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MILWAUKEE FILES PROTEST

Objects to Taxation by State on Its Trackage Rights in Omaha.

OLD FIGURES SUIT THE ROCK ISLAND

Supreme Court Sustains Contentions of Governor Mickey in Case Which Figured in Late Campaign.

(From a Staff Correspondent.)

LINCOLN, May 17.—(Special.)—Today the State board granted hearing to Tax Commissioner Dudley of the Milwaukee railway, which was recently notified that under an opinion of the attorney general it is taxable in Nebraska, although it uses the Omaha terminals of the Union Pacific. Dudley objected to the jurisdiction of the board, said that the company owned no track in the state, and urged that the addition in the value of the track due to its use thereof ought to be taxed to the Union Pacific.

The governor informed him that as a matter of equity, the board believed these leasing lines ought to be taxed, although the commissioner tried to make a distinction between its enjoyment of trackage facilities, and an out and out lease. The members of the board drew from him the fact that the Milwaukee sleepers and chairs were operated across the state.

Dudley was given ten days to get the data required by the board. It was intimated that the work of assessment might be completed the first week in June. Tax Commissioner Maher for the Rock Island appeared and asked the board to leave the valuations at the figures for 1904. Then the main line was assessed at \$9,800. He said the company would enter any protest if those figures were adopted again.

Apportionment Less.

The May temporary school fund apportionment as announced today by Treasurer Mortenson is \$28,540.05, as compared with \$44,000 a year ago, when the high water mark was reached. The stamp in tribute to the failure of the Union Pacific and Burlington to pay taxes, and also to the fact that the uniform half-mill levy will not yield as much on the new valuation as the old levies ranging from one-half to one and one-half mills.

Municipal League Wins.

In the primaries held yesterday the Municipal league scored a victory in the nomination of five candidates for aldermen who had been recommended. The vote was light. The high man was A. H. Hutton, recently republican candidate for mayor, who was beaten by the democrats and disgruntled republicans.

Medics in Session.

Three brands of doctors are in session in the city. The homeopaths of the state are holding their thirty-second annual session. The eclectics are holding their thirtieth annual session. A number of distinguished physicians from other states are in the city. The dentists are still in session. Clinics and special lectures occupy their time.

Governor Mickey Wins Suit.

The supreme court in the case of Oscar Samuelson against J. H. Mickey, which played such a large part in the gubernatorial campaign, decided that the judgment of the lower court was based on insufficient evidence. The lower court adjudged a deed to some land acquired by the governor to be a mortgage despite the contention that it was absolute and gave the power to dispose of it. The land was deeded to Mickey in trust. It was claimed, but he testified that Samuelson had rented the land of him and acknowledged the transfer of title. During the campaign an effort was made to show that the governor had taken unfair advantage of a debtor in holding the land under a deed intended to be a mortgage.

In the Opinion Which was Prepared by Commissioner Albert the Law is Stated as Follows:

The test whereby to determine whether a deed is absolute on its face should be held to be a mortgage, is whether the relation of the parties to each other as debtor and creditor continues. If it does, the transaction should be treated as a mortgage, otherwise not. Riley against Starr, 43 Nebraska, 245. Evidence examined and held insufficient to sustain a finding that a deed, absolute on its face, was intended to operate as a mortgage.

World-Herald Denied Rehearing.

The supreme court entered an order this afternoon denying the application of the World Publishing company of Omaha a rehearing in its case against County Treasurer Fink of Douglas county involving the publication of the delinquent tax list. The court recently decided adversely to the company and the present ruling is on a motion for a rehearing.

Barcker Must Hang.

The supreme court has overruled the motion for a rehearing filed by the attorney for Frank Barcker, the Webster county double murderer, sentenced to hang June 16. The forty-day limit in which

the motion could have been filed expired Tuesday. Wednesday morning counsel for Barcker submitted an application for leave to file a motion for rehearing. The court allowed the application to be filed but overruled it as intending to delay the carrying out of the former decision.

User of Stock Pass, Passenger.

The court has adhered to its former judgment in the case of the Burlington Railroad company against David C. Troyer, error from Hamilton county. Judge Barnes dissenting. Troyer, while traveling on a stock shipper's pass, sustained personal injuries. In the lower court judgment was given against the railroad. The supreme court holds that under the evidence the question of the negligence of the company was a matter for the jury to determine and that the evidence is sufficient to warrant a finding that the defendant company was guilty of actionable negligence, which was the proximate cause of the injury complained of. The court says that it cannot be said as a matter of law that the plaintiff was guilty of contributory negligence so as to preclude a recovery. The court holds that a person while traveling on a freight train on a stock shipper's pass for the purpose of attending to the live stock being shipped, sustains the relation to the carrier of passenger, but in a restricted and modified sense.

Stock Yard Not Common Carrier.

In the case of the Burlington railroad company against Powers, error from Butler, the court reverses the judgment of the lower court on the ground that the evidence is insufficient. The case is remanded for further proceedings. This was an action for damages, the plaintiff alleging that the railroad company's pens at the town of Theford were decayed and rotten and were unfit for use and that the plaintiff's cattle broke out of the yards and he was forced to expend considerable money in employing herders to search for the animals, thus causing delay in shipment. A verdict for \$250 was given in favor of the plaintiff in the lower court. The court holds that a railroad company which constructs yards by the side of its track to facilitate the loading of stock is not responsible as a common carrier for stock placed in such yards for subsequent shipment, but subject to the right of the shipper to remove the stock from the pens for feed and water before the shipment is actually made. In such a case the liability of the company is no greater than an ordinary depository or bailee.

Had Right to Try Crossing.

The supreme court holds that Nels Matheson was not guilty of negligence in attempting to cross the tracks at the intersection of Twentieth and Leavenworth streets in Omaha when he saw a car approaching and believed that there was sufficient time for him to get over the track before the car arrived. His estimate of the distance proved a little faulty and the car struck the rear wheel of his wagon. The case hinged on the plaintiff's judgment of distance, the Omaha street railway company, defendant, alleging that the plaintiff was guilty of negligence. The court holds that the question is not whether the plaintiff might not have seen the car at a greater distance, but whether he was guilty of negligence in attempting to cross with the car at the distance it actually was when he saw it.

Omaha Not Liable for Boy's Death.

The city of Omaha is held not liable for the death of Austin Reeder, a 9-year-old boy, who was drowned in a pond near the intersection of Seventh and Center streets. The pond was formed by an embankment made in grading Sixth and Center streets and because of that fact the boy's father testified that he had seen the car at a greater distance, but whether he was guilty of negligence in attempting to cross with the car at the distance it actually was when he saw it.

Porter Must Pay It Back.

Former Secretary of State Porter must repay the state \$93 collected by him as fees for recording brands during his term of office, according to the decision of the supreme court affirming the judgment of the district court of Lancaster county. The court adheres to a former decision in the case in which it held that the law giving Porter the fees was unconstitutional as adding to the emoluments of office. In the former trial the case was reversed because the judgment included the bondsman, against whom there was no cause of action because the official in accepting the illegal fees acted outside the duties of his office. Under the law Porter was to have 20 per cent of the fees. The court in the former decision held that he would not be held liable for that portion which he had paid to the recording clerk in his office.

Couple Missing Again.

BEATRICE, Neb., May 17.—(Special Telegram.)—Frank Hanscom and Mrs. Fred Ortmann of this city, who figured in an elopement here some time ago, have again turned up missing. The authorities

To the Insuring Public

The Penn Mutual Life Insurance Co., of Philadelphia.

On the 7th day of December, 1904, by its Board of Trustees, unanimously adopted the following resolution:

"BE IT RESOLVED by the Trustees of The Penn Mutual Life Insurance Company of Philadelphia, Pa. in order that its policy-holders may have full and exact knowledge of its business management and of the security and character of its investments, that the President of the Company request the Insurance Commissioner of Pennsylvania, together with the Insurance Commissioners of Massachusetts and Wisconsin, either in person or by deputies, to make a full and complete examination of the affairs and investments of the Company, as provided for by law, said examination to be made as early as can be arranged after the closing of the accounts of the Company for the current year."

COMMENTS OF THE COMMISSIONERS

- "THERE WERE PREPARED and submitted to the officers of The Penn Mutual Life Insurance Company such questions as were deemed necessary for them to answer. Attached hereto the same may be found as a part of this report."
- "AS CALLED FOR in the resolution adopted by the Board of Trustees of the Company, a FULL AND COMPLETE examination of the business management and its affairs subjected to the CLOSEST POSSIBLE SCRUTINY."
- "THE FINDINGS SUBMITTED by the examiners show that the net surplus of the Company, as of December 31st, 1904, should be \$4,190,498.06 instead of \$4,281,261.22. MAKING A SURPLUS LARGER BY \$90,763.16 THAN CLAIMED in the annual statement of the Company. All of the Company's assets have been appraised by competent experts employed in this examination, and the increased surplus shown arises from the CONSERVATIVE VALUATION of assets by the management."
- "THE CHARTER OF THE COMPANY, granted February 24th, 1847, provides fully for its operation on a purely mutual basis, and it HAS NO CAPITAL STOCK. The Trustees are elected directly by the body of policy-holders. NO PROXY VOTING being permitted; and the officers are, in turn, elected by the Trustees, no one of whom is eligible to official position."
- "THE OFFICERS AND TRUSTEES exercise CONSTANT, INTELLIGENT AND FAITHFUL supervision over all features of the company's business."
- "THE REAL ESTATE HOLDINGS were examined by competent appraisers selected in the various localities, with the result that the valuations obtained are \$387,699.76 IN EXCESS of those claimed by the company."

Signed: ISRAEL W. DURHAM, Insurance Commissioner, Pennsylvania. FRED'K L. CUTTING, Insurance Commissioner, Massachusetts. ZENO M. HOST, Insurance Commissioner, Wisconsin.

It is with pleasure and satisfaction that the Trustees and Officers have received and now publish the report of the Commissioners. In the future as in the past they will strive to fulfill the mission of A PURELY MUTUAL COMPANY confining their efforts to transacting business within the lines laid down in its Charter and By-Laws and in strict compliance therewith.

HARRY F. WEST, President
For full information relative to all forms of Purely Mutual Life Insurance, apply or write to C. Z. Gould, General Agent, 522 Bee Bldg., Omaha, Neb.

LOGAN LAMBERT IS HELD

Man Who Assaulted Father Schell Bound Over for Felonious Assault.

PRIEST TELLS STORY OF THE ATTACK

Effort of Prisoner to Secure Discharge Not Successful and Former Liquor Trader is Looking for Bail.

DAKOTA CITY, Neb., May 17.—(Special.)—Logan Lambert, the Homer ex-saloon keeper, who on the afternoon of April 18 last assaulted Rev. Father Joseph Schell, the priest who is interesting himself in behalf of the Winnebago Indians, in Easton's livery barn, in this place, and broke his jaw in two places, from the effects of which he has just recovered, had his preliminary examination before County Judge J. J. Elmers on the charge of assault with intent to commit grave bodily harm, and was bound over to the district court in the sum of \$700 bonds, which it is thought he will be able to furnish.

But three witnesses were introduced by the state, being Bob Homan, the barn attendant who witnessed the assault; Rev. Father Schell and Dr. Rouse of the St. Joseph hospital, Sioux City, who attended Father Schell. The witnesses corroborated each other as to the assault. Rev. Father Schell's testimony was to the effect that he had come to this place to attend county court, being interested in a case that was on trial, and he also Lambert. Father Schell and Lambert met several times during the day, and at noon they shook hands together and passed the time of day. At the conclusion of the trial of the case after dinner on that day Father Schell went to the barn to get his ass.

Priest Tells of Assault.

Just as he entered the barn Lambert followed him in and said, "Father Schell, I want to speak to you a moment in regard to my case in the courts at Omaha." Father Schell replied, "All right," supposing Lambert to be his friend. "I want to talk to you privately," said Lambert, and, being followed by Father Schell, they proceeded to a stall, about half way back in the barn. Upon arriving there Lambert said: "Well, Father Schell, what do you think of it?" Father Schell, partly turning around from Lambert and looking down, hesitating in thought, said, "I think—"

Lambert's Hand Damaged.

The only witness placed on the stand by the defendant was Dr. D. B. Sidworthy of Homer, who testified that on the evening of the fight he made an examination of the hands of Lambert and found the knuckle of the third finger of his right hand broken and the hand badly swollen. The attorney for the defendant, William F. Warner, pleaded the court for a dismissal of the charge on the grounds that a simple assault had only been proven, which was

LOWER ELKHORN IS RISING

Large Amount of Land Near Nickerson is Flooded.

FREMONT, Neb., May 17.—(Special.)—The Elkhorn river is higher this morning than at any time since the rise began. Near Nickerson hundreds of acres are under water and the roads are damaged. The bridges near that town are all right. Residents and land owners in the southwestern part of the city are feeling very anxious about what the future will do in the next stage of high water. Where it first left its banks west of town it began to cut a well defined channel several feet in depth and extending some distance towards the city. This was dammed up by earth and fascines. A little to the south of that another channel was started. For a distance of half a mile the banks are low and sandy and afford little resistance to the force of the water. Unless a dike is put in extending along the upper part of this strip the high water of next spring will flood the southern part of the city worse than it did Sunday night. It is almost impossible to pump out the flooded cellars in the section south of the tracks. The ground is so saturated that the water keeps in almost as fast as it is taken out. Steps will probably be taken shortly to organize a protection district and build an embankment or put in some permanent structures which will keep the Platte from cutting off the southwestern part of Fremont.

Fined for Assaulting Jap.

LEXINGTON, Neb., May 17.—(Special Telegram.)—Frank Karnes, a member of the gang which inflicted the blows on the Japanese boy here Monday, had his trial before Judge Burton today. He was found guilty and fined \$75 and costs. The boy is recovering, thanks to those who came to his rescue. The other members of the gang will be released from jail on promise of leaving the county.

Change in Bank Ownership.

BROKEN BOW, Neb., May 17.—(Special.)—An important business transaction took place this week when F. M. Rabble disposed of his interests in the Commercial bank to W. A. George, one of the leading citizens of the town, consideration unknown at present. It is understood on good authority that the change will occur June 1. Mr. George intending to incorporate for the sum of \$25,000.



The morning of life is the time of abundance, profusion, strength, vigor, growth. When the sun begins to sink, then the hair begins to fade and the silvery gray tells the tale of approaching age. What shall your mirror say.—sunrise or sunset? Rich, dark hair? Or faded, gray hair? The choice is yours, for Ayer's Hair Vigor always restores color to gray hair. And it checks falling hair, also.

J. C. Ayer Co., Lowell, Mass.