SUPPLEMENT

PRITEL LIDU, Wilber, Neb. Thursday October 24, 1895.

THE SUPREME COURT.

Some Remarkable Decisions Handed Down in the Last Few Years.

Voters are Requested to Read Them, Form Their Own Conclusions and Vote Accordingly.

It is well known to every intelligent person in the state, that six years ago Judge Reese, one of the fairest and best judges the state has had, was defeated for a renomination by the direct action of the railroads in controlling the state convention by proxies, some of which, it can be proved, were purchased in open market, and they then nominated a former B. & M. attorney for judge.

Two years later Reese was again defeated by the same influence, and a former B. & M. attorney nominated for judge. Two years ago the railroads set out to defeat Judge Maxwell and put in, in his place a man they could rely upon at all times, and by the free use of money, and of passes not only in the state, but to any point a party desired to go, and by charging full rates both ways to those delegates who were in favor of Maxwell, they succeeded in defeating him. Thus they have judges of their own choosing, and an examination of the case will show the influence of the railways in placing unnatural and forced constructions upon contracts and laws in favor of such corporations, not only against the public at large, but against railway and other employees as well.

That these statements are borne out by the facts, we here refer to a few of the cases decided by that court within the last few months.

The Case of a Widow.

In C. B. & Q. R. Co., vs Wymore 58 N. W. 1120, the deceased was section boss at Mallen, a station on the railroad of the plaintiff in error.

This case was tried in Custer county before Judge Hainer and resulted in a verdict of $5000 for the widow. Company appealed to the supreme court and had the case reversed—by Norval.

The facts are as follows: "A young lady named Wilgus had gone to Mallen that day to take the train east. That train was due at about half past three o'clock a. m. She came to the station the evening before, and as there seems to have been no hotel at the place the section boss permitted her to go to his house, some ten or more rods from the station, and remain there with his family until a few minutes before the train was due, when he started with the young lady, who was a stranger, to accompany her to the station. They passed along a traveled way between the tracks, which were from fifteen to twenty-five feet apart, at a safe distance from either; a train was on the side track near which they were passing, when in consequence of a collision, with the train on the side track, they were both killed. A few days after the death of her husband, the widow was waited upon by an agent of the B. & M. railroad, who assured her that as her husband was a member of the Burlington Voluntary Relief Association, she was entitled to a certain sum from such Association.

As she well knew that her husband had been a member of that association for some time, and that a certain sum had been retained each month from his wages to pay dues, she innocently supposed that the small pittance of $500, was from the relief fund and not for the loss of her husband. It is stated in the opinion that at the time she received this money she was required to execute a receipt "in full satisfaction, and discharge of all claims, and demands on account of or causing from the death of said deceased, which I now have or can hereafter, have whether against the said relief fund, the said Chicago, Burlington & Quincy railroad company, or any other association associated therewith in administration of the relief department."

The reply is not set out in the opinion, but what purports to be the substance of it she pleaded therein "that the release had been obtained from her by threats on the part of the company, that she, and her children, would be turned out of the section house unless she executed it."

The supreme court refused to consider this issue upon the alleged ground that the evidence of such threats had been excluded, but the questions excluded are there presented, and sufficient is shown to show the nature of the evidence offered and excluded, and it was the duty of the court to say whether those were proper inquiries. It is a well known rule of law that any instrument obtained under duress is void and the duress may be shown whenever action is brought on the instrument or it is set up as a defense and such is the rule of the supreme court as but lately announced. Beindorff vs Kauffman 60 N. W. 101. Here was a widow suddenly bereft of her husband and means of support confronted with an agent of the company who in tones of sympathy and friendship pays her $500.00, from the relief department, the funds of which the deceased himself had contributed to create. She knew that she as the beneficiary was entitled to whatever was due from it. Had the same dues been paid to almost any of the beneficial orders, like the A. O. U. W., the Modern Woadman, Odd Fellows, and like societies, she would have been entitled upon the husband's death to two thousand dollars. But in this case, having accepted the $500, she is confronted with a receipt to be signed accepting this pittance to discharge the company from the payment of $5,000. Thus the widow and children of a faithful servant of the company, who lost his life in the company's service, without fault on his part, is complacently robbed of her means of support from the money to which she was entitled under the statute from the death, by negligence, of her husband.

In other words, the heirs and dependents of the deceased man could not have what he had laid away for them during his lifetime in the shape of life insurance, until they should sign an article forever releasing a grinding corporation from its legal duties.

The Case of a Switchman.

In C., B. & Q. R. Co. vs. Bell, 62 N. W. 314, the defendant was a switchman in the employ of the railway company, and was crushed while coupling cars by order of his superior officer. He was badly injured and the proof clearly shows negligence on the part of the company, by reason of which the injury was sustained. He recovered a judgment in the court below, which was reversed by the supreme court upon the ground that he had been a member of the Burlington Voluntary Relief association, the dues of which had been retained out of his wages, and he supposing the institution was what its name imports, had accepted $60 from that department, and therefore his right of recovery was held to be barred and he could keep his injuries and pay the costs. The same dues, if paid monthly to any of the accident insurance companies, would have entitled him to at least $2,000, but having accepted a small sum from the alleged relief department he was held deprived of a fair return while he was unable to work and had absolved the company from all liability. As construed by the court, the company is relieved from all liability, and this was the evident object of the creation of the department, with a court to construe it to the company's liking, and deprive its employees of their just rights in the premises.

Another switchman received instructions from the railroad court. In C. B. & Q R. Co. vs. Howard, 63 N. W. 872, the defendant in error Howard, a brakeman, was injured in the foot while switching cars at Dorchester. Afterwards his foot was amputated, and he brought an action against the company and recovered before a jury in the district court.

This judgment was reversed in the supreme court and it was held that he could not recover on either the pleadings or proof. From the statement of facts it appears that the accident was caused by the displacement of a draw bar or coupler, in consequence of the car striking the corner of another, and it was a question of fact whether or not the fault was not in the defective appliances. The loss of a foot to the brakeman maimed him for life, and if caused by the defects complained of or from negligence his right to recover was undoubted and he is entitled to submit these questions to a jury. The court, however, held there could be no recovery and that the court below should so have instructed the jury.

Reference is also made to the Burlington Relief association, of which Howard was a member, and had received certain small sums, which it is estimated would bar his right to recover in any event.

Mr. Bignell Writes a Letter.

In C. B. & Q. R. Co. vs. Cochrane, 60 N. W, 874, a fireman in attempting to get on his engine, slipped in such a way that his right foot was caught and run over by the trucks of the engine tender, which first caused the amputation of the toes and afterwards the amputation of the foot back to the instep. Afterwards the company paid him $100 for the loss and a receipt in full taken. In the petition Cochrane alleges that the injury was settled "in consideration of $100 and the promise of the company to furnish him employment for the remainder of his life, or so long as he desired, with wages sufficient for the support of himself and family." This is substantially admitted. The plaintiff at the time of the alleged settlement was in the service of the company and remained in its service for six or eight months thereafter. His wages do not appear to have been very high and he protests against a reduction. He was then asked to submit a sample of his penmanship which he did and a letter was thereupon written by Bignell, the company's agent, asking him to report for duty next Monday morning. This letter was not delivered until twenty-seven hours after the time he was required to report, in other words the letter was not delivered until Tuesday, near midday. The court censures Cochrane for his "inexcusable default and who shows no desire or willingness to perform his part of the contract" and the judgment in his favor was reversed, as "he was guilty of the first breach of contract, and his default was without justification or excuse."

Another Case.

In C. B. & Q. R. Co., vs. Oleson, 59 N. W. 554, the defendant in error was one of a force of men engaged in repairing the track, being in charge of a foreman, and he was ordered by the foreman to jump on a moving engine and procure a can of oil to oil the jack used in raising the track; that in attempting to do so he slipped and fell and was injured without any fault on his part. The company denied negligence. Oleson recovered in the court and jury below, but the judgment was reversed in the supreme court for alleged error in the instructions.

The Eight Hour Law.

In Low vs. Rees Printing Co., 41 Neb. 127-59. N. W. 362, the court not only held void the sections of the statute relating to the number of hours which should constitute a days work "for all classes of mechanics, servants and laborers, through the state of Nebraska" excepting those engaged in farm and domestic labor," but denied the power of the legislature to pass such a law, as being in conflict with the constitution. An examination of the opinion will show a labored effort in a multiciplicity of words to befog the real issue, and it is slurred over. A year or more before the opinion was filed the plaintiffs asked to have the case advanced as being of public importance, and a motion to that effect was filed by the plaintiff in error, but a majority of the court refused to advance it or consider it of public importance.

FINANCIAL SCHOOL.

The skins of animals were the earliest forms of money.

Sheep and oxen among the old Romans took the place of money.

Oxen form the circulating medium among the Zulus and Kaffirs.

Tin to-day forms the standard of value at the great fairs of Nishni Novgorod.

In the retired districts of New Guinea female slaves form the standard of value.

Iron spikes, knives and spear heads and brass rods are employed in certain parts of Central Africa.

Chocolate is still used in the interior of South America for a currency, as are cocoanuts and eggs.

The archaic Greek money was in the form of thick, round lumps of metal, stamped with the given value.

Whales' teeth are used by the Fijians, red feathers by some of the South Sea Islanders, and salt in Abyssinia.

The Icelandic and Irish laws yet have traces of the use of cattle for money. Many Teutonic fines were paid in cattle.

A learned and just judge, or an agent of the corporations, which do you want?

WITH AND WITHOUT MAXWELL.

The Court Reverses Itself and Relieves the Railroad of $4835 Damages as Soon as Maxwell Leaves.

Some Powerful Influence Brought to Change the Minds of the Judges Left on the Bench.

Some Things the Railroads Can Do.

In Omaha and Republican Valley Ry. Co. vs. Clark (57 N. W., 545) Clark's team had been frightened by the neglectful discharge of steam by one of the company's engines standing at a crossing of a public street in the city of Norfolk and ran away, breaking Clark's leg and inflicting other very severe injuries. He recovered $4,835 in the district court.

The company took the case to the supreme court, where it was heard in 1892 and the judgment of the district court affirmed, all the judges, Maxwell, Norval and Post, concurring, and it was held that where a locomotive crosses one of the principal streets of a city, where teams are constantly passing, and where an employee of the company, having care of the engine, UNNECESSARILY opens the valves of his engine, and lets steam escape, and frightens a team and causes it to run away, the company is liable for the damages, provided the person in charge of the team was free from contributory neglect. The first opinion was written by Judge Maxwell, and every fair-minded lawyer will concede that the statement of the law was correct.

The railroad company moved for a rehearing, which was granted, and a second opinion written after Judge Maxwell's term had expired. The second opinion will be found in Vol. 59, N. W., 545, where the judgment was reversed, and it was held in fact, that there could be no recovery, and rules were laid down as to the evidence required in a case of that kind, that will forever preclude recovery in such cases.

There must have been some powerful influence brought to change the minds of those other two judges, after Maxwell had left the bench. There was no friend of the people there to protect this man's honest claim of more than $4,000, and point out to the citizens of Nebraska the shortcomings of some of their chosen servants.

Railroads Can Destroy Crops.

In a number of decisions, beginning with Morrissey vs. the C. B. & Q. Ry. Co. (56 N. W., 946) it has been held that a railroad company may construct an embankment without openings, nearly across a party's land and throw the surface water thus accumulated from rains, freshets, or overflows upon the proprietor below, without rendering the railroad company liable.

In the above case the farmer's crops were destroyed in the years 1888 and 1889 by the obstruction of the water by the railroad embankment, and turning the water in a body on his land. The court held that he was remediless. The following is the statement as it appears in the final opinion as to the cause of injury: "An embankment was made without an opening through it, from which it resulted that the water, which in former freshets had been discharged over the bottom land, now crossed by the embankment, was arrested in its course toward the Nemaha river and diverted to Yankee creek, causing thereby an increased volume of water to seek an outlet by way of that creek and the bottom lands beyond it, including those of the plaintiff. To this increased flowage of water plaintiff attributed his injuries complained of."

Yet it was held that the company was not liable for the damages.

A Farmer's Experience.

The preceeding cases serve to illustrate the methods of the railroad company in dealing with its employes, their widows and orphaned children. There are many other cases that we might cite had we the necessary room to print.

It is not alone the railroad employes that are made to feel the awful effects of a supreme court owned and controlled by the railroad authorities. The following is a typical case:

The case of the O. & R. V. R. Co. vs. Severin. This was a case where the railroad company constructed its line of road through a man's front yard, passing between his house and the public high way. It was necessary for the farmer to cross the track of the company every time he left home.

The company fenced their track on both sides and at the crossing in front of the house, put in two sets of bars, large, heavy planks, which required a stout man to take down and put up again. The farmer sued the company to compel them to put in an "open way," with "cattle guards" to prevent stock from getting upon the track. He recovered in the district court before a jury.

The case was carried to the supreme court by the company, where it was reversed by Judges Cobb and Norval, on the ground that the company had sufficiently complied with the law by putting up the bars referred to above. Judge Maxwell filed a dissenting opinion, citing the law in the case. It is in part as follows: "Sec. 106, Chap. 16, Compiled Statutes, Neb., provides: When any person owns land on both sides of any railroad, the corporation owning such railroad shall, when required so to do, make and keep in good repair, one cause-way or other adequate means of crossing same."

Sec. 1, Article 1, Chap. 72, provides: "That every railroad corporation whose lines of road or any part thereof is open for use, shall erect and maintain fences on the sides of their said railroad, suitable and amply sufficient to prevent cattle, horses, sheep and hogs from getting on the railroad, except at the crossings of public roads and high ways and within the limits of towns, cities and villages, with opens, or gates, or bars at all farm crossings of such railroads for the use of the proprietors of the lands adjoining such railroad." Maxwell says concerning the above that the law "requires farm crossings of railroads to be with opens, gates or bars. There are three classes of cases, therefore, provided for by statute, and the question of what is an adequate crossing is a question of fact (for a jury) considering all the circumstances of each case. If a crossing is but little used, then bars may be sufficient and would be an adequate provision. If the crossing is used to a greater extent, then gates may be sufficient, but if the crossing is in constant use, as where the railroad intervenes between the public road and the residence of the land owner (as in this case) then an adequate crossing would be an "open way."

"The words 'with opens' are evidently designed to apply to cases of that kind; otherwise they have no meaning whatever.

"The court below found that the only adequate means of crossing, and this court cannot say as a matter of law that such way is not required. The words 'with opens' are entirely ignored in the majority opinion (written by Cobb and Norval), although they evidently refer to a class of cases not provided for, where gates or bars would be sufficient means for a farm crossing. The judgment of the court below in my view is right and should be affirmed."

Farmers should consider this case before casting their vote for supreme judge this fall. Look at the difference between the two men. Both are represented in this case.

A Poor Petition—Read It.

In Mo. Pacific Ry. Co., vs. Baxter, 60 N. W., 1044, the widow as administratrix brought an action for the death of her husband and recovered a judgment in the district court. This was reversed in the supreme court on the ground that the petition did not state a cause of action.

The petition as set out in the opinion is as follows: "The petition of the administratrix alleged the death of George Edward Baxter; her appointment as administratrix of his estate; that he was her husband, and at the time of his death left the administratrix, his widow and two minor children, him surviving. The petitition further alleged "that the defendant had so negligently, carelessly and unskillfully constructed its railroad track at Talmage, both upon the main track, side tracks and spur tracks, that any one who was an employee of said company, using due diligence care and skill in transacting the business of said company, was liable to be injured, hurt and damaged on account of the negligent, careless and unskillful manner in which the said track of the defendant was constructed at Talmage; that the said George Edward Baxter, while employed by the defendant at a reasonable salary as a compensation for his services, in the exercise of due care and skill upon his part in coupling the cars upon the side track of the defendant at Talmage, did, without any negligence upon his part, but on account of the negligence, carelessness, and unskillfulness of the defendant in the construction of its railroad bed, side tracks and spur tracks, in not properly blocking, and filling up the space between the outside rail and guard rail, have his left ankle caught just above the heel between the guard rail and outside rail of said track, which threw him under the trucks of said cars and he was thereby killed, which said killing was on account of the carelessness, negligence and unskillfulness on the part of the defendant in the construction of their railroad, and while the said George Edward Baxter, the employee of the said railway company, was acting directly under the orders of the conductor of said train of which he was brakeman, and while he was using due care, diligenc and skill in the transaction of the business of said railway company."

The administratrix also alleged in her petition that her husband at the time of his death, was thirty-three years old. At that time he was employed by the railway company as a brakeman on a train running between the stations of Crete and Talmage in Nebraska, "including the main line of the road at Talmage, the side track, spurs and other tracks necessary to be used and operated by said railway company at said place in connection with their business to and from Crete, in Saline county, Nebraska." It will be seen at once that the petition evidently is well drawn, and certainly is sufficient to entitle the widow to recover, but it was held to state no cause of action, and would not support a verdict in favor of the widow.

A Brakeman's Fate.

In Erb vs Eggleston, 60 N. W. 98, the defendant was a brakeman employed in the K. C. W and N. W. R., the plaintiff in error being the receiver of such road. The defendant had about two years experience as a brakeman, and had been in the employ of the company about three weeks, when the injuries complained of occurred. The parties were engaged in making up a train. The engineer had just supplied sufficient momentum to a car to carry it to the train then being made up, and the defendant as the car passed him undertook to seize the hand holds of the car and mount the same and apply the brakes. The defendant's hands, however, were wrenched loose from the car and he fell on the track immediately behind the car, and in front of the moving engine doing the switching. He signalled the engine to stop, but it passed over him, mangling both arms so that amputation was necessary. An examination of the facts stated in the opinion will show that if this man, bruised and mangled as he was, cannot recover for the injuries, then it will be impossible to recover in any case, and it virtually exempts railroads from liability.

A Railroad Can Defy the Laws.

In the case of the Omaha and Republican Valley Ry. Co. vs. Hall, 63 N. W. 49, it was held than an informer could not maintain an action to recover the penalty of $50 for each case of neglect imposed by the statute upon a railway company for failing to ring the bell or blow the whistle, at least eighty rods from the crossings of public roads or streets.

This statute was passed in 1864 before there was a railroad in the state, and was carried into the revised statutes of 1866, page 226, and has remained unchanged to the present time.

In the above case the action was brought to recover for 75 cases of action of $50 each, in all $3,800. The plaintiff recovered before a jury in the court below, but this was reversed by the supreme court and the action dismissed upon the ground that a private citizen could not maintain the action.

The statute requires the bell to be rung, or the whistle blown, at least eighty rods from the crossing of a road or street and provides that the bell shall be kept ringing, or the whistle whistling until the road or street is crossed; and for every neglect the railroad company