

RAILROAD DAMAGE SUIT

SUPREME COURT REVERSES A JUDGMENT

ERRORS OF THE TRIAL COURT

Improper Instructions to Jury, Betraying Peculiar Views of Ventura Judge on Law

Mrs. Mary Green and her daughters recovered judgment for damages in the superior court of Ventura county some time ago from the Southern Pacific company on account of the death of George N. Green, the husband and father, who was killed by a railway train of the defendant company.

In an opinion handed down by the supreme court, which arrived in this city yesterday, the judgment and order are reversed and the case is remanded for a new trial. The opinion was written by Justice Van Fleet and was concurred in by Justices Harrison and Garretts.

The trial court is held to have very clearly committed prejudicial errors in admitting before the jury, over defendant's objection, testimony to the effect that one of the daughters of deceased, who was living with him at the time of his death, had no property of her own upon which to maintain herself.

Such evidence, the court says, is never admissible in a case of this character, for the very simple reason that the extent of a defendant's responsibility for the results of his negligence is not to be measured by the condition as to affluence or poverty of the injured party at the time of suffering the injury, since that is a condition for which the defendant is in no way responsible.

The court is held also to have erred in admitting for the purpose of impeachment certain testimony as to a conversation occurring between witnesses in September, 1895, to contradict statements of one of the persons testifying to another conversation between the same parties during the trial in March, 1896.

On the subject of the measure of damages, the trial court charged the jury that they had the right to take into consideration the pecuniary loss, if any, suffered by plaintiffs by the death of Green and also the relations proved to have existed between the wife and Green at the time of his death and the damage, if any, sustained by her by the loss of his support, society, comfort and care.

These instructions are said to have incorrectly stated the rule or measure of damages in such cases. The mistakes were not cured by the instruction given at the request of the defendant that they should confine their verdict to the pecuniary damages suffered, since it cannot be told which instruction the jury followed.

At the request of plaintiffs, the court instructed the jury that negligence of the defendant might be inferred if it did not "ring the bell or sound the whistle continuously for the distance of eighty rods before reaching the crossing." This requirement is held to impose a greater burden on the defendant than is sustained by the statute. Another instruction tending to create the impression that there was that in the age or condition of the deceased which called for the exercise of greater care by defendant than in the case of an adult person of less advanced years is held not correctly to state the law.

LABORERS' LIENS

Suits Against Bear Valley Company Fail in the Supreme Court

By two decisions received yesterday the supreme court reverses the judgment against the Bear Valley Irrigation company and others, obtained by M. L. Shocum and others in one case and by P. B. Worden in another. The receivers of the company appealed from judgment declaring and enforcing certain asserted liens of plaintiffs upon the property of the corporation and from an order denying a new trial. The liens were based upon an act of the legislature providing for the payment of the wages of mechanics and laborers employed by a corporation.

It was contended by appellants that the act in question is unconstitutional for various reasons, and, among others, for the reason that it is special legislation inhibited by the constitution, because it attempts to provide for the creation of liens in favor of a special class of laborers and thus creates a mere arbitrary classification not founded upon natural differences, or differences defined by the constitution.

This contention is held to be correct if the act provides a lien only for those laborers and mechanics who are employed by the week or month, and does not provide liens for those who are not thus employed. But the court has already declared that, in the construction of the act, in one case holding that the act, by the terms of its first section (Stats. 1891, page 195), does not apply to all corporations, but only to those which, while doing business in this state, employ laborers and mechanics by the week or month, whose wages, under the terms of their employment, are payable weekly or monthly. It does not purport to impose upon those corporations any duty or liability toward all the mechanics or laborers whom it may employ, or to create a right in favor of those of its employees whose wages are not earned or payable by the week or by the month.

The former decisions are held to have definitely established the construction of the act and in accordance with that interpretation, the judgment and order denying

a new trial are reversed and the causes are remanded. Chief Justice Beatty files a dissenting opinion, in which he denies the correctness of such construction of the act.

SEWAGE FIGHT

Both Sides Derive Satisfaction From Findings of Court

Argument was closed yesterday in the Vernon sewage case, which has been going on for more than two weeks. Findings were ordered by Judge Campbell to be drawn, to the effect that the use of sewage for irrigation was not injurious to health; that a disagreeable odor could at all times be discerned within 500 feet of the wells opening into the pipe lines and of the open ditches; that occasionally, perhaps six times a year, the odor would be carried for a distance of three-quarters of a mile from an area devoted to the raising of alfalfa on which the sewage is used for irrigation; and that beyond the 500-foot limit, should the odor under sewage restrictions six times a year hereafter be allowed to extend, this would constitute a nuisance.

None of the nine plaintiffs reside within 500 feet of open ditches or wells, and the defendant company is not the owner of any open ditches in the neighborhood. Should it, however, permit the odors of sewage to pass from its pipes beyond the three-quarter mile limit, it will be in contempt of court and liable to punishment for permitting a nuisance to exist.

The operation of the system of irrigation with sewage is therefore allowed to go on, but under sewage restrictions which will be made more fully understood by the findings when actually drawn, and which are expected to bring about greater care in the use of sewage, thus obviating in great measure the difficulty regarding which complaint has been made. Hereafter the irrigation company will be directly answerable to the court as to the manner in which the sewage is used.

Both parties to the controversy express satisfaction regarding the result of the trial; the company because it is not forced out of business, and the citizens at the prospect of abatement of a nuisance.

A SCOTCH DOCTOR

Fresh Attack of Insanity Causes His Confinement

David M. Watson, a Scotch doctor, was adjudged to be insane yesterday by Judge Clark and ordered to be committed to the asylum at Highland. Watson has lived with his mother on Lamar street in East Los Angeles and got the impression recently that the neighbors wanted to drive him out of town. The smoke occasioned by the fire which destroyed the Standard Oil company's tanks and buildings near the river Watson conceived was raised for the purpose of making it unpleasant for him, and other vagaries led to his arrest on a charge of insanity.

Three times before he has been mentally unbalanced, though very bright and thoroughly to be depended upon when in his right mind. The first attack came on fifteen years ago at Detroit, Mich., where he was confined in an asylum. After six weeks' detention he was discharged as cured, and for ten years afterward nothing peculiar was noted in his behavior. Then all at once he had a fresh attack and came to California, where he soon recovered, not being sent to an asylum here. Again, two years ago, at Toledo, Ohio, mental derangement came on, but in two weeks this was overcome without his incarceration in an asylum.

The present attack appears more serious, and is manifested by fear of his food being poisoned, a desire to wander away and jealousy of the neighbors. For his own good he will be placed in the asylum, where it is thought he will soon recover.

MUST SERVE FULL TIME

Terms of Imprisonment for Two Offenses Not Concurrent

Wilbur Welch was convicted of petty larceny in the city police court July 2 last and went to jail in default of the payment of the fine of \$120 imposed, there to remain at the rate of \$1 a day till the fine should have been satisfied by his imprisonment. The theft for which he was committed occurred June 27, and on July 11, he was again taken before Justice Owens on a charge of petty larceny committed June 23. Having been convicted once already, the second case went a little worse with him, a fine of \$150, with the alternative of imprisonment at \$1 a day being imposed on his conviction for the second offense, the term to begin on the expiration of his first sentence.

Yesterday the boy was brought before Judge Allen on a writ of habeas corpus, E. A. Meserve, his attorney, claiming that the two sentences should run concurrently. According to that calculation, the first sentence expired on October 29 and the second sentence, running concurrently since July 11, and being for 150 days, expired yesterday. But Deputy District Attorney James opposed that view of the case, urging that the court could properly indicate from what

time the second sentence should commence to run, and reckoning from October 29, when the first term expired, there would still be 107 days for the boy to serve. That would cause the second term to expire March 27.

SAN DIEGO LAWSUIT

Supreme Court Cannot Go Back of the Judgment Roll

A San Diego lawsuit, entitled Patterson Sprigg against Clarence H. Barber, is considered in a supreme court opinion received in this city yesterday. The statement in support of a motion for a new trial contained nothing more than the evidence introduced at the trial and the rulings of the court as they occurred. The questions arising were therefore whether the court could look beyond the judgment roll and the statement, and consider the trial for a new trial and the grounds stated therein, on a mere certificate of the court clerk that such a motion had been made and that a record of it was included in the court minutes.

No copy of the notice of motion or its specifications, no copy of the motion itself, appeared in the transcript, and no specifications of error in any form. The judgment of the trial court and its order refusing a new trial were therefore affirmed.

Ballard Must Pay

Judge York yesterday rendered an opinion in the case of A. H. Smith against William Ballard and wife. This was an action to recover a balance due for medical services rendered by Dr. E. A. Prager, deceased, the bill having passed to the ownership of plaintiff. The court holds that plaintiff is estopped by his bill of particulars to claim more than \$220 as balance due after the receipt of a check for \$300, stated to be on account. The payment on account of services rendered to defendant Lizzie Ballard, Judge Ballard's wife, were actually rendered to her husband, and he alone is responsible. Judgment is given for the \$220 due on the original account and for \$10 for services rendered after the check was given. The defendants are colored people.

Ballerino Victorious

The cause of B. Ballerino, appealed from justice court, where he was found guilty of misdemeanor, came before Judge Smith for hearing yesterday, where judgment was reversed and a new trial awarded. The district attorney did not wish to try the case again, and on his motion the cause was dismissed and the defendant discharged. In company with A. Gallardo and M. Lavini, the defendant was originally tried for disturbing the peace of persons living near Ord and Buena Vista streets. One of the boys was acquitted, one paid a fine, and Ballerino appealed, with the result stated.

A Bar Meeting

A meeting of the Los Angeles county bar will be held in Department five of the superior court next Wednesday at 10 a. m. to hear the report of the committee appointed to draft resolutions of respect to the memory of W. E. Arthur, deceased.

County Health Officer

Dr. E. N. Mathis, the only applicant for the position of county health officer to succeed Dr. Holland, who has resigned on account of his election as coroner, was appointed to the vacancy by the board of supervisors yesterday.

Jail Arrivals

Juan Martinez was brought in from Pomona to serve 120 days for obtaining money under false pretenses, and John Williams, a vagrant, to serve ten days for misdemeanor.

Court Notes

Charles Chester Moore began suit for divorce yesterday against his wife, Mary J. Moore.

W. P. Martin sued the city of Los Angeles yesterday to quiet title to lot 16, block C, of the Johnston tract.

Augusta Aune brought suit against W. M. and Laura W. Williams yesterday to clear the title of lots 7, 8, 9 and 10, block 2, of the Fairview tract.

H. S. Bauer sues Charles and Katharine Bauer and Gregory Perkins, Jr., assignee of the estate of Charles Bauer, for \$816.25 and the foreclosure of a mortgage on lands in the Rancho San Rafael.

Charles Kubler was found guilty by Justice Young yesterday of selling liquor at the Threemile house on the El Monte road without a county license. He will appear Monday for sentence.

By consent of counsel, the trial of Albert G. Brady, for assault with intent to murder Governor Smith of the Soldiers' Home, was continued by Judge Smith yesterday to January 23, at 10 a. m.

Judge Allen, sitting in Department two of the superior court yesterday, granted a

divorce to Mrs. Rebecca V. Clifford from William Clifford, the cause being permitted to go by default. The decree was based on desertion and non-support.

A complaint in foreclosure of a mortgage on an undivided half interest in lot 9, block F, of the Mott tract, and of lot 1, block 9, of the Fairmount tract, also a half interest in the Omaha Heights tract, was commenced yesterday by Caleb H. Libby against M. G. McKoon and others. The indebtedness was originally \$1200, but has been reduced to \$800.

William C. Campbell of San Diego has filed a petition in bankruptcy in the United States district court. Liabilities \$2170; no assets.

NEWS OF THE RAILWAYS

The Owl Train to San Francisco—Notes and Personals

The "owl" train to San Francisco on the Southern Pacific will go into service probably on Wednesday next and will make the trip in fourteen and a half hours. The equipment will be of the best, consisting of new vestibule Pullman cars, provided with all the comforts of the most luxurious eastern limited trains. It will leave this city at 7 p. m. and will arrive in the northern city at 9 the next morning. South-bound, the train will leave at 5 p. m. and will arrive here at 7 the following day.

The Southern Pacific's freight business is so heavy that, notwithstanding seven new engines have been added during the past month, fifteen new ones will be put into service before the first of the year.

Chief Counsel C. N. Steery of the Santa Fe has gone to Arizona on official business. Superintendent Beamer of the Southern California railway at San Bernardino was in the city yesterday.

The morning train from San Pedro on the Terminal jumped the track at noon on Friday last. Mrs. Terry was in the habit of warming her feet when she arose every morning. She had a small stove for this purpose, but the warmer was out of order Friday morning, so she substituted an ordinary coal oil lamp. In some manner the oil exploded and set fire to her night robe. Her son-in-law went to her rescue, but he was unable to extinguish the flames, and handed Mrs. Terry to his son and went for a blanket with which to smother the flames. It was too late, though, for the unfortunate woman had been badly burned about the body and face, and in addition, had inhaled the flames.

The burning oil set fire to the room, and Hazel Durkee, a 14-year-old grandchild of Mrs. Terry, was nearly burnt by the flames. The house was with difficulty saved from destruction. Drs. Buell, Scholl and Mathis were summoned to attend the suffering woman. She was in terrible agony, and it was necessary to keep her in the influence of opiates. Her sufferings were relieved by death shortly before 4 o'clock yesterday morning. Mrs. Terry was 78 years of age. No inquest was held, as the physicians in charge gave the necessary death certificate. The funeral will be private, and occur from the residence of Mr. Campbell, this afternoon at 2:30 o'clock.

DIED FROM HER INJURIES

Mrs. Terry Inhaled Flames With Fatal Result

Mrs. E. A. Terry died early yesterday morning from the effects of burns and inhalation of fire at the house of J. A. Campbell, her son-in-law, who resides at No. 1329 Santa Fe street. Mrs. Terry was in the habit of warming her feet when she arose every morning. She had a small stove for this purpose, but the warmer was out of order Friday morning, so she substituted an ordinary coal oil lamp. In some manner the oil exploded and set fire to her night robe. Her son-in-law went to her rescue, but he was unable to extinguish the flames, and handed Mrs. Terry to his son and went for a blanket with which to smother the flames. It was too late, though, for the unfortunate woman had been badly burned about the body and face, and in addition, had inhaled the flames.

POLICE COURT NOTES

George Workman was fined \$2 by Police Justice Owens yesterday for violating the hitching ordinance. He paid the fine.

John Brown was fined \$1 for hauling sand from the river bottom within fifty feet of the levees, which was contrary to the city ordinance. He paid the fine.

S. Obeheid, a Syrian, pleaded guilty to having disturbed the peace at the corner of Ord and New High streets. The Syrian came down like a wolf on the fold of a woman and children who were nearby and swore at a horrible rate. He was fined \$5 or five days and paid up.

Theodoro Moreno was fined \$50 or fifty days. Moreno stole a can of milk and some cooking utensils.

The examination of Charles Thomas on a charge of assault with a deadly weapon came to a close in Justice Owens' court yesterday. The defendant was charged with striking Chris Hansen over the head with a club. Thomas was held to answer in the sum of \$1000.

The arraignment of George T. Curran on a charge of assault to commit murder was continued until the 20th, as Charles Earl, the victim of the fellow's knife, is unable to leave his bed. Mr. Earl is improving and is now out of danger.

Christmas for the Poor

The Salvation army is making preparations to give a free Christmas dinner to the poor of the city. Last year twelve hundred people were fed and between two and three hundred clothed. The object is to furnish a basket of food to the poor and deserving families for a Christmas dinner. A dinner will be given to the transient poor at 759 Upper Broadway street, from where the food will be distributed to families for Christmas.

The army desires contributions of game, meats, fruits, vegetables, clothing, toys and money. Contributors are requested to send food, clothing or money to Staff Captain and Mrs. Dunham, 327 1/2 South Spring street.

Crushed His Elbow

Antonio Montana, a boy 10 years of age, residing at No. 228 Bloom street, was attended at the receiving hospital last evening for a crushed elbow. The boy had been playing about a moving oil wagon on Main street, near Bloom, and in some manner fell down, and the wheels passed over his right arm near the elbow. The arm was put into splints, after which the boy was taken to his home.

JOTTINGS

Lovers of good driving horses cannot miss it by buying one of our No. 3 Chester Columbus Buggy Co.'s driving wagons. They have the Bailey hangers, long-distance axles and quick-shifting shaft couplings. Hawley, King & Co.

Our Home Brew

Mater & Zobelein's lager, fresh from their brewery, on draught in all the principal saloons; delivered promptly in bottles or kegs. Office and brewery, 440 Aliso street. Telephone 81.

New styles of vehicles constantly arriving. Be sure and see them. Hawley, King & Co., corner Broadway and Fifth street.

ST. ATHANASIUS MISSION

Successful Bazaar at the Silver Republican Rooms

The ladies of St. Athanasius Episcopal mission held an attractive little bazaar yesterday in the rooms of the Silver Republican club on Second street. The rooms were tastefully decorated and the collection of hand-made fancy and domestic articles was advantageously arranged. Miss Jessie Washburn presided at a table of beautiful hand-painted china, her own handwork, and Miss French at a table full of domestic and fancy aprons. A collection of pretty fancy articles was in charge of Mrs. L. M. Fitzhugh and Miss Adams. Mrs. Theal had charge of a table of beautiful stamped leather goods and Miss Hutton presided over the candy table. Luncheon was served at noon under the direction of Miss Wheeler, Ash and Whittington. Punch and ice cream were served by Miss Fitzhugh and Mrs. Whittington. In the evening there was a musical program of instrumental and vocal selections by Miss Graham, C. F. Edson, T. Dickenson, Messrs. Kirk, Charles Black and Horace King.

A Home Industry

Mr. and Mrs. C. E. Grapevine of San Diego were visitors yesterday at the chamber of commerce on their return from the Omaha exposition and an extended tour in the east, after the big show closed. Mrs. Grapevine is the discoverer of the method of making cream of lemon, a lotion for the skin, that has achieved a phenomenal sale, though the industry is comparatively new. Mr. and Mrs. Grapevine expect to greatly enlarge their business on their return to San Diego, and have ordered a special case made in the east for an exhibition of their goods in the hall of the chamber of commerce.

Election of Officers

The annual election of officers of Stanton Woman's Relief corps was held Friday and resulted as follows: President, Alice A. Fitch; senior vice president, Mary Parker; junior vice president, Mary F. Moore; treasurer, Addie Johnson; chaplain, Adaline Miller; conductor, Cora Radford; guard, Lydia R. Willard; delegates to the annual convention to be held at San Diego, Misses Margaret G. Wright, Amanda Nelson, Azema Melchor and Sarah A. Rickey.

Marriage Licenses

John S. Holcom, aged 31, a native of Indiana and a resident of Downey, and Ethel P. Quarts, aged 20, a native of Illinois and a resident of Pasadena.

Walter S. Beahury, aged 24, and Elberta Thompson, both natives of California and residents of Pasadena.

Arthur J. Thompson, aged 26, a native of Virginia, and Nellie O. Thomas, aged 19, a native of Pennsylvania, both residents of Los Angeles.

"77"

Is Dr. Humphreys' Prescription For Grip, Influenza and Stubborn

"Seventy-seven" contains several carefully selected remedies, each specific for a particular symptom: One for La Grippe, One for Coughs, One for Influenza, One for Catarrh, One for Sore Throat. This combination of cures in one prescription will "break up" any kind of a cold.

At druggists or sent prepaid, price, 25c and 50c; price pocket flask, \$1.00. Dr. Humphreys' Manual at druggists or sent free. Humphreys' Med. Co., cor. William and John sts., New York. Be sure to get H-U-M-P-H-R-E-Y-S

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AMBASSADOR POWELL CLAYTON



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Tempting Holiday Offerings. Haviland China Dinner Sets. Berry Spoons. Chafing Dishes. Parmelee's Retiring Sale. 232-234 South Spring Street.

How Would She Like This? Ladies' Toilet Table \$18, \$20, \$25, \$40. Los Angeles Furniture Co. Opposite City Hall. 225-227-229 South Broadway.