

SUPREME COURT SYLLABI

Points Covered in Opinions Handed Down by the Judges During the Week.

FITZGERALD AND MALLORY WIN A SUIT

Judgment for Three-Quarters of a Million Against the Missouri Pacific—Burlington Voluntary Relief Association—Also Knocked Out.

LANCOLN, Neb., June 28.—(Special to The Bee.)—The supreme court today handed down an opinion in the celebrated case of the Fitzgerald & Mallory Construction company against the Missouri Pacific railroad.

The Missouri Pacific railroad. It has been in litigation for almost six years, and the judgment, \$742,083, with interest at 7 per cent from December 16, 1891, is a good advance on what Judge Tibbets found due, \$529,573.43. John Fitzgerald is the man who has been pushing the case and he will get about \$200,000 of the verdict.

Another decision of peculiar interest at this time is one concerning the Burlington Voluntary Relief Association. In this case the company sought to evade payment on the ground that the assured had not made formal application, and that the money taken from his pay as assessments on his insurance was offered to be returned to him. The court holds that even though no formal application for membership was made the fact that the assured paid the assessments withheld from the wages of the assured a sum equal to his assessment operated as an acceptance of the risk. It was also held that the assessor of a time check in retaining the assessments was not a legal tender, and even if it were it could not relieve the department of responsibility already assumed.

On June 25 the court was presented to adjournment, and the following proceedings were had: Erb against Eggleston, advanced.

Omaha against Richards, leave granted to file amended petition in error. Motions were submitted in the following cases: Douglas county against Keller; Harrison against Woodrow; Kincaid against Exchange National bank; state against Hill; Hudson against Pennek; Thompson against Harris; city of South Omaha against Tax-payers league; Kluge against Schaeffer; Farmers Loan and Trust company against Muninger; Carpenter against Lingens; Owen against Udall, motion for rehearing denied; Lamb against Gleason, rehearing denied; Wiggins against Hume, dismissed; Mickelwait against Palmer, dismissed; Johnson against Parmalee, dismissed; Miller against Madison, dismissed.

On Wednesday, June 27, the proceedings were: Thompson against Harris, motion to correct judgment sustained; Boyd against Boyd, decree as per stipulation.

Leave to file amended petition in error in Farmers Loan and Trust company against Muninger. Kilpatrick against Schaeffe, motion to dismiss sustained.

Ball against Woodard, motion to dismiss appeal overruled. Motion to vacate writ of prohibition sustained.

South Omaha against Taxpayer league, advanced.

Motions for rehearing overruled in following cases: Moon against Waterman, Bell against Beller, Stratton against Tarpington, Davis against Scott, Walker against Burlington & Quincy Railway company against Wyome, Hardin against Smith, Holter against Mann, Chappel against Smith, Hughes against Interstate, North American, Nebraska Loan and Trust company against Hamer, Chicago, Burlington & Quincy Railway company against Wilcox, Wiggins against West, Cortelyou against Mahon.

Hill against state, plaintiff to serve and file briefs in twenty days, or judgment will affirm.

Graham against Frazier, motion to dismiss overruled.

In the matter of the application of the attorney general relative to rules, motion for rehearing denied.

Before adjournment till September this morning the following order was made: The present term of the court will expire before the convening of the next term of court, and inasmuch as it is necessary that a time check be designed to discharge the duties of said office during the term, it is ordered that David A. Campbell be appointed to discharge the duties of said office until the expiration of the term, upon his giving a bond in the sum of \$10,000. Said appointment to take effect before the expiration of the present term of office.

In the case of the state against Hill the billfit was permitted to amend return of summons by showing that the residence of the defendant at the usual place of residence of the defendant. The motion to quash the summons directed to the sheriff was sustained. All other objections to service of summons overruled.

Burlington Voluntary Relief Department against White, writ of habeas corpus affirmed. Opinion by Mr. Commissioner Irvine.

A relief department in the nature of a mutual insurance association was maintained in connection with a railroad company. The members of the relief department were employees of the railroad company. By their contract with the company they authorized the company to withhold from their wages certain sums to provide for the payment of benefits in the case of sickness or death of members. The railroad company contracted to make up deficiencies in the payment of benefits. It also furnished the clerks and other employees for conducting the affairs of the relief department. The superintendent of the department required an employee who attempted to become a member to submit to a physical examination in a prescribed manner and submit himself to a physical examination. His designation was then subject to the approval of the superintendent. W was an employee of the railroad. July 21 he expressed to the superintendent his desire to become a member. The superintendent ordered W either for such application or for such examination. W refused to undergo either the roll of members of the department and from the July pay roll there was deducted a sum of \$10.00. On the 29th of July W wrote to the superintendent stating that his contribution should be refunded by time check and that the notice of disability should be cancelled. September 20 an instrument was issued by the department to W and by him refused. A few hours thereafter W died; held:

That the department, by causing to be deducted from W's pay assessments for the purpose of making good his knowledge of the fact that no formal application had been made and no examination had, was estopped from denying to the plaintiff the relief department.

That the fact that the relief department was a mutual insurance company was not a bar to recovery.

That all of the transactions being with the knowledge of the superintendent of the department there was no question of authority of the superintendent to waive requirements, their acts being in such case the acts of the department.

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THE BIG STORE. Only House in America. IS THE ONLY HOUSE IN AMERICA. Our Pre-Inventory Sale Offers Some Very Unusual Buying Chances.

ARE YOU ONE OF THE FORTUNATE BUYERS?

Dress Goods. 32-inch wide printed dimities in light or dark ground on sale at 15c yard. Don't compare this with the 25-inch wide domestic dimities which are being sold in this city at 12 1/2c and 15c yard.

Musical Instruments. Sheet music only 6c per copy. 5,000 copies of all grades of vocal music, folios, 25c, 35c and 50c. A full and complete assortment is up for 15c and 20c.

Boys' Clothing. A boys' fine knee pants suit 65c, worth \$2.00. Strictly all wool double or single-breasted knee pants suit, on sale at \$1.50; they are worth \$3.00.

Crash Toweling. Bleached or brown twilled crash only 4c yard. Bleached buck toweling, 5c yard. Unbleached all linen crash, 5c yard.

House Furnishing Goods. Mason fruit jar rubbers, 3 1/2c per dozen, get them while they last. Jelly glasses, 3c per dozen. Rockingham cream pitcher, 5c each.

Straw Hats. Men's straw hats, 25c. Men's straw hats, 25c. Children's straw hats, 25c.

Cheese. Again we quote you some prices: Full cream brick cheese, 5c per pound. Limburger cheese, 9c, 11c and 12 1/2c. Swiss cheese, 12 1/2c, 14c and 16c. Wisconsin full cream, 7 1/2c, now go at 5c.

Fruit and Fish. We have fancy lemons 12 1/2c and 15c per dozen; nice sweet oranges, 15c, 20c, 25c and 30c; codfish, 2 1/2c per pound; nice herring, 15c per dozen; California salmon, 10c per pound; white fish, 3 1/2c, 5c, 7 1/2c and 10c. Everything in fish here at lowest prices.

Butter. Here are some of our prices: Country butter, 15c; best country butter, 15c; extra quality butter, 15c.

Crackers. Crackers, 3 1/2c per pound; fancy XXX soda crackers, 5c; ginger snaps, 7c; sugar cookies, 7c; molasses cookies, 7c; cream molasses cake, oatmeal and city sodas all at 10c; snoflake crackers, 7 1/2c.

Meats. For fine quality and low prices in meats and lard we are without doubt the leaders. California sugar cured hams, 9c; corned beef, 8c; pickle pork, 7 1/2c; dried beef, 10c, 12 1/2c and 15c; boneless ham, 10c; Bologna head cheese and liver sausage, 5c per pound.

Trunks. Crystal covered, iron bottomed trunk, strong and durable, \$5.50. Black enamel, iron bottomed trunk, \$10.00. Canvas covered, iron bottom trunk, \$10.00.

RECEIPTS TO OMAHA MEN. Tour of the Jobbers Through Nebraska Towns Hearing Fruit. FALLS CITY, Neb., June 28.—(Special Telegram to The Bee.)—Richardson county capital is in the hands of the Omaha Commercial club, eighty members of which arrived here this evening.

REPORTS OF STATE ASSESSMENTS. LINCOLN, June 28.—(Special to The Bee.)—The reports of the assessments are coming in from the various counties to the state auditor. The reports of the first five counties received as compared with the reports made last year show a decrease of \$125,000.

THINK 2 THINKS HIRES' Rootbeer. WILL LINK YOUR THINKS. Deliciously Exhilarating, Sparkling, Effervescent. Wholesome as well. Purifies the blood, tickles the palate.

State Auditor Moore is preparing a comparative statement of the net earnings and losses of the insurance companies doing business in the state during the past five years, which will be of considerable interest, especially in view of the recent advance of rates made by the insurance companies.

GRAND ISLAND, June 28.—(Special Telegram to The Bee.)—The convention of the Daughters of Veterans closed today. The following officers were elected: President, Mrs. E. G. Gelsdorf; Mrs. E. G. Gelsdorf, Carrie Trouty, Gibson, and Bertina Talbot, Red Cloud; treasurer, Alma Redding, Lincoln; secretary, Margaret Brown, Grand Island; Grand Island, Neb., president, K. K. K., secretary, Stella Allen, Geneva.

NEBRASKA CITY, Neb., June 28.—(Special Telegram to The Bee.)—The stock exchange building, owned by the Union Stock Yards company, in which Secretary of Agriculture Morton is largely interested, was damaged about \$700 by fire this morning. The damage, \$5,000. Origin of the fire is unknown.

At Auburn an hour's stop was made for dinner, after which the crowd moved toward this city, making ten-minute stops at the towns enroute. At every point the visitors have been greeted with enthusiasm, and the business men expressed themselves as well pleased with the tour thus far, affording them as an opportunity to talk personally with customers. Messrs. Dickey, Blotchy and Broatch were left at Nebraska City, but regained the party this evening after a long, stern chase via freight. The order for the tour was given at 4 a. m., followed by a hand-shaking expedition through the towns between here and Crete, where dinner will be served. The tourists will return to Omaha at 10 p. m. Friday night.

GRAND ISLAND, June 28.—(Special Telegram to The Bee.)—The editor of the Independent, Fred Hedde, received a telegram from Kiel, Germany, from a committee of the Turner Verein, congratulating him and extending best wishes as a charter member and organizer of that society, the oldest in Schleswig-Holstein. As far as known, Mr. Hedde is the only living member among those who organized that society, which is now celebrating its fiftieth anniversary.

NEBRASKA CITY, Neb., June 28.—(Special Telegram to The Bee.)—Prof. H. L. Chaplin, for six years past the city superintendent of schools, has been elected superintendent of schools of Sterling, Ill. It is understood that he has accepted the position.

At the time of the visit of the former president, the late Hon. R. B. Hayes, reported in 52 N. W. rep. 103, reaffirmed. State ex rel. Reissel against Whitney, mandamus writ allowed. Opinion by Mr. Justice Harrison.

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NEW LIFE. Dr. E. C. West's Nerve and Brain Tonic. Sold under positive written guarantee, by authorized agents only, to cure: Headache; Loss of Brain and Nerve Power; Lost Manhood; Quickness; Nervelessness; Lassitude; All Diseases of the Liver of the Generative Organs in either sex, caused by (Constitutional, Excessive Indulgence in Tobacco, Opium or Liquor, which soon lead to (Incurable, Fatal) Disease, unless remedied by a certain and reliable medicine. WEST'S GENUINE NERVE TONIC, a certain cure for Constipation, Asthma, Bronchitis, Dropsy, Whooping Cough, Stomach Trouble. Pleasant to take. It saves the patient from the use of the most costly of all medicines. GUARANTEED TO GIVE SATISFACTION. Goodman Drug Co., Omaha.

TRUSSES. DOES YOUR RIBS TRUSS PLEASE and a Large Stock. The Aloe & Penfold Co. 1408 Farnam St., Opposite Paxton Hotel. THE LION DRUG HOUSE.