stronger than a bottle of soda pop.

Hay's Hair Health

Restores color to Gray or Faded hair—Removes Dandruff and invigorates the Scalp—Promotes a luxuriant, healthy hair growth—Stops its falling out. Is not a dye.

Hay's Hairina Soap is unequalled for Shampooing the hair and keeping the Scalp clean and healthy, also for red, rough chapped hands and face. 25c. at Druggists. REFUSE ALL SUBSTITUTES For Sale and Recommended by McGrath Bros. Drug Co.

You Feel at Home when you stop at the Grand Hotel

Everything for your comfort. Modern, strictly first-class in every respect. Four blocks from depot and postoffice. Special Sunday Dinners.

Henry Sanders, Prop. Near 3rd and Main St., Keokuk, Iowa.

SOCIETY

Little Friends Assist Her in Observing Happy Birthday.

This afternoon at the residence of her parents, Mr. and Mrs. J. G. Haubert, 725 High street, little Miss Marion Caroline Haubert entertained twenty-six girl friends at a party in observance of her ninth birth anniversary. The usual happy concourse of games, prominent at a child's function of this kind, were played and the small misses spent an enjoyable time with their hostess. Refreshments were served and the hours from three to six o'clock passed in too quick succession.

Miss Drake's Announcement.

Friends in the city have received cards announcing the marriage of Miss Harriett Jane Drake, formerly of this city and Mr. August William Brassler which occurred at Shreveport, Louisiana, Tuesday morning, June 27. Mrs. Brassler is a niece of Miss Julia Drake of this city and spent several years here attending school. She graduated in the class of '06 from the Keokuk High school. Mr. and Mrs. Brassler will be at home after July 10th at 604 Main street, Malvern, Arkansas.

Dance This Evening at the Bluff.

The usual weekly dancing party will be given tonight at Bluff Park.

LAID AWAY THEIR DEAR COMPANION

Funeral Services This Afternoon for the Late J. Roy Hodge, Conducted by Rev. Sage.

This afternoon at St. John's Episcopal church, funeral services for the late J. Roy Hodge were observed at four o'clock. The Rev. John C. Sage, minister of St. John's Episcopal church, conducted the obsequies.

Many friends, both young and old of the late young man were present, to do honor to the memory of the deceased and the many beautiful floral pieces placed on the bier were marks of tribute and high esteem from the many who knew him.

SUIT FOR DIVORCE IS BEING FOUGHT

Mabel Walton Does Not Want to Give John Walton Freedom Because of Her Inebriety.

Declaring that she does not want to give her husband a divorce on the grounds of her inebriety, Mabel Walton is today defending a suit brought by John Walton. The case is being heard by Judge Henry Bank, and William Timberman and Frank Bellinger are presenting the woman, and D. D. Harrington the plaintiff.

Before Judge W. S. Hamilton the case of Ackles vs. Evans is being tried to a jury. It is a case in which Ackles seeks to obtain real estate commission in the sum of \$500.

CITY NEWS.

Choice fireworks for the Fourth at Wolfe's, 708 Main. The baseball diamond is being sprinkled this afternoon and the same will be done every afternoon while the dust is being blown into the grandstand and bleachers. For fireworks, the kind that go off when you want them to, go to Wolfe's.

STRANGER AND HE TOOK HIM IN

Stronghurst, Ill., Man Got Up Early and Asked Clerk for \$35 Belonging to Cedar Rapids Citizen.

FORCED ACQUAINTANCE

T. W. Swick Deposited His Wad With Night Clerk and J. H. Ward Made Easy Money.

Pestered nearly to exasperation by the fellow he didn't want following him about and who was an utter stranger to him; then to be placed in the same hotel room with the parasitical stranger and awakening this morning to find that his unwelcome room mate had taken \$35 belonging to him from Clerk Chas. Jones of the Hotel Grand, is the brain racking experience of a Cedar Rapids man, T. W. Swick.

Last night Swick and a man registered as J. H. Ward, arriving in the city from Burlington on the 8:37 train. Swick and Ward were both given the same room by the night clerk, Ward wishing it that way.

Before going to the room, Number 46, Swick deposited \$35 with the clerk but received no receipts for it as he should have done. This morning, Ward was up at an early hour and going to the hotel office asked the day clerk, Chas. Jones, for the \$35 due room 46. The clerk not knowing but what the money was Ward's, paid it to him.

Officer William Wilson was called and upon learning the facts of the case, left the hotel at 12:30 with Swick to help search for the Stronghurst man who evidently left the city, as no trace of him could be found.

The Hotel Grand must stand liable for the \$35 according to the police, as the money was wrongfully given out, though unknowingly to the wrong party and the rightful owner had no receipt.

Ward it appears, followed Swick here, forcing his acquaintance and evidently learning that Swick had money during the trip from Burlington.

CASTORIA For Infants and Children. The Kind You Have Always Bought

Bears the Signature of Dr. J. C. Fitcher

\$7 VERDICT GIVEN RUSS

Attorney Snyder Loses in Fight for Attorney Fees in Superior Court.

LAID AWAY THEIR DEAR COMPANION

After being out all night the jury in the case of Attorney T. F. Snyder vs. Warren Russ brought in a verdict this morning at 7:25 o'clock of \$7 for the defendant on his counter claim. The jury was composed of John Dick, foreman; A. Bindel, Walter Hennings, Albert Rockelman, G. Edward Heinz and Fred Morris. The case was tried in the superior court and the jurors were instructed at 6 o'clock yesterday evening, and began their consideration of a verdict at 7:30 o'clock.

In the findings of the jury it was found that the plaintiff had ordered an appeal to the supreme court and that the plaintiff was not in good faith in advising the appeal.

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Every Month Near Death.

Foster, Ark.—Mrs. Fannie Ellis, of Foster, says: "I was sick for seven years, half the time could not stand on my feet. Every month, I was very near death. I tried Cardui, and in two months, I was cured, and am now stout and healthy. My friends all ask me now what cured me. My looks are a testimonial to Cardui." No matter how serious or long-standing the trouble, Cardui will help you. It is a mild, vegetable, tonic remedy, especially adapted to relieve and cure the common womanly ailments. It relieves womanly pains and restores womanly strength. Try Cardui.



If you always use Calumet Baking Powder, because it always gives best results, with any kind of flour.



The baking can be made with more certainty of good results; it will be more uniformly raised—it will be lighter—it will be tastier—it will be more wholesome, because the materials in Calumet are so perfectly adapted to all baking requirements and then so carefully proportioned that failures are almost impossible.

Besides it is more economical than the trust brands—and so far superior to the cheap and big-can kinds that a comparison cannot be made. You can bake better with CALUMET Baking Powder

One can will prove it—Try and See. Ask your grocer. He has it or can get it for you. Refuse a substitute. Received Highest Award World's Pure Food Exposition.

Well! Well! Well! Listen!

Read! Investors! Read! Then Buy!

Do you want to clean up BIG PROFITS in next 3 years, well I guess yes. HOW, WHERE, BUY the WALTE tract (55 acres) will make 220 lots, streets and alleys out. Buy now before price is raised, Joins the Messenger tract over which air ship sailed, north. It's sure to be taken; get busy and get it. For sale only by

J. R. Roberts & Co. Phone 114 Red 720 Main

HERE'S A BARGAIN

6 1/2 acres, 5 room cottage, good. New barn, located at Twenty-first and Palean streets. Right in town. \$6000 takes it. HURRY. Won't have it long. For sale by

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THE WORLD'S MARKETS

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Daily Range of Prices. CHICAGO, Ill., June 30.—

Table with columns: WHEAT, Corn, OATS, PORK, LARD, SHORT RIBS, Estimated Car Lots, Chicago Live Stock.

and 15c higher than yesterday; mixed \$6.30@6.70; good \$6.40@6.60; rough \$6.15@6.35; light \$6.30@6.70.

Cattle strong. Sheep strong at 10c higher. Hogs tomorrow 11,000. Cattle 300. Sheep 2,000.

Wheat 10. Corn 213. Oats 88. Rye 2. Barley 11.

Local Grain Market. KEOKUK, Iowa, June 30.—No. 2, white, red \$1.76. No. 3, Wheat, red .72. No. 2, Wheat, hard .76. White oats .36. Mixed oats .35. Corn .47.

Local Live Stock. KEOKUK, Iowa, June 29.—Live stock market furnished today by Joseph Haubert: Hogs—Good butchers, \$5.75. Sheep—Butchers, \$4.00. Lambs—\$5.00. Calves—\$5.00 to \$6.50.

NEW YORK, June 30.—The Pro New York Produce. duce markets are as follows: Butter—Creamery, 24c. Process—Special, 20 1/2c. Eggs—Fresh, gath. red, westerns first, 15c at 16c. Elgin creamery butter, 23c. Iced fowls, 14@14 1/2c.

JUDGE BELL AT WORK AT 5 A. M.

Sounds Improbable But There Are Reliable Witnesses That Such is a Fact.

The question arose in the editorial rooms of The Gate City today as to whether this was an item of news, or a false alarm, but it was finally left to the public to decide whether or not it is a news item that Judge Rice H. Bell was at work this morning at 5 o'clock. Improbable as the statement seems there is a reliable witness, for Dr. G.

All men, women and children need the VACO

The Busy Merchant and Office Man often go without lunch because they are too busy to spare the time; with steaming coffee or a refreshing iced drink from a VACO the lunch can be eaten without leaving the office.

Hornaday Sells Them

We Sell and Recommend Shoo-Fly

The original stock protector. We want you to try it on your horses and cows.

City Drug Store

Seventh and Main. Keokuk.

Bluff Park Summer Resort

Season Opens June 15

Beautifully located between Fort Madison and Keokuk, Ia., on the Mississippi river. Cool atmosphere. High elevation. Comfortable cottages. Good board. Suitable accommodations. Pure, medicinal mineral water. Row boats; fishing; bathing; boating; tennis; croquet. A fine hall for use of guests; other amusements. Dining hall under management of Mr. J. L. Ogden, formerly with Oriental Hotel, Nauvoo, Ill. For terms and particulars write to J. E. Whitaker, Montrose, Iowa.



Want Column

WANTED.—By large corporation, single man to represent us at once. Must be a hustler. Ask for Mr. Woodward, Hotel Royal.

WANTED.—Two dining room girls, at Hotel Keokuk.

WANTED.—To buy 5 or 6 room house with bath, north side. Address C, care Gate City.

FOR RENT.—Six room house, 319 N. Eleventh street. Furnace, bath, gas. Possession given July 1st. Apply to Thos. T. McManus.

FOR RENT.—Nicely furnished room, to the right party. Inquire at Y. W. C. A.

FOR RENT.—Furnished room in modern house. Possession given tomorrow. Call mornings. 124 North Fourth street.

FOR SALE.—One of the finest eight room homes in Keokuk. Modern conveniences, fine repair, good location. Inquire 909 Franklin street.

FOR SALE.—All wool woven rug, 9x12. Call at 205 Blondean street.

FOR SALE.—125 feet, Ninth and Johnson; \$48 dollars per front foot. Price one week only. Geo. S. Tucker.

FOR SALE.—100 feet 18th and Main; \$40 dollars per front foot. Hold good one week only. George S. Tucker.

FOR SALE.—155 feet, Twelfth and Johnson; \$35 per front foot. Offer good for one week only. George S. Tucker.

FOR SALE.—Good horse, new buggy and harness. Reasonable. Inquire 1823 Franklin street.

FOR SALE.—Acre of land with house and barn. Plank road and Burke street. See J. A. Roberts.

LOST.—June 18 at Rand park, bangle pin with initials E. A. and G. C. A. Please return to this office. Reward.

burning alongside of the railroad tracks.—There were no robberies last night, so far as the police know.—The annual meeting of the board of education of the Keokuk public schools will be held tomorrow, Saturday, afternoon at 2 o'clock.

J. J. Travers and wife of Los Angeles, Cal., are visiting in the city for a week or two, while returning to their home from an European tour. Mr. and Mrs. Travers are visiting with Mrs. Henry Kesselring and C. H. Forman.

Headaches Hard headaches. Dizzy, Sick headaches. Burning, throbbing, splitting headaches. And the great majority are all due to constipation. Anything better than Ayer's Pills? Let your doctor decide.