

PENDING APPEAL

Florence Blythe to Have No Allowance.

THE ORDER IS SET ASIDE.

The Supreme Court Declares that the Evidence Producing it Was Insufficient.

The Supreme Court has reversed the order of Judge Coffey in the Probate Court granting a family allowance to Florence Blythe as the widow of Thomas H. Blythe, deceased.

In support of the original application for the allowance counsel introduced in evidence the findings of fact, conclusions of law and the decree before made and entered in the action of Blythe vs. Ayers et al., wherein it was found and adjudged that Florence Blythe was the lawful child and heir of Thomas H. Blythe, deceased.

The appellants thereupon requested the court to grant a continuance for such reasonable time as would enable them to perfect an appeal to the Supreme Court from the judgment in Blythe vs. Ayers, and stated that they in good faith intended to appeal from such judgment and also asked for a continuance for the purpose of introducing testimony to prove that the petitioner was not a member of his family.

Then the appellants moved the court to deny the prayer of Florence Blythe upon the grounds that no evidence had been introduced that she was the child of Thomas H. Blythe or a member of his family, other than the findings, etc., in the case of Blythe vs. Ayers, and that the findings of fact, conclusions of law and decree showed that the petitioner never was the adopted child of Blythe.

The Supreme Court, however, in dealing with the case yesterday, decided that the two last-named objections would not hold, but that the decree must be reversed because there is no evidence to support it.

"Appellants were present at the hearing of the application, and denied the allegation of the petition that Florence Blythe was the child and heir at law of Blythe, deceased. To prove that the findings, conclusions of law and decree in the case of Blythe vs. Ayers were introduced in evidence. We think them wholly insufficient to prove it."

"The findings and decree in that action were filed and entered October 22, 1890. The application for an allowance was filed and heard October 31, 1890. The judgment was not rendered until the 11th of November, 1890, and under the statute the losing parties were entitled to an appeal from it at any time within sixty days from its rendition."

"By virtue of section 1049 of the Civil Procedure Code, an appeal is allowed until the time for appeal has expired, or the judgment is sooner satisfied."

"This judgment, being but nine days old at the time of hearing, and not satisfied, afforded no evidence of the facts therein affirmed, for it was not a final judgment, inasmuch as the action was still pending. A judgment in order to be admissible in evidence must be a final judgment, and therein recited must be a final judgment in the cause, and if the action in which the judgment is rendered is still pending, necessarily the judgment is not final."

"The sound policy of a law which will not allow a decree in such evidence is well illustrated by the Blythe litigation. This judgment, which was introduced in evidence upon the hearing of the matter of family allowance, to prove the paternity of the child, is now pending in this court. Let us assume that the judgment will be reversed upon the findings and the cause remanded with directions to enter judgment for appellants. By such assumption the judgment upon which the decree of family allowance was based has gone forever."

"It has not only disappeared, but the evidence of the paternity of the child upon which the allowance was granted is declared by the court of last resort to be no evidence of such paternity. If this judgment were reversed, the fact of paternity, it was conclusive evidence of that fact; it was 'res adjudicata.' Yet that cannot be possible, for nothing is res adjudicata until it is a final judgment."

"Until final judgment is reached the proceedings are subject to change and modification, and are imperfect and inchoate, and can avail nothing as a bar or as evidence, until the judgment with its verity as a record settles finally and conclusively the question at issue. Other Justices of the Supreme Court have gone to even greater lengths, and have declared such a judgment inadmissible as evidence for any purpose."

"For the foregoing reasons we conclude the evidence is wholly insufficient to support the decree. Let the decree be reversed. GARRATT, J. Justices McFarland, De Haven and Fitzgerald concurred."

"This question of a family allowance for Florence Blythe has been under discussion for some considerable time. The first proceedings taken before the Supreme Court were under a writ of prohibition, wherein the administrator was restrained from paying Florence her allowance—\$300 a month from April 4, 1883, to October 31, 1890, and \$600 a month from that time on—during the pendency of the appeal, decided yesterday. This occurred more than one year ago."

Judge Coffey was not the least amazed at his ruling having been reversed. "While I cannot say that I expected it," he said, "yet nevertheless I considered the whole matter of the case, and I am sure that I was not surprised at my decision being reversed."

BREACH OF CONTRACT.

Legal Dispute About the Ship Galbraith's Charter.

The Supreme Court Declares that the Evidence Producing it Was Insufficient.

The Supreme Court has reversed the order of Judge Coffey in the Probate Court granting a family allowance to Florence Blythe as the widow of Thomas H. Blythe, deceased.

A peculiar case of breach of charter-party, involving a claim for about \$30,000 damages, is on trial in the United States District Court. It is the action of the Galgate Ship Company against Starr & Co. Messrs. Andros and Page are the proctors for the libelants, and Messrs. Towle and Hutchinson represent the respondents.

According to the story of the libelants, Starr & Co. in 1892 arranged, through Balfour, Guthrie & Co., to charter the ship Galgate in England to carry a cargo of wheat to the United Kingdom. Balfour, Guthrie & Co. through their representatives, Balfour, Williams & Co., in England, signed a charter-party as directed.

In the printed form of the contract a "charter" surveyor was to be employed, but those words were erased and others, "competent surveyor," substituted, and that furnished a pretext for the ultimate refusal to accept the charter-party, although when the instrument came to this city it was accepted in that shape with thanks. Charters were high then, but after the Dresden failure they fell considerably, and when the vessel arrived Starr & Co. took the position that they had never chartered her. Action was accordingly begun in the United States District Court for damages for the loss of the ship's charter.

The disputed agreement was offered in evidence as an exhibit, and Broker P. D. Toosey's deposition was read yesterday.

WILL NOT CHANGE Davie Ferry to Keep the Present Berth.

The Place Assigned Too Dangerous. No Parallel in the Injunction Suit.

The Davie Ferry and Transportation Company will not accept the berth offered them by the Board of Harbor Commissioners, midway between Mission piers 1 and 2, for the reason that ingress and egress would be attended with too much danger to their boats.

Here is the position: There are berths for three vessels on the north side of Mission 2, and for a like number on the south side of Mission 1. In rough weather it would be practically impossible to steer a safe course between them, and whenever it happened that one of the vessels was towing to or from her berth the passage would be entirely blocked.

The Davie people claim that the injunction they have obtained against the Board of Harbor Commissioners is in preference to any place where there will be danger to their boats or passengers. "They will once more try to secure what they originally asked for, namely: The berth at the inner end of the north side of Mission 1, and the berth at the inner end of the south side of Mission 2, which makes one trip a week to this port and stays one day."

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In that case it was sought to remove two passenger steamers to an out of the way place in the bay, to prevent damage to their passenger traffic; hence therein recited must be a final judgment in the cause, and if the action in which the judgment is rendered is still pending, necessarily the judgment is not final."

"The sound policy of a law which will not allow a decree in such evidence is well illustrated by the Blythe litigation. This judgment, which was introduced in evidence upon the hearing of the matter of family allowance, to prove the paternity of the child, is now pending in this court. Let us assume that the judgment will be reversed upon the findings and the cause remanded with directions to enter judgment for appellants. By such assumption the judgment upon which the decree of family allowance was based has gone forever."

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RUSH FOR SEATS.

The Grand Opera-House Besieged.

THEY WAITED ALL NIGHT.

People Who Camped Out on Dry-Goods Boxes to Be First at the Box-Office.

The irate seats for the first week of the Lynde-Terry performances opened yesterday morning at the Grand Opera-house at 10 o'clock.

At the time of the season before, however, that the crowd began to assemble in anticipation of the event. All through the long night watches that separated Wednesday evening from Thursday morning the enthusiastic crowd camped out, with only dry-goods boxes or the dusty sidewalk for resting places. Several of the watchers sent for beer to beguile the weary hours. Toward morning these swillers grew hilarious, and the police thinned the crowd by a few arrests.

Shortly before dawn a band of ladies appeared and disputed the foremost places with the men who were holding the fort. Angry protests followed, but they were quelled when the ladies cheerfully paid 75 cents each for the privilege of heading the line.

Daylight found the shivering crowd swelling rapidly in numbers, and small boys with campstools and dry-goods boxes began to do a rushing business by charging two bits for a seat. It was evident that people had camped out all night, armed with lunch-baskets, books and wraps, as if they looked forward to a day's solid camping.

As soon as the box-office doors opened there was a rush. The speculators were in ahead, and for nearly an hour very few ladies were able to buy tickets. After that, however, more police came on the scene and the crowd was formed into one long file, which filled the alleyway leading to the greenroom of the opera-house. Before noon the crowd overflowed the alley and extended round the corner of Third street.

To circumvent speculation no one is allowed to buy more than ten tickets for any one performance. Several of the speculating gentry, however, had boys in the line waiting for tickets.

After the first hour \$5 tickets were being offered among the crowd for \$5. Places in the line near the box-office could be had for \$1 each. Most of the purchasers took tickets for all the performances, and a preference has been shown at all it seems to have been for "Becket."

It was a motley crowd that stood on Mission street, among the heat and dust of yesterday. Ladies in wraps and campstools, jostled by messenger-boys and porters; young ducks and seamy men in shirt sleeves, smoking and waiting with philosophic patience.

"We have been here ever since half-past 8 o'clock," said one lady to a CALL reporter late yesterday afternoon. "You see they are letting the people in ten at a time, and we are about an hour off the box-office yet."

"How can you calculate so exactly?" was asked. "We have marked our progress on the wall in blue ink every half hour," replied the tired ladies, laughing. "We found that all down the alley the file moved a distance of seven feet in two hours. That was the rate of progress, pushing in ahead. We ought to have gone 'there'."

"Oh! the speculators pushed in first so roughly," remarked one girl, and then glancing forward she added, "Just look at that poor old fellow, the secretary here since the morning. I have noticed her once or twice look exhausted and fall out of line, but she always comes back."

The tired lady did not know that Miss Terry and Miss Wardell visited the Cliff House, and on Wednesday evening Irving realized the desire he expressed some days ago of seeing a performance in a Chinese theater. He sat on the stage for a long time and said afterward that he considered the entertainment quite enjoyable.

The rest of Irving's company is expected to arrive here on Saturday morning. Manager Henry E. Abbey will accompany them. Among the performers are several whose names are household words to English theater-goers. William Terris, in particular, is well known to the audience. Terris has often been called the handsomest and most shapely actor in London. His picture is to be found in every stationer's store. It was Irving who first brought Terris to prominence in the United States, and for years he has played as leading man in some of the best London theaters.

Nine carloads of stage settings that will last for a long time, and a proscenium into the stage of the London theater, are expected to arrive on Saturday morning.

VULGAR, BUT PLAIN. The Supreme Court Decides the Meaning of the Word "Sack."

STATEMENT OF THE CONDITION AND AFFAIRS OF THE GIRAUD FIRE AND MARINE INSURANCE COMPANY.

OF PHILADELPHIA, IN THE STATE OF PENNSYLVANIA, ON THE 31ST DAY OF DECEMBER, A. D. 1892, and for the year ending on that day, as made to the Insurance Commissioner of the State of California, pursuant to the provisions of sections 610 and 611 of the Political Code, condensed as per blank furnished by the Commissioner.

Table with columns: Amount of Capital Stock, Real Estate owned by Company, Loans on Bond and Mortgage, Cash on Hand and in Bank, etc.

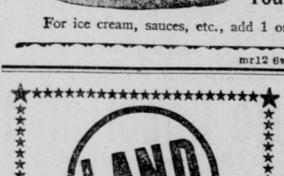
Table with columns: Losses in process of Adjustment or in Suspense, Gross Premiums on Risks running one year or less, Gross Premiums on Risks running more than one year, etc.

Table with columns: Net amount of risks written during the year, Net amount of risks expired during the year, Net amount of risks reinsured, etc.

Subscribed and sworn to before me this 7th day of April, 1893. J. S. BARNETT, President. H. DABLAN, Assistant Secretary.

MANN & WILSON, GENERAL INSURANCE AGENCY, 322 AND 324 CALIFORNIA ST., SAN FRANCISCO, CAL.

IT HAS STOOD THE TEST OF all climates, being shipped to every country. For more than 30 years the old reliable GAIL BORDEN EAGLE BRAND.



Condensed Milk has been the favorite with American housekeepers. Richness, purity and health are the characteristics of the Eagle brand. Your Grocer and Druggist sell it.

TRUSTEES' SALE. IN ACCORDANCE WITH THE TERMS AND UNDER THE AUTHORITY OF A CERTAIN DEED OF TRUST, DEED EXECUTED BY JAMES M. MCCARTY and MARY B. MCCARTY, TRUSTEES, PARTIES OF THE SECOND PART, TO HENRY C. CAMPBELL and THADDEUS B. KENT, TRUSTEES, PARTIES OF THE THIRD PART, dated June 8, 1889, and recorded in the office of the County Recorder of the County of Fresno, State of California, in book 99 of deeds, at page 1 and following, and in pursuance of a resolution passed on the 26th day of August, 1893, by the board of directors of said San Francisco Savings Union, a corporation, and in pursuance of the said deed of trust, and in pursuance of the said resolution, the undersigned, trustees of said deed of trust, do hereby give notice that the lands hereof conveyed and other sums due under said note and deed of trust, and requesting the undersigned, HENRY C. CAMPBELL and THADDEUS B. KENT, TRUSTEES, to sell the real estate described therein to satisfy said indebtedness.

WE, HENRY C. CAMPBELL and THADDEUS B. KENT, TRUSTEES, do hereby give notice that on Tuesday, the 5th day of September, A. D. 1893, at 12 o'clock M., of that day, and at the auction room of EASTON, ELDREDGE & CO., 638 Market Street, in the city and county of San Francisco, State of California, we will sell at public auction the principal sum and other sums due under said note and deed of trust, and requesting the undersigned, HENRY C. CAMPBELL and THADDEUS B. KENT, TRUSTEES, to sell the real estate described therein to satisfy said indebtedness.

HAIR HEALTH. I warrant to Re-grow your hair. Most satisfactory Hair Growth. Sold by WARE, LEWIS & CO., Montgomery Street. Also Polk and Sutter Sts., San Francisco.

STATEMENT OF THE CONDITION AND AFFAIRS OF THE FONCIERE INSURANCE COMPANY.

OF PARIS, FRANCE, ON THE 31ST DAY OF DECEMBER, A. D. 1892, and for the year ending on that day, as made to the Insurance Commissioner of the State of California, pursuant to the provisions of sections 610 and 611 of the Political Code, condensed as per blank furnished by the Commissioner.

Table with columns: Amount of Capital Stock, Real Estate owned by Company, Loans on Bond and Mortgage, Cash on Hand and in Bank, etc.

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Subscribed and sworn to before me this 7th day of April, 1893. J. S. BARNETT, President. H. DABLAN, Assistant Secretary.

MANN & WILSON, GENERAL INSURANCE AGENCY, 322 AND 324 CALIFORNIA ST., SAN FRANCISCO, CAL.

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STATEMENT OF THE CONDITION AND AFFAIRS OF THE HARTFORD STEAM BOILER INSURANCE COMPANY.

OF HARTFORD, IN THE STATE OF CONNECTICUT, ON THE 31ST DAY OF DECEMBER, A. D. 1892, and for the year ending on that day, as made to the Insurance Commissioner of the State of California, pursuant to the provisions of sections 610 and 611 of the Political Code, condensed as per blank furnished by the Commissioner.

Table with columns: Amount of Capital Stock, Real Estate owned by Company, Loans on Bond and Mortgage, Cash on Hand and in Bank, etc.

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Table with columns: Net amount of risks written during the year, Net amount of risks expired during the year, Net amount of risks reinsured, etc.

Subscribed and sworn to before me this 25th day of January, 1893. J. M. ALLEN, President. E. H. WINSLOW, Secretary.

MANN & WILSON, GENERAL INSURANCE AGENCY, 322 AND 324 CALIFORNIA ST., SAN FRANCISCO, CAL.

TRUSTEES' SALE. IN ACCORDANCE WITH THE TERMS AND UNDER THE AUTHORITY OF A CERTAIN DEED OF TRUST, DEED EXECUTED BY JAMES M. MCCARTY and MARY B. MCCARTY, TRUSTEES, PARTIES OF THE SECOND PART, TO HENRY C. CAMPBELL and THADDEUS B. KENT, TRUSTEES, PARTIES OF THE THIRD PART, dated June 8, 1889, and recorded in the office of the County Recorder of the County of Fresno, State of California, in book 99 of deeds, at page 1 and following, and in pursuance of a resolution passed on the 26th day of August, 1893, by the board of directors of said San Francisco Savings Union, a corporation, and in pursuance of the said deed of trust, and in pursuance of the said resolution, the undersigned, trustees of said deed of trust, do hereby give notice that the lands hereof conveyed and other sums due under said note and deed of trust, and requesting the undersigned, HENRY C. CAMPBELL and THADDEUS B. KENT, TRUSTEES, to sell the real estate described therein to satisfy said indebtedness.

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STATEMENT OF THE CONDITION AND AFFAIRS OF THE METROPOLITAN PLATE GLASS INSURANCE COMPANY.

OF NEW YORK, NEW YORK, ON THE 31ST DAY OF DECEMBER, A. D. 1892, and for the year ending on that day, as made to the Insurance Commissioner of the State of California, pursuant to the provisions of sections 610 and 611 of the Political Code, condensed as per blank furnished by the Commissioner.

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Subscribed and sworn to before me this 18th day of January, 1893. E. H. WINSLOW, Secretary. JOHN H. RIEGER, Notary Public.

MANN & WILSON, GENERAL INSURANCE AGENCY, 322 AND 324 CALIFORNIA ST., SAN FRANCISCO, CAL.

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Advertisement for Gole's Eye Salve, featuring an illustration of a man's face and text describing the product's benefits for eye ailments.

Advertisement for the Bush-Street Fire, detailing the fire's impact on the neighborhood and the actions of the fire department.

Advertisement for the Hair Health product, promising to regrow hair and improve scalp health.

Advertisement for the CONGRUATION NEVAH ZEDDEK, a religious or spiritual gathering.

Advertisement for R. LIDDLE & CO., featuring a large illustration of a man in a suit and text about their business.

Advertisement for the PALACE HOTEL, located at the corner of Broadway and San Francisco, highlighting its amenities and location.