

NEW YORK LIFE UPHELD

CHARGES DISPROVED.

Justice Dowling Says Evidence of Electioneering Is Weak.

Justice Dowling, in the Supreme Court, yesterday denied the application of Stephen Farrelly for an injunction to restrain the New York Life Insurance Company from conducting a campaign on behalf of its administration ticket in the pending election of trustees.

In his application for an injunction, Mr. Farrelly alleged that the money of the policyholders was being spent in circulating literature in support of the administration ticket, and that employees of the company were spending their time in the same cause, acting under the orders of the company's officials.

On these points Justice Dowling says: Plaintiff has been unable to substantiate these charges by proof. The allegations of his complaint are in large part made on information and belief, and entirely so as to the charges of improper conduct on the part of defendant corporation.

Plaintiff charges on information and belief that the defendant corporation has opened in its books a special account for the expenses incurred in campaigning with the law governing this election, which is the first one held by this company under the law of 1906.

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Mr. Cromwell said last evening that the New York Life had welcomed the opportunity of meeting the charges, and had placed before the court more than one hundred affidavits, covering every department of its business. He added:

While it is naturally gratifying to the company and its counsel that the court should find that the charges made against it and its agents have been wholly unfounded, it is of far greater moment to the multitude of policyholders who are being conducted by the company with strict regularity, and that the company is observing the letter and the spirit of the new insurance law.

Samuel Untermyer, general counsel for the International policyholders' committee, said last night: The only effect of the decision, coming at this late date, will be that the Mutual company will have to protest against all ballots furnished to policyholders by agents and bearing policy numbers, in violation of the Armstrong law.

Mr. Untermyer added that the company had tried to avoid liability by making it appear that the agents put numbers on ballots, whereas they were put on in the company's office.

BURNHAM TRIAL JUROR ILL.

The trial of George Burnham, Jr., general counsel for the Mutual Reserve Fund Life Insurance Association, was adjourned in the Criminal Branch of the Supreme Court yesterday on account of the illness of E. Bradner Buckley, the fourth juror.

Mr. Buckley was suffering from acute bronchitis, was handed up to Justice Greenbaum. As the seriousness of the juror's illness was not known, Justice Greenbaum said the case would go over for twenty-four hours.

POULTRY DEALERS APPEAL TO METZ.

Controller Metz was appealed to by delegations representing the New York Live Poultry Dealers' Association and independent dealers of Washington Market yesterday to settle differences that had arisen between them.

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CANNOT STOP TRAINS.

Decision Limiting Powers of State Railroad Commissioners.

Washington, Dec. 3.—According to a decision rendered to-day by the Supreme Court of the United States, in an opinion by Justice Peckham, a state railroad commission cannot compel trains running from one state to another to stop at designated stations.

The case involved was that of the Mississippi Railroad Commission against the Illinois Central Railroad Company, and it grew out of an effort on the part of the commission to compel certain through trains on that road to stop at the town of Magnolia, a place of twelve hundred inhabitants, about a hundred miles from New Orleans.

The commission was unable to make the through trains stop without violating schedules, break connections and prevent compliance with the terms of the road's contract for the expedient carrying of the mails.

The state law was attacked as in contravention of the interstate clause of the federal Constitution. The Circuit Court of the United States for Mississippi, in which the case was first tried, held that the commission's action was not in violation of the federal Constitution.

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SENSATION AT TRIAL.

DECEPTION IS CHARGED. Gillette's Counsel Says Physicians Swore to Falseness.

Herkimer, N. Y., Dec. 3.—Never perhaps in the history of Herkimer County justice have the closing scenes of a murder trial been characterized by such bitter attacks of counsel as developed in the summing up of the Gillette case to-day.

Replete as the trial has been with surprises and sensations, none were prepared for the sharp exchange with which the day closed. Justice Devendorf had expected to give the case to the jury to-day, but after District Attorney Ward had spoken for fifteen minutes, court was adjourned until to-morrow morning.

The prosecutor will close and the judge's charge be made to-morrow, it is expected. Ex-Senator A. M. Mills, a close personal and political friend of the prosecutor, made the last appeal to the jury to acquit Chester E. Gillette of the murder of Grace Brown, his sweetheart, at Big Moose Lake on July 11. He had occupied nearly the whole of the session, and it was late in the day when he dramatically declared that the five physicians who had sworn that there was a blood clot on Grace Brown's brain had sworn to a falsehood; that they had come together and agreed on a common story for the witness stand, and deliberately withheld testimony favorable to his client.

Intimating that the physicians were improperly influenced, he added:

If there is an investigation of graft, some of these five doctors may figure in it. They were paid large fees to give evidence which it was thought was so prepared that it would convict the defendant. I know and now—and I know personally each of the physicians—that they did not bring in all the facts; they did not report something favorable to this boy. Each of these doctors knew that a fraud was being perpetrated. You can't pick out five reputable physicians in the county who would do such a thing as these doctors did.

As Mr. Mills closed, District Attorney Ward jumped to his feet and, interrupting the judge, who had decided on an adjournment, launched into a scathing denunciation of Mr. Mills and the methods he had taken to sway the jury over to the defence. As he spoke the outstretched and trembling hand of the prosecutor shook in the face of the counsel for the defence, Mr. Ward said:

When Mr. Mills stands here and tells you, as he just has, that those five doctors, reputable men of Herkimer County, and your friends, who enter your homes perhaps every day, are liars and traitors, you are not only insulted, but you are also misled. I know and I know personally each of the physicians—that they did not bring in all the facts; they did not report something favorable to this boy. Each of these doctors knew that a fraud was being perpetrated. You can't pick out five reputable physicians in the county who would do such a thing as these doctors did.

Mr. Mills declared that every bit of evidence introduced by the District Attorney was overdrawn, and that nothing authentic had been presented to the jury that was inconsistent with the course a boy and a girl in similar trouble would have taken in seeking relief and secrecy to shield their reputations.

He said the District Attorney might as well have said that Grace Brown was struck by a bushel basket as with a frail tennis racket, and that the girl's head had struck the keel of the overturning boat as she went overboard, if there were such injuries as the physicians had sworn to. Mr. Mills averred that Grace Brown followed the wish written by her in one of the letters to Gillette, that she drowned herself, hoping to be buried with her secret unknown by the mother whose love and respect she valued more than her own life. He closed with the attack on the physician, who, he claimed, distorted the report of their autopsy, that brought the District Attorney to his feet.

After declaring that counsel for the defence had sought to find a rogue in the jury Mr. Ward continued:

They say this young man should have been represented by a lawyer. How could he be represented when the officers were in the ironclads looking for him at the time the autopsy was performed? The District Attorney himself was not there. And then, because he was not represented, Mr. Mills attempts to discredit the word of the five reputable doctors brought here, and he attempts to make a doctor of himself. He makes himself out a doctor, and tries to tell you what constitutes a doctor. He says, "doctor," says he has studied nights and learned medicine in the last few weeks—why, gentlemen, he couldn't learn as much about anatomy—this man who never saw a lung in his life—by reading Huxley's book, that he could learn of law by reading his books nights.

"BLOW ON THE HEAD CAUSED DEATH."

Why weren't they represented? Why, gentlemen, nobody knew but what the girl had been drowned until the four boys were under the hair and followed it to the brain. And when they found that blood clot they knew in a minute what caused her death—it was a blow on the head. There was nothing in this post mortem to mislead or deceive anybody, and they revealed the fact that murder had been committed; that the girl had not died from drowning; that no water entered her lungs; that she was not drowned; that the hair and followed it to the brain. And when they found that blood clot they knew in a minute what caused her death—it was a blow on the head.

Who does the counsel want to reach when he speaks of the doctors' testimony? He had a learned doctor who said by him there it would have been competent for him to have put that doctor on the stand and sworn to things Mr. Mills testified to in summing up. He wasn't under oath. Mr. Mills told you what constitutes a falsehood. He would bear evidence to that, but he wasn't himself sworn. He knew if that doctor got on the stand he would testify as the other doctors, but instead of taking that course he says "I don't know." What was his argument? You could have called doctors that the people would pay for.

Now, what insidious thing did he mean when he told you about graft that existed? Was there any graft when that poor girl was brought up into the woods to be murdered? Did graft cause that? What did he mean? He meant to take some poor, weak minded man, if there was one on this jury, and tell him that there was something he knew that was down in his heart that ought to prevent you from doing just.

I charge here and now that that little falsehood was put into the case for the purpose of prejudicing a poor, foolish juror and to keep him from giving proper consideration to the evidence in this case. Then he made a scathing plurge on those medical notes. It was amusing to hear him say, "You haven't got the original notes." No, of course not, there were five doctors and only one set of

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original notes, and each of them couldn't have it. A doctor went to a stenographer, whom he engaged upon that work. Where there were matters that he regarded as immaterial he left them out and sent out of the physician's copy. He (Mills) would say, "Was there something left out?" "Yes." "Was it left out on purpose?" "Yes." He wouldn't ask these doctors what it was.

Now, just to contradict one statement he has made. These doctors all agreed that this girl didn't drown. You take a lung, a thin organ, designed to contain air, you take it and fill it with air, immerse it in water, and it floats, of course. That water in a few days may go out, but if it goes it leaves these air cells broken down and dead, and any doctor, whether the water has been in it. When the doctors found where that blow had gone, and found what the condition of the lungs was, they needed to seek to further for the cause of death.

"DEFENCE OF TRICKERY AND DEVICE." This learned doctor says, "No, it was caused by drowning. That's what he learned when he examined bodies. He found differently than those other five doctors, but it isn't under oath. He says these doctors got pay from the county, so does he, so do I, so do all the judges. What nonsense to address that to sensible men. There were the ruptured vessels, the scalp shows discoloration, the skull was open. The dura mater was discolored and ecchymotic. He thought he could make a case out of this. He called it ecchymosis, that therefore they had done something wrong. This man would have laughed in his sleeves if this jury had believed his argument, to think he had the ability to get up and bulldoze you.

His whole defence is one of trickery and device; he hasn't got a word of evidence, he hasn't got a single fact in this whole case but which points conclusively to the guilt of the defendant of the charge implied in the indictment. The only defence he has is one of trickery and device, from long experience, to mislead some jurymen.

As the doctors say, this unconscious body was placed in the water, and if there was any flutter of life the mere submerging would make it cease. He knows that the District Attorney's office is here to shield the innocent and prosecute the guilty, but he wants it to prosecute the guilty the way the defendant's attorney would like him to prosecute. I want to say to you in this case there are two parties interested, and the District Attorney isn't one of these parties. I told you in advance, and I tell you now that it isn't that much (snapping his fingers) importance to me what the verdict is in this case; I am the least concerned.

The only people who are interested in your verdict are the people of the State of New York, and I am their spokesman. I may not be able to tell the bill, but I am getting my salary, and I am going to do the best I can. When I have spoken for them I don't care the snap of my finger what your verdict is. The people are interested, and then come the lawyers for the defendant. If they can bring this man free with all this awful evidence surrounding him, it will mean that they have achieved a remarkable triumph. It is great in its silliness, in its skill and great in its boldness, the plea that the counsel has just made. It is great in the boldness in which he has misquoted the testimony, in the boldness with which he has tried to convince you that "this poor, innocent boy" came down here from Cortland County and fell among thieves. It is great in the boldness with which he tries to make out that between the sheriff and all the judges and I think he will say all the jurymen, entered into a conspiracy together to deprive him of his liberty and inflict punishment upon him, while he was the only innocent man in the bunch. It takes bold evidence to make such a jury believe that there was any evidence he would not have to make it.

I want you to remember to decide this case on the evidence—that means the sworn evidence, and not this misquoting and falsified evidence as you heard it from the learned counsel. You are sworn to take this evidence, to take the evidence of these physicians. At this point the prosecutor stopped abruptly and court adjourned until 9:30 o'clock to-morrow morning, when the District Attorney will resume his argument, occupying the forenoon session. It is expected that his case will go to the jury to-morrow afternoon.

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CROKER RE-ELECTED.

Again a Governor of Democratic Club.

Richard Croker was re-elected a member of the board of governors of the National Democratic Club at the annual meeting of the club last night at the clubhouse in Fifth avenue. The governors elected were Richard Croker, John Fox, John F. Carroll, Cord Meyer, Fred Mayor Robert A. Van Wyck, Andrew Freedman and Lewis Nixon, all of whom terms will run for three years. Randolph Guggenheimer was elected to the board of governors, to serve one year.

The board of governors will meet to-night to select four additional members pursuant to an amendment adopted at the meeting last night, to increase the membership of the board from twenty-one to twenty-five.

"There is nothing significant in the re-election of Mr. Croker," said one of Mr. Croker's friends last night. "He has been on the board of governors right along since the club was organized. While for years he has not been able to take an active part in the affairs of the club, due to his living abroad, for the sake of old times he is continued on the board."

LIABILITY OF RAILROADS.

Decision Relieving Southern from Responsibility for Seized Whiskey Reversed.

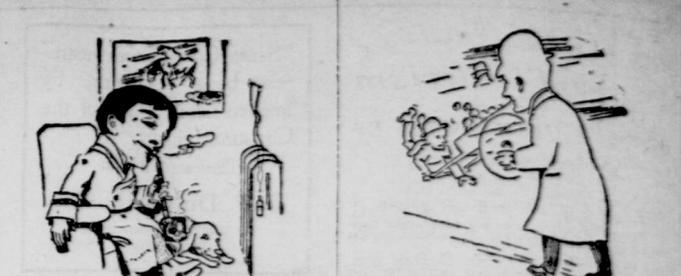
Washington, Dec. 3.—In deciding to-day the case of Paul Heyman against the Southern Railway Company the Supreme Court of the United States dealt with the question as to the extent to which a railroad company becomes an insurance company to its patrons. Heyman is a wholesale liquor dealer in Augusta, Ga., and when some years ago he sold and shipped two consignments of whiskey to purchasers in Charleston, S. C., it was immediately seized by the state authorities and destroyed, in pursuance of the South Carolina dispensary law, which stipulates in the warehouse in which it had been stored by the railroad company. Heyman was compelled to return the purchase price to the consignees, and then sought to recover from the railroad company on the ground that the company had insured the safe delivery of the goods.

The Georgia Supreme Court held that as the property had been seized under legal authority the company was not liable. The Supreme Court, in its opinion of the federal Supreme Court was delivered by Justice White and reversed the finding of the lower court. MORGAN AFTER CROMWELL AGAIN. Washington, Dec. 3.—Senator Morgan is planning to resume his investigation of the action of William Nelson Cromwell, of New York, in connection with the Panama Canal Railroad affairs, and probably will do so before the next session of the Senate.

ORIENTAL RUGS ON EXHIBITION.

There is now being exhibited at H. H. Topkapi's studio, at No. 141 to 147 Fifth avenue, a collection of the highest grade of Persian rugs and carpets. It consists of rugs of all sizes and prices, from the smallest mat to the largest carpet, and includes examples in pure silk, mohair and Persian wool. Some are of very great age and of rare and unusual colorings, many of them woven in the olden days.

Every rug was especially selected by Mr. Topkapi, and the collection presents a treat for the lovers of Oriental handicrafts. BROWNE CASE SET FOR ARGUMENT. Washington, Dec. 3.—The case of Charles C. Browne, a former employe in the office of the Appraiser of Merchandise in New York, charged with complicity in the silk importation frauds of 1902, was advanced to argument by the Supreme Court



Let's make the most of our comforts. The crackle of a radiator isn't up to a wood fire—but with a cosy dressing gown it's not so bad after all. We've quantities of dressing gowns now, especially for Christmas, but they say it's going to be cold to-night. Dressing gowns, \$8 to \$22.50.

ROGERS, PEET & COMPANY. Three Broadway Stores. 258 Warren st. 842 at 3th st. 1250 at 32nd st. ROGERS, PEET & COMPANY. Three Broadway Stores. 258 City Hall. 842 near Union Square. 1250 opposite Greeley Square.

are sometimes left in the carton while the household is far away. Are they ruined by long keeping? No, they improve in flavor. Health Food Co., 57 5th Av., N.Y.

Many persons leading a quiet indoor life, eat too much albuminous animal food, such as beef and eggs. They should try Dr. Mt. Prospect Av., New York.

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WOMEN'S DRESSES AND SUITS

Women's Dresses and Suits, in recent models, made of silk or cloth, appropriate for visiting, street or informal dress wear. Practical Suits for golfing and outing. Separate Costume and Walking Skirts.

The following at considerably below the regular prices will be offered this day, Tuesday, December 4th:

Eton and Coat Suits of black and colored broadcloth, \$35.00 and \$40.00

Afternoon Dresses of black and colored clair de luna, silk lined, \$45.00 and \$55.00

Eton Suits of black and colored chiffon velvet, silk lined, \$58.00

(Third Floor)

STORE WILL BE CLOSED DAILY AT SIX P.M.

Commercial & Social Stationery, Engraving, Die Stamping, Printing, Card Indices, Suit Cases and Bags, Office & Library Furniture, Filing Devices and Supplies, Blank Books, Loose Leaf Ledgers, Fountain Pens, Razors, Leather Goods, Playing Cards & Games. HOSKINS 354 BROADWAY

Art Exhibitions and Sales.

SUIT AGAINST MORAN. Fairbank Asks Damages for Campaign Charges—Perkin Named.

Worcester, Mass., Dec. 3.—Damages to the amount of \$50,000 each are sought by Wilson H. Fairbank, the state exposition commissioner, who filed papers to-day in the Superior Court for civil actions against District Attorney John B. Moran, of Suffolk County, and James N. Perkin, who was the secretary to the Massachusetts commission to the Lewis and Clarke Exposition. The plaintiff alleges slander.

Mr. Fairbank charges that District Attorney Moran, during a campaign speech at Somerville last month, accused him of theft and forgery in connection with the expenditure of the state appropriation to the Oregon exposition. Against Perkin it is alleged that the defendant, in the presence of Governor Guild and others at the State House, accused the plaintiff of forgery. Also, it is charged that he caused to be published in newspapers a statement that the plaintiff had imposed on Miss Ethel C. Rich, a clerk employed by the commission, by making her think that she was performing the routine service in forging the names of creditors of the state to bills which had been rendered as vouchers, in order that Fairbank might square his accounts with the Commonwealth.

At a recent meeting of the executive council in Boston the accounts of Commissioner Fairbank were approved and the commissioner himself was exonerated on charges of misconduct.

CLAIMS OLD TRINITY PROPERTY.

Denver Policeman Is Latest in Field for \$300,000,000 Holdings.

More claimants for the valuable real estate properties owned by the Trinity (Church) Corporation have turned up, and George T. Mahlum, a Denver policeman, and twenty-eight of his relatives say that if they can only find a certain sheepskin document they hope to recover property valued at \$300,000,000 or more.

Herman H. Cammann, the controller of the Trinity Corporation, laughed when he learned of the claim yesterday. "I never heard of this particular claim," he said, "but there have been others in the past. We have never lost any of our prop-

erty in this way, however, and do not expect to." Mahlum's contention is that Francis Forman, a relative, gave a sixty-nine-year lease to the Trinity Corporation in 1776 for 100 acres of ground, of which is that now occupied by Trinity Church. The only trouble is, he says, that the lease was not recorded, and according to Mahlum, that they cannot find the original of the lease, which was retched day, they are searching for it, and promise to begin proceedings to recover the property soon after the close of the year.

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