

MAYOR MOORES WINS

Supreme Court's First Decision in the

DE MURDER OF RELATOR IS OVERWHELMED

Answer Filed by Respondent Held to Be

IMPORTANT RULING ON A 555 LAW

Unclaimed Fees and Costs Do Not Become

RETENTION DOESN'T CONSTITUTE DEFAULT

Relator Must Show that Respondent
Wilfully and Flagrantly Neg-
lected to Pay Over

LINCOLN, Neb., Dec. 2.—(Special Telegram.)—The supreme court has handed down an opinion in the Brotch-Moores case, declaring that the demurrer to the answer should be overruled, with leave to the re-

as follows:

On demurrer judgment should go against the party whose pleading was first defective in substance.

The office of mayor of a city of the metropolitan class is an office of profit and trust under the laws of this state.

Unclaimed witness and costs remaining in the hands of the clerk of the district court are not public moneys and the legislation of this state insofar as it attempts to divest the persons for whom

The term "default" as used in said section of the constitution implies more than a mere civil liability. There must exist

The word "eligible" relates to the capacity to be elected or chosen to office as well as to hold office. Per Norval, J., and Ragan, C., Post, C. J., and Ryan, C., concurring.

Held, that the information states a cause of action. Harrison J., Irvine and Ragan, C., dissenting.

The answer of the respondent avers sufficient matters, if true, to constitute a defense. Per Norval, J., Post, C. J., and Ryan, C., concurring.

the parties in the case, the opinion goes on to hold that the office of mayor of the city of Omaha is an office of profit and trust "under the state," and discusses the matter of the application of the provisions of the constitution of Nebraska to the office of mayor.

The information of the petitioner discloses that the respondent as clerk of the district court collected and received in fines and penalties, which he retained in his hands for more than one year after his term of said office expired, and has failed to pay the same to the officer entitled thereto on the date of his election as mayor the sum of \$2,651.20 and that \$242.37 of said amount remains unpaid and has been paid by the

information therefore shows that he is at this time in default as collector and custodian of the public funds at least to the amount last named, and if the matter pleaded therein are true he is ineligible for the office of mayor of the city of Omaha.

It also holds that if the term "ineligible" as used in section 2, article xiv, of the constitution refers alone to the capacity to hold office and not to be elected and chosen to an office, it is obvious that the respondent does not

tion of the constitution, but respondent has not contended that if he was a defaulter, at the time of his election he is eligible to hold the office in question, though all arrears were paid before he assumed the duties of mayor. Doubtless the reason he has made no such contention here is that he regarded the question foreclosed against him by the decision in *State against McMillen*, 23 Neb., 38, *State against Boyd*, 31 Neb. 682. In each

gible," referred to the time of election and not to the time or period of entering upon the office. The term "eligible," as employ

and ordinary signification, and when so construed there is no escaping the conclusion that it means "capable of being elected or chosen." The opinion goes on:

WILFUL CORRUPTION NECESSARY
To render one ineligible there must have existed such wilful conduct, omission, duty or wrongful action that the intent misappropriate money or property belonging to the public is fairly inferable therefrom. If a civil liability is the crucial criterion to be applied here, then every con-

constitution who has failed to pay over public money of which he has been robbed, which, while in his hands, was destroyed by fire, or who failed to pay to his successors the true amount with which he was charged, is liable on account of an error or mistake evidently made by his deputy in adding a column of figures. It is stated that there are

in default and those convicted of rebellion or insurrection, the disability of the first class being temporary and ceasing the moment he has counted for or paid over the funds or property. To render one in that class ineligible it is not essential that it should have been judicially ascertained that he was in default, but there must exist in addition

corrupt intention, or such a flagrant disregard of duty as to justify the inference that his conduct was wilful and corrupt.

PAYMENT SHOWS INTENTIONS.

The opinion concludes with the following

It is admitted that the items which go to make up said sum were paid to the

until after the expiration of his term, and with reasonable diligence the same could