

BONDSMEN ARE HELD LIABLE

Sureties on Bond of Ex-Oil Inspector Hilton Must Stand Shortage.

DECISION RENDERED BY SUPREME COURT

Case Remanded to District Court with Direction to Enter Judgment on the Verdict—Syllabus of the Decision.

LINCOLN, May 3.—(Special.)—The supreme court this afternoon handed down an opinion in the case of the bondsmen of ex-Oil Inspector L. F. Hilton against the State of Nebraska, in which the plaintiffs sought to be released from liability on the bond, judgment having been rendered against them in a lower court. The judgment, which was for \$5,622.56, is reversed and the case remanded with direction to the district court to render judgment on the verdict and to certify therein that Hilton is the principal and that the plaintiffs in error are sureties on the bond.

In the district court the clerk in certifying the case failed to state, in accordance with the provisions of the code of civil procedure, that some of the defendants in the case were sureties. The supreme court held that this is reversible error, although the matter was not brought to the attention of the lower court by motion or otherwise.

The action against Hilton and his bondsmen was instituted to recover \$5,622.56, which he was alleged to have received for inspecting gasoline. The defendants contended that the inspection of gasoline was not an official act and that for that reason the oil inspector should not be held liable for the amount, but only for the amount named as accounted for by Mr. Hilton when he retired from office.

The supreme court holds that when the inspector of oils examines gasoline and places upon the cans the brand of condemnation he performs an official act and that the fees received by him for the services are officially received.

The bondsmen in the case are Richard Blago, W. C. Walton, G. D. Stewart and John M. McKee. According to the decision of the court they are liable for the amount of the shortage.

The syllabus. The opinion of the case was written by Judge Sullivan. The syllabus is as follows: 1. When sureties for the purpose of enabling the principal to assume the duties and enjoy the emoluments of an office to which he has been appointed execute an official bond containing a recital that the appointee has been duly made, they will not be permitted afterwards, when sued on such bond, to deny the validity of the act creating the office.

2. In such case the law authorizing the appointment to be made is constructively incorporated into the bond and its validity affirmed by the obligors.

3. Under the provisions of chapter xiv, article i, Compiled Statutes for 1897, it is the duty of the inspector of oils and his deputy to inspect petroleum products, and of every producer of petroleum to sell to the owner to be put upon the market and sold for illuminating purposes.

4. The act of the inspector of oils in inspecting petroleum and contemplating its inspection when kept for sale as an illuminant.

5. The fact that no grade or quality of gasoline will meet the statutory test does not exempt such oil from inspection if the owner intends to offer it for sale as an illuminant.

6. The design of the law providing for the inspection of oils was not merely to prescribe a test for those products of petroleum which might or might not, according to their quality, be dangerously inflammable, but rather to require an effective inspection of every producer of petroleum, and to be sold and used in this state for illuminating purposes.

7. A person owning gasoline kept or intended for sale as an illuminating oil is under the act of 1897, legally bound to submit it for inspection; and he is also bound to pay the inspector the statutory fees for the services rendered.

8. The fees so paid are paid for official purposes and are within the purview of the inspector's bond.

9. In an action on a bond of a public officer the sureties cannot successfully defend on the ground that the money which their principal misappropriated was received by him for official acts irregularly performed.

10. When the inspector of oils examines gasoline and places upon the cans in which it is contained the statutory brand of condemnation he performs an official act and the fees received by him for the services are officially received, although the dangerous inflammable character of the oil has not been determined by actually applying the test prescribed by the statute.

11. The presumption that a public officer has executed with fidelity the duties which he was charged is a mere arbitrary rule of law, which loses its force and effect when met by opposite proof.

12. There being in this case evidence that the inspector of oils was inspecting the state when he went out of office and the answer containing an implied admission that he had not lawfully disbursed all moneys received for inspecting gasoline, the presumption of official faithfulness does not obtain.

13. The failure of the clerk of the district court in recording a judgment, to certify in accordance with the provisions of section 511 of the Code of Civil Procedure, that some of the defendants in the action are sureties, is reversible error, although the matter has not been brought to the attention of the trial court by motion or otherwise.

Enos's Case in Supreme Court. The filing of a petition in error with the supreme court in the contempt case of Mayor Enos of South Omaha, who was fined \$200 for violating a restraining order by the district court in Douglas county, will operate as a suspension of the sentence imposed upon him. Commitment to the county jail until the fine is paid was a part of the penalty for the alleged violation of the order. The petitioners ask the supreme court for the usual order of suspension of sentence until the fine is paid.

It will be remembered that the litigation grew out of a political quarrel. El Johnston, who was acting as challenger at the registration in South Omaha, secured an order from Judge Paenett of the district court restraining Mayor Enos, Chief of Police Carroll, Captain Morrison and Anton Hudock from interfering with him or preventing him from being present at the place of registration in the Fourth ward in South Omaha.

The order was violated and Johnston was forcibly ejected from the place of registration. All the persons charged with violating the order were arraigned before Judge Paenett, but Carroll and Morrison were found not guilty. Mayor Enos and Anton Hudock were adjudged guilty, fined \$300 each and ordered committed until the fines and costs were paid.

Lincoln Local Notes. The controversy over the possession of the Lincoln hotel in this city has resolved itself into a three-cornered fight. Suit was

BARTLEY BONDSMEN BOB UP

Make Another Effort to Avoid Assuming Responsibility.

SUIT IN LANCASTER DISTRICT COURT

Attorney General Temporarily Enjoined from Carrying on Prosecution of Case in Douglas County Court.

LINCOLN, May 3.—(Special Telegram.)—A suit of considerable political significance was instituted in the district court here late this afternoon by the bondsmen of ex-State Treasurer Bartley. The petition in the case recites all the facts connected with the giving of the Bartley bond and also of the bond given by the Omaha National bank's sureties to indemnify and hold harmless not only the state, but the ex-treasurer for all losses sustained by the deposit of any funds in the Omaha institution.

The third trial of the suit brought by the state to recover from the bondsmen the amount lost by Bartley's default is set for hearing in Omaha tomorrow morning. The bondsmen say that under all statutes and rules of procedure the state must first exhaust all its remedies against the corporation such as railroads, etc., whose valuations are made by the state.

The state treasurer, who is a member of the State Board of Equalization, states in a letter that if the cash basis of assessment is carried out that the county will pay more than its just share of the state taxes and is its proportionate and just share. It is urged that the 1-mill utility levy recently enacted alone, on the cash assessment plan, will cost the county \$8,000 in taxes more than it justly ought to pay. It is also claimed that cash assessment and a low levy will cost the county hundreds of dollars in taxes from corporations such as railroads, etc., whose valuations are made by the state.

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RAINS SOAK NEBRASKA GROUND

Start Grain and Small Grain and Put Soil in Good Condition.

GENEVA, Neb., May 3.—(Special.)—Fifty-one hundredths of an inch of rain fell yesterday afternoon and the mercury fell from 84 degrees to 40 degrees, with a north wind.

EXETER, Neb., May 3.—(Special.)—The past week has given us some very peculiar and varied weather. The several showers of rain were very much needed and have caused a decided change for the better in the winter wheat. A few pieces are looking fine and a large number, which two weeks ago it was believed would be planted in corn, will now make nearly a half crop with favorable weather the rest of the season.

An unusually large acreage of corn will be planted this spring. It looks as if very little of the fruit is damaged to any great extent.

SUTTON, Neb., May 3.—(Special.)—A heavy thunderstorm, bringing a much needed rain, occurred here yesterday afternoon and evening. Winter wheat is looking fairly well. Farmers are beginning to plant corn.

MEAD, Neb., May 3.—(Special.)—These parts have been visited by several nice rains during the last few days and a heavy rain fell in this vicinity yesterday. Winter wheat is all killed and spring planting late.

PLAINVIEW, Neb., May 3.—(Special.)—The heaviest rain of the season fell here last night. There was considerable wind at times. The glass front of E. Parker's store was blown out by a gust of wind.

CREIGHTON, Neb., May 3.—(Special.)—Another splendid rain visited these parts yesterday afternoon. The people of Creighton viewed the clouds with some anxiety as they were whirling in every direction. There was a splendid downpour of rain but no wind. The small grain is all sown and some farmers began over a week ago to plant corn, which will be greatly benefited by this rain.

LOUISVILLE, Neb., May 3.—(Special.)—Within the last week this part of the county has had frequent rains, with bright sunshine in between. Several nice showers fell last night. Most farmers are about ready to plant corn.

IMPERIAL, Neb., May 3.—(Special.)—Chase county has been blessed with two beautiful rains in the last few days, which are bringing out the small grain in fine shape. Likewise the corn is getting on. The farmers are all busy putting in their corn crops. The ground is in elegant shape for working and the outlook for a crop is exceptionally good.

PLATTSBOUTH, Neb., May 3.—(Special.)—The spring showers are coming this way thick and fast. Many farmers who had the ground plowed for corn, the fall wheat is coming out much better than previously anticipated. During a shower Sunday the house occupied by R. D. Blunt and family in Mercersville was struck by a lightning bolt. The chimney was badly wrecked and thirteen holes were made in the ceiling of one room, while another one contained ten punctures. All of the members of the family were in the building at the time except Mr. Blunt, who was in an adjacent room. He and his wife were stunned by the shock, but not badly frightened.

MONROE, Neb., May 3.—(Special.)—This section of the state was visited by a very heavy rain, accompanied by thunder, lightning and some hail. The rain was in volume any had this season. No damage was done so far as learned.

NORFOLK, Neb., May 3.—(Special.)—This section was visited last evening by a severe rainstorm. Some damage was done in the west part of the city, where the rain rushed down from the hills, tore up sidewalks and overran lawns, depositing mud thereon to the depth of several inches.

DAVID CITY, Neb., May 3.—(Special.)—Four inches of rain fell here yesterday afternoon and evening. A high wind accompanied the rain and a severe electrical storm. Lightning struck the residence of Deputy County Clerk Holland, doing considerable damage. Mr. Holland and family were in the house at the time, but fortunately were not hurt. The lightning did considerable damage to the lines of the local telephone company and the electric light system. The rain was the first this spring and was needed badly.

RANDOLPH, Neb., May 3.—(Special.)—One of the heaviest rainfalls of the season visited this locality last evening, thoroughly drenching the ground. The rain fell in torrents for about three hours, making the prospects for wheat excellent. Previous to this there had been very little moisture.

FULLERTON, Neb., May 3.—(Special.)—A severe storm of wind, rain and hail struck this town last night a few minutes before 1 o'clock. Many chimneys were blown down, outbuildings upset and demolished, porches blown away and for a time the streets were flooded with water. The greatest damage in town was done to the high school building. The teachers had just dismissed the children with orders to hurry home and all the children were safely away from the school grounds when two chimneys and the flagstaff were buried with great violence from the roof. One chimney fell through the roof, entering the fourth grade room taught by Miss Loomis and filled the entire room with bricks, mortar and plaster. It will require many days to repair the damages. Reports from the country near town indicate great dam-

CEGAR COUNTY ASSESSMENT

HARTINGTON, Neb., May 3.—(Special.)—The annual assessment and the basis on which it is being made is a subject of much agitation just now in Cedar county.

The assessors at their March meeting agreed to assess all property upon a fair cash value, claiming that the law required it.

Heretofore assessments have been made on the basis of a fractional part of the actual cash value. Owing to the fact that but few if any other counties in the state are making a cash value assessment it is claimed now that Cedar county will be obliged to pay thousands of dollars more state taxes than is its proportionate and just share. It is urged that the 1-mill utility levy recently enacted alone, on the cash assessment plan, will cost the county \$8,000 in taxes more than it justly ought to pay. It is also claimed that cash assessment and a low levy will cost the county hundreds of dollars in taxes from corporations such as railroads, etc., whose valuations are made by the state.

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KILLED BY LIGHTNING

RANDOLPH, Neb., May 3.—(Special.)—Last evening during the severe rainstorm which passed over the locality, Chris Wagner and his son, Albert, living eight miles northwest of this place, were struck by lightning. The young man was instantly killed, as was also one of the horses he was driving. Mr. Wagner's arm was severely burned, but at this writing he is in a fair way to recover. The father and son were plowing in the field when the storm struck them.

TODAY'S WEATHER FORECAST

Uncle Sam's Skies with Higher Temperature Predicted for Iowa and Nebraska.

WASHINGTON, May 3.—Forecast for Thursday: For Nebraska and Kansas—Fair Thursday and Friday; warmer Friday; variable winds.

For Iowa—Fair Thursday and Friday; warmer Friday; westerly winds.

For Missouri—Fair Thursday, with cooler in southern portion; fair Friday; variable winds.

For South Dakota—Fair Thursday, with warmer in western portion; fair and warmer Friday; westerly winds.

For Colorado and Wyoming—Fair and warmer Thursday; fair Friday; variable winds.

Local Record. OFFICE OF THE WEATHER BUREAU, OMAHA, May 3.—Omaha record of temperature and precipitation compared with the corresponding day of the last three years:

Table with 4 columns: Year, Maximum temperature, Minimum temperature, Precipitation.

Normal for the day... 53. Accumulated deficiency since March 1... 2.99. Normal rainfall for the day... 15.10 inches. Excess for the day... 11.00 inches. Total rainfall since March 1... 41.00 inches. Deficiency since March 1... 1.01 inches. Excess for cor. period, 1898... 2.12 inches. Excess for cor. period, 1897... 2.12 inches.

Reports from Stations at 8 p. m. STATIONS AND STATE OF WEATHER.

Table with 3 columns: Station, Temperature at 8 p. m., Precipitation.

Omaha, clear... 50 52 0.00. North Platte, clear... 50 52 0.00. Salt Lake, clear... 50 52 0.00. Cheyenne, clear... 50 52 0.00. Rapid City, cloudy... 50 52 0.00. Huron, clear... 50 52 0.00. Williston, snowing... 50 52 0.00. Chicago, cloudy... 50 52 0.00. St. Paul, cloudy... 50 52 0.00. Davenport, cloudy... 50 52 0.00. Des Moines, partly cloudy... 50 52 0.00. Kansas City, clear... 50 52 0.00. Denver, clear... 50 52 0.00. Birmingham, snowing... 50 52 0.00. Galveston, cloudy... 50 52 0.00.

T indicates trace of precipitation. Local Forecast Official.

Nervous Exhaustion Is relieved by Herford's Acid Phosphate. Take no Substitute.

REFERENCES: Best Banks and Leading Business Men of this City.

Happiness or Unhappiness

Health and disease are conditions on which depend pleasure or sorrow, happiness or unhappiness, success or failure. Health makes a man equal to any emergency. Disease makes him unequal to the ordinary duties of life. It is curable.

When Electricity fails to cure, when medicine fails to cure, go to the State Electro-Medical Institute and let its Electrical and Medical Specialists prove to you that by their combined electro-medical treatment they can cure you even when all else has failed.

Effectively as either medical or electrical treatment has proven to be when used separately under proper advice, the combining of these two great curative agents by these eminent specialists produces a curative power never before obtained, and insures a permanent cure by either medicine or electricity used in the old way alone. Does it not appeal to your intelligence that it is so combined will accomplish more than when used separately? These able, and successful, and wonderful results in curing NERVOUS, CHRONIC AND BLOOD DISEASES and all difficult diseases of MEN AND WOMEN.

A cordial invitation is extended to all physicians or specialists having difficult or stubborn cases to bring their patients to the Institute for treatment under its improved method. The results are guaranteed. All because of the fact that the Institute knows the right treatment. NO MISTAKES AND NO FAILURES. In seeking treatment the following qualifications should be taken into consideration: Ability, experience, skill and an established reputation for success.