

'BLOW POST LAW' BEING TESTED IN COURT

Also Question of Whether Husband Is Personal Property of Wife

UNIQUE CASE NOW BEFORE HIGH COURT

Originated Over Action of Mule in Loitering on Railroad Track

WASHINGTON, D. C., March 17.—Whether a husband may be considered the "personal property" of his wife, and whether the "Blow-Post Law" of Georgia is constitutional are two of the questions at stake in the unique suit of Mrs. Josephine King, of Georgia, against the Southern Railway company, argued today before the supreme court of the United States. It comes up at a time when the only bachelor justice of the court, Justice Moody, is too ill to consider the case.

The suit is for damages, arising out of a railroad accident. In the autumn of 1903, Mrs. King, her husband, A. C. King and her daughter, Miss Inez King, were riding along a country road in Georgia behind a mule. A high bank obscured the view of the tracks of the Southern Railway company just ahead of them. As the mule got squarely upon the track, a through passenger train from Washington to Atlanta struck it and the buggy, killing King, and injuring the wife and daughter. Mrs. King got damages from the state courts for injuries to her person. She also sued on the death of her husband. It is this suit which was argued here today before the supreme court.

In the lower court, the railroad contended that the recovery in the state court for injuries to her person estopped Mrs. King from maintaining an action for the death of her husband. The circuit court of appeals for the fifth circuit in passing on the judgment of Mrs. King for \$3,250 for the death of her husband, considered the argument by the railroad.

The contention is made that the injuries to the person of the wife and the loss occasioned by the death of her husband, said the court, "constitutes a single cause of action and that separate actions will not lie. This contention appears to be seriously made, but in the practice and procedure of the several states it would appear to be a legal novelty without law or precedent. If it be conceded that the deceased husband was the 'personal property' of the plaintiff herein, then the contention would be supported by the decisions of every state court but one.

Where injuries to the person and the physical property of the injured party occur out of the single tort, then, and in that event, the tort to the person and the property constitutes a single cause of action and as previously suggested the same would be presented in single suit. This is the English view and the holding is the same in all American courts with one exception. The declaration that the husband is the 'personal property' of the wife has not as yet received the sanction of court or text writers. The rule as to a single cause of action has no application where the injury is suffered in a different capacity or by different persons.

The "personal property" question was not dealt with by the counsel for the railroad in a brief in the case submitted to the supreme court before the argument today. The railroad's fight before the supreme court is on the constitutionality of the "Blow-Post Law." At the time of the accident, the trial court held the railroad negligent because it was violating this law. So it became material for the railroad to show that the law was not valid.

The law was passed in 1852. "I have found nothing like it anywhere else," said John J. Strickland, counsel for the railroad in his brief. It requires a railroad engineer to blow his whistle from a blow-post 400 yards from every high-way crossing until he arrives at the road, and to simultaneously check and keep checking the speed of his train, so as to stop in time should any person or thing be crossing the track on the highway.

The railroad contends that the statute imposes an unreasonable burden on interstate commerce. It is said, for instance, that it would require twelve hours for a train to run from Atlanta to Macon, Ga., a distance of about 100 miles, if the statute were obeyed strictly.

Reuben R. Arnold, for Mrs. King, claims that the constitutionality of the law was not attacked properly. Furthermore if the railroads would avoid the consequences of the law, he says, they may eliminate grade crossings. He suggests that the law is a valid exercise of the police power and should be applicable to an interstate train, because the one is just as dangerous to life and property in running over grade crossings as the other.

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SINKING NEW WELL WAS COMMENCED YESTERDAY

City Will Sink Prospecting Hole in Search of New Water Supply

The work of sinking the new city water well at the pumping plant south of the city was commenced yesterday and beginning today, the new well will be sunk continuously until the strata underlying the Gila conglomerate has been explored, in an effort to increase the water supply of this city.

A thirteen-inch drill will be used at the start of the new well and the well will be bored as deep as possible at this size. If necessary, the well will be cased and a smaller bit used for deeper boring, but it is thought that the well may be sunk through the conglomerate at its original size.

D. Wyant, pumpman at the city water works, who has charge of the drilling operations, stated that the drilling machinery was put to work in good shape and that the new well will be sunk without difficulty to the required depth. Only one shift was run on the drill yesterday, as it was thought best to have everything in good working order before the night shift is started.

Owing to the fact that the depth at which the conglomerate terminates, is not known, an estimate of the time necessary to complete the well cannot be made, but barring accidents, the well should be completed before the summer season.

WELLINGTON BAR HAS NEW OWNERS

Perry and Henderson Purchase from Sanders

The Wellington saloon changed hands yesterday, when D. J. Perry and Tom Henderson purchased the interests of Lon and Red Sanders, who with Perry have made up a partnership which has controlled this saloon for the past several months.

Perry and Henderson purchased the interest of the Sanders brothers, including their share of two-thirds of the stock on hand for \$1,500, it is said, in addition to assuming all obligations of the concern.

The Wellington was formerly owned by Starr & Rogert. Perry and the Sanders brothers having purchased the resort last fall.

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***** AMUSEMENTS *****

Julia Marlowe is to appear in London again, probably before the end of the year.

Augustus Thomas, author of "The Harvest Moon," now on tour, wrote his first play at the age of fourteen.

When Charles Frohman produces "Chanteclair" in America, Miss Maude Adams will appear in the title role.

During the coming season Mr. Frohman will produce in London a new detective-thriller play called "Alias Jimmy Valente."

Miss Mabel Taliaferro is using William Butler Yeats, "The Land of Heart's Desire" as a curtain raiser this season.

James K. Hackett will revive "Monsieur Beaucaire," in which the late Richard Mansfield appeared with great success nine years ago.

It is reported that Mr. Charles Frohman has secured both the English and American rights of Sir Arthur Wing Pinero's next play.

For the cast of "The Fruit of Divorce" in which Arnold Daly is to star, Miss Hilda Spang and William Hawtrej have recently been engaged.

John Hyams and Miss Lela McIntyre began rehearsals last week for a new musical comedy in which they will star under the management of W. J. Block.

Charles Klein has returned to his country home at Rowayton, Conn., to complete the new play which he is writing for the use of Miss Rose Stahl.

The receipts of "Chanteclair" are running to \$3,000 a night in Paris. Rostand gets one-tenth, which ought to console him for the cuts in the dialogue.

"The Trial of Jeanne d'Arx" will be the most conspicuous feature of Mme. Bernhardt's repertory for her next American tour which will begin some time next autumn.

"Israel," with Constance Collier, Graham Browne, Edwin Arden and the complete New York production, is touring the middle west on the way to San Francisco.

Miriam Nesbitt, who plays Beth El-bott in "The Traveling Salesman," was the original Jessica in "Bordertown," which was produced at the Lyceum theater, New York, on April 30, 1901.

Richard Carle will appear next month in "The Echo," a musical comedy by Deems Taylor and William Le Baron. William Rock, Miss Maude Fulton and Frank Lohr have also been engaged for that production.

Paul Armstrong, in collaboration with Wilson Mizner, has completed another play for Liebler & Co., for early fall production. The title is "In the Deep Purple," and the play deals with a certain phase of the underworld.

Preston Gibson, author of "The Turning Point," has completed arrangements with the Shuberts by which he will produce next season a new play on the life of Lola Montez, the Spanish-Irish adventuress, who was famous about the middle of the last century.

Another operetta by Franz Lehar, composer of "The Merry Widow," will be presented this spring by the Shuberts. It is called "The Man with the Three Wives" and is said to be even more spicy than "The Merry Widow." Paul Potter will make the adaptation.

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