

TURN IN JONES WILL CASE

Surprise is Sprung by Heirs Agreeing to Settle Litigation.

ATTORNEY FOR PROTESTANTS DISSENTS

A. G. Allick is Made Administrator to Succeed B. N. Robertson, Who Denies Mrs. Jones Was Unduly Influenced.

New and unexpected developments in the litigation incident to the probate of the will and codicil of the late Sophronia Jones, widow of A. D. Jones, Omaha's first postmaster, occupy the attention of the county court.

The petition asking for the probate of the will and codicil was filed in December and the hearing in the case has been put off from time to time.

Upon hearing this objection Judge Vinsonhauser granted a stay in the proceedings until this morning, but when the attorneys appeared in court today it was found that the heirs to the Jones estate had been in conference with their attorneys Tuesday evening and at that time had signed papers looking to an amicable settlement of the case.

Baldwin is Surprised. Judge Baldwin was greatly surprised to learn of this proceeding. He at once repaired to his office to talk over the matter with his clients and the statement was made that an effort would be exerted to have the agreement which the heirs had signed Tuesday evening annulled and declared void and have the case proceed before Judge Vinsonhauser in accord with the agreement reached Tuesday morning.

Judge Baldwin and his clients were made to make a report to the court during the morning, but up to noon the various attorneys and heirs waited listlessly about the court house, but Judge Baldwin failed to put in an appearance and what disposition will be made of the case is now a matter of conjecture.

A. D. Jones and his wife, Sophronia Jones, previous to their deaths, drew up wills which were identical in every particular. The same legatees were named in each will. If Mr. Jones died first his property was to pass to his wife and vice versa, and after their death the property was to pass to certain heirs who were named as legatees under the wills of both the husband and the wife.

Mr. Jones Dies First. Mr. Jones died first and the property passed to his wife. Just previous to her death, Mrs. Jones at that time being nearly 80 years of age, drew up what is alleged to be an improvised and improper codicil wherein certain other parties than those named by both Mr. Jones and Mrs. Jones in their identical wills were named as legatees of the estate.

When it came to a hearing on the petition asking for the probate of the will and codicil both were protested on the ground that Mrs. Jones was under undue influence at the time she drew up the codicil. B. N. Robertson had been named as executor of Mrs. Jones' estate and was on hand Tuesday morning prepared to make a refutation of the charge that Mrs. Jones had been unduly influenced.

However, the heirs named in the will were got together and induced to sign papers looking to a settlement of their differences and putting an end to the controversy by consenting to the probate of the will. Expressions of dissatisfaction with the executor were voiced, however, and A. G. Allick was agreed upon as Mr. Robertson's successor.

But now that Judge Baldwin and his clients have changed their minds about the agreement which was signed Tuesday evening, it is expected the case will be continued and that the protest against the probate of the will will be urged before the court.

CAUTIONED TO BE CAREFUL

Verdict in Case of Rev. Elwood, Whose Sermon is Alleged to Have Caused Lynching.

WILMINGTON, Del., Feb. 3.—Rev. Robert A. Elwood, pastor of the Olivet Presbyterian church of this city, who was tried today by the Newcastle presbytery on charges growing out of the sermon entitled "Should the Murderer of Miss Helen Bishop be Lynched," was found guilty of three of the specifications brought against him.

A committee of five was appointed to see that punishment, and at a late hour tonight this committee, after some deliberations, recommended that Rev. Mr. Elwood be cautioned to be more careful in the future.

If You Have These Symptoms Send for My Book.

If you want to feel better, if you want more energy, if you lack ambition, if you don't do things like you used to, if you lack confidence in yourself, if your nerve-courage is leaving you, if you lack vigor, vitality, if something is eating away your constitution, write to me for my book now.

The book tells of my discovery. Tells how after thirty years I found the cause of these symptoms, and what others, give above. The book tells how by scientific experiment I traced out the causes that bring on chronic diseases. It tells how I perfected my prescription—Dr. Shoop's Restorative.

I found invariably that where there was a weakness, the food nerves were weak. Where there was a lack of vitality, the vital nerve lacked power. Where weak organs were found, I always took weak organs. Not the weak organs, but the vital organs, the source of life.

DISPUTE OVER JURISDICTION

Fire and Police Commissioners Repel Alleged Encroachments of Councilmen.

SAYS LATTER WANT TO CHANGE HOURS

Desire to Carry Political Favor with Firemen Ascribed to Councilmen Accused of Overstepping Bounds.

A clash between the council and the Board of Fire and Police Commissioners is threatened because of the activity of several councilmen in their anxiety to make friends with the men of the fire department. The point of dispute is the matter of jurisdiction, and members of the board have declared that they will seriously resent any more interference in what they call their domain.

The latest factor that has contributed to this feeling is the encouragement offered by Councilmen DeLoecker and Evans to members of the fire department who want a different method of apportioning the twenty-four hours of duty each man is allowed a week. At present the day is divided into three shifts, two of six hours each and one of twelve.

Councilmen Schrader and Evans have advised the men to get up a petition and present it to the council. It is said, with the assurance that favorable action will be taken.

Board Opposition to Plan. The board, on the other hand, believes that such a change of the "shift" would result in a partial demoralization of the service, inasmuch as the hours are now arranged as recommended by Chief Balter, who does not like the proposed change.

Recently the council "dipped in" fire department matters by ordering in a number of stoves and hot water apparatus in the various houses, without consulting with the commissioners. Said one of the latter: "There is altogether too much desire on the part of some of the councilmen to carry political favor with the firemen. At every opportunity they are inclined to step in and make this or that provision for the benefit of the men, without asking the board whether or not it is for the best interests of the service."

THREAT TO DYNAMITE ROAD

Blackmailer Makes Demand for Ten Thousand Dollars for the Lehigh Valley Route.

HAZZLETON, Pa., Feb. 3.—Details of an alleged dynamite plot along the Lehigh Valley railroad, twenty miles north of Hazleton, came to light tonight.

T. H. Pindell of Wilkesbarre, superintendent of the Wyoming division of the Lehigh Valley road, last week received an anonymous letter saying if \$10,000 was not deposited at Lake Station on the Wilkesbarre mountain between 1 a. m. Saturday and the same hour Sunday morning that the line would be blown up.

BRIDE AND GROOM ARE DEAD

End Life Because Parents Disapprove Marriage and Turn Them from Home.

SAGINAW, Mich., Feb. 3.—The wedding here last week of Corporal Charles A. Valois of Company H, Twenty-sixth United States infantry, and Miss Mabel Steiner had a tragic climax last night when the young couple took poison in a rooming house on Franklin street.

FRISCO EXPRESS DITCHED

Entire Train Except Engine and Diner Goes Down Embankment, but Passengers Escape.

BIRMINGHAM, Ala., Feb. 3.—It is reported here that a westbound train on the Frisco, leaving Birmingham at 12:30 today, was ditched near Tupelo, Miss. Every car left the track and rolled down an embankment, except the engine and cafe car.

SEASONABLE FASHIONS



LADIES' DRESSING SACK

No. 6013. The dressing sack is one of the most important articles in a woman's wardrobe and, having once learned their use, no woman will be without a few pretty ones, that may be hurriedly slipped on in the early morning or perhaps for afternoon hours when one feels that a tight dress would be uncomfortable.

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SUPREME COURT SYLLABI

The following opinions will be officially reported:

1341. Vogt against Datty. Appeal from Thurston. Reversed. Kirkpatrick, C. Division No. 3.

If the plaintiff in an action dies after judgment, but before execution thereon, no valid execution can be had upon the property of the judgment defendant until the estate has been ascertained.

1342. Hull against K. C. & O. R. Co. Error from Kearney. Affirmed. Oldham, C. Division No. 1.

Where a railroad company purchases land by warranty for depot and right-of-way purposes, it has the exclusive right to the possession and use of all of such lands against the owner of adjacent lands.

It is for the railroad company and not for the adjacent owner to determine how much of these lands is necessary for depot and right-of-way purposes.

1343. Grandin against First National Bank Chicago. Appeal from Douglas. Affirmed. Sedwick, C. Division No. 2.

A plaintiff who has obtained an attachment upon specific real estate in this state, and recovered judgment thereon, may maintain an action in equity to set aside a fraudulent conveyance of real estate in this state, and enable the plaintiff to enforce his attachment against the property.

2. After plaintiff in attachment has recovered judgment and an order for the sale of the attached real estate, and has begun an action in equity to set aside a fraudulent conveyance of real estate, a fraudulent conveyance is pending for several years, it is not a defense that the holder of the legal title has made valuable improvements thereon, while the action was pending, being led by the delay in bringing the action to trial to satisfy plaintiff's claim would be abandoned.

3. Upon an appeal in equity this court will not be influenced in its decision by the findings of the trial court based upon testimony or other written evidence. The conclusions of the trial court, derived from the consideration of the evidence of the whole case, will be reversed if the evidence of the trial court in weighing such evidence, they appear to be "right." Fullerton against Sims. Nebraska 34. N. W. Report, 11.

4. Evidence in this case found to support the petition for divorce. Appeal from Douglas. Affirmed. Barnes, C. Division No. 2.

1. An action to determine property rights not growing out of the marriage relation cannot be joined with an action for divorce.

2. Such causes of action are joined in a petition, a divorce therein for misbehavior of cause, if the action should be sustained.

3. In a suit by a married woman against her husband to set aside a conveyance of real estate to which she holds the legal title, and

to quiet the title thereto in himself, the husband is not a competent witness.

1371. Ross against Ross. Appeal from Douglas. Affirmed. Barnes, C. Division No. 2.

1. What sum the husband may be required to pay his wife during the pendency of a divorce suit is temporary alimony expense money and counsel fees, to enable her to properly defend the action for matters within the discretion of the district court.

2. Where a petition for a divorce contains second cause of action for the settlement and adjudication of property rights, not growing out of the marriage relation, a demurrer for joinder of causes of action should be sustained.

3. After a demurrer to a misjoinder of causes of action has been sustained and the plaintiff files a new petition and again inserts therein allegations relating to the second cause of action, a motion to strike such allegations should be sustained, and the objectionable matter eliminated from the pleading.

4. It is entirely within the sound discretion of the district court to require the husband to pay the sums of money allowed the wife as temporary alimony until she makes a proper defense, as a condition precedent to her right to prosecute her action. And an order requiring such payment does not conflict with any right which the husband has by contract.

1382. Lambra against Jones. Appeal from Lancaster. Affirmed. Barnes, C. Division No. 1.

1. A creditor, whose claim has not been reduced to judgment, and who has no lien in rem, is not entitled to have such property included in a case out of the general rule above stated.

2. Mere insolvency and inability to reach a particular fund by garnishment process, are not sufficient to bring a case out of the general rule above stated.

3. Whenever, on the trial of a creditor's action, it appears that the plaintiff has a remedy at law, the equitable proceedings should be dismissed.

1383. Cady Lumber Co. against Conklin. Appeal from Douglas. Affirmed. Duffie, C. Division No. 1.

1. Where materials are furnished by a subcontractor to the head of a firm having the contract for the erection of a building, and in its statement for a lien such subcontractor names only the individual member of the firm with which it deals as the contractor, and where there is nothing to indicate that the owner or other parties claiming liens on the premises were notified or injured by the failure of the subcontractor to correctly state the firm name of the contractor, the lien of the subcontractor will not be held invalid because of such error.

2. A subcontractor's petition to foreclose a mechanic's lien need not allege that there is anything due from the owner to the original contractor.

1384. Farmers' and Merchants' Ins. Co. against Warner. Error from Boone. Affirmed. Duffie, C. Division No. 3.

Where a policy of insurance contains a clause permitting the company to repair an injured building instead of paying the damages sustained in money, its option to repair to be exercised within sixty days from the receipt of proof of loss, and where the company's contract was not the proof of loss stipulated by the policy, in such case the option to repair must be exercised within sixty days from the date of its waiver of proof of loss.

1385. Chicago, Burlington and Quincy Railroad Company against Alexander. Error from Merrick. Reversited. Oldham, C. Division No. 1.

1. It is only where all peremptory challenges have been exhausted by the party complaining that a ruling of the trial court in the admission of a juror for cause can be reviewed.

2. Rulings of the trial court in the admission of evidence examined and held not prejudicial.

3. Where from the deposition of a witness it appears that he is a nonresident of the county, it is unnecessary for the party offering the deposition in evidence to prove that such witness is not present in court or in the county.

4. In an action for personal injury it is not error to permit plaintiff to exhibit his injured limb to the jury.

5. It is customary to permit attorneys to comment upon the absence of witnesses, or their nonproduction, when they are called upon to examine a witness in issue. It is a mere matter of argument and may be discussed by either side, trusting to the good sense of the jury to properly estimate the value of such arguments.

6. Alleged misconduct of counsel in addressing the jury must be objected to when the language is insulting to the jury or the trial court procured on such objection and an exception saved to the ruling, to make the objection available in this court.

7. Action of the trial court in giving and refusing instructions examined and approved.

8. In an action for personal injuries where substantial damages are proven and the verdict of the jury appears to be excessive, the error must be corrected by a proper remittitur of the excess damages by the district court or by this court on a proceeding in error.

9. Quantum of damages examined and held excessive and a remittitur of \$3,000 directed.

1386. State Savings and Loan Association against Johnson. Error from Lancaster. Affirmed. Hastings, C. Division No. 1.

1. An appeal bond signed only by the judgment debtors, if approved by the justice rendering the judgment, is sufficient to confer jurisdiction on the appellate court to have the defect corrected.

2. The sustaining of an objection to jurisdiction in the appellate court and dismissal of the appeal on the account of insufficient error where the objection was pending for no offer or application to be allowed to furnish a sufficient bond.

1387. Nebraska Land and Feeding Company against Traasman. Error from Cherry. Reversed. Barnes, C. Division No. 1.

1. The matter of permitting the filing of amended pleadings at any time during the trial is within the sound discretion of the district court, and unless it clearly appears that the court has been guilty of an error in exercising its order in that behalf will not be disturbed.

2. Where a contract of hire has been consummated by writing the presumption is that the writing contains the whole contract, and in absence of fraud, mistake or ambiguity of expression in the contract filed parol evidence is inadmissible to change or vary its terms.

3. If an instruction is given not called for by the evidence and which appears to have a tendency to prejudice the party complaining a new trial will be granted. The following opinions will not be officially reported:

1381. Bauer against Taylor. Error from Douglas. Former judgment reversed. Reversed. Kirkpatrick, C. Division No. 3. Unreported.

Advertisement for AN ALL STAR PERFORMANCE. WORTH \$28.00 a seat if given in an Opera House. You can give it in your own home with an Edison or Victor Talking and Singing Machine for a few cents a performance. The greatest songs of these great artists: Scotti Adams, Garbin Renaud, De Luca, Battistini, Kristmann, Note, De Lussan, Campanari. Also World's Greatest Bands. Most complete stock of records in the west—ALL KINDS—ALL PRICES. WRITE FOR CATALOGUE. Nebraska Cycle Company, Geo. E. MICKEL, Manager. 15th and Harney Streets. Telephone 1661.

Advertisement for HIDDEN CITY CONTEST. There are the names of a number of cities both in the eastern and western hemispheres in the Want Ads in The Bee. Prizes will be awarded to the persons making the largest and most correct list according to the following conditions.... Read the Conditions carefully. CONDITIONS: Take a sheet of paper—write your name and address at the top—cut out the ad—paste it on the sheet—underline the name of the city, and underneath the ad write the name of the state or country in which it is located. If the name of the city appears more than once it is only necessary to put it down once. Do this for one week, beginning Monday, February 1st, and ending Sunday, February 7th. Do not mail your answer until your list is complete, including the names that appear in the want ads in the issue of Sunday, February 7th, otherwise your answer won't be counted. If you use more than one sheet, write your name and address at the top of each sheet, mark the number of cities found and underlined at the top of each sheet. The first prize will be given to the person making the largest most correct list—the second to the next largest, and so on. In case of a "tie" the person sending in answer first as shown by postmark on the envelope will be given preference. All answers must be sent by mail, and no answer will be considered which is mailed later than Monday, February 8th. No one connected with The Bee Publishing Co., will be allowed to compete for a prize.

List of Prizes... 1st-CASH \$10.00, 2nd-CASH \$5.00, 3rd-CASH \$2.50, 4th-CASH \$1.25, 5th-One Year's Subscription to The Metropolitan Magazine \$1.00, 6th-One Year's Subscription to The Metropolitan Magazine \$1.00, 7th-One Year's Subscription to The Metropolitan Magazine \$1.00, 8th-One Year's Subscription to The Metropolitan Magazine \$1.00, 9th-One Year's Subscription to The Metropolitan Magazine \$1.00, 10th-New Books and Novels \$1.00, 11th-New Books and Novels \$1.00, 12th-New Books and Novels \$1.00, 13th-New Books and Novels \$1.00, 14th-New Books and Novels \$1.00, 15th-New Books and Novels \$1.00. Address all Replies to—"Want Ad" Department, Omaha Bee, Omaha.

Advertisement for MARDI GRAS New Orleans, La. \$31.50 Omaha to New Orleans AND BACK. February 9th-14th. Long Limit and Liberal Stoppers en Route Allowed. For further information and copy of Mardi Gras Booklet call at Illinois Central City Ticket Office, No. 1402 Farnam St., Omaha, or write, W. H. BRILL, District Passenger Agent.

Advertisement for Ayer's Cherry Pectoral. "I had two patients in the last stages of consumption. I prescribed Ayer's Cherry Pectoral, and today they are well and able to do their daily work."—Dr. C. C. ALMOND, Horsepen, Va. You can hardly find a home without this splendid cough medicine. Parents know what it does for children: breaks up a cold in a single night, wards off bronchitis, prevents pneumonia. Wise physicians advise parents to keep it on hand; wise parents follow the advice.