



1918

## Editorials

Kentucky Law Journal

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# Kentucky Law Journal

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## EDITORIAL NOTES.

### NOTES ON RECENT CASES.\*

**Taking Land for Temporary Logging Road for "Public Use."**  
The scope of what constitutes "public use" within the meaning of eminent domain statute is broadened by the recent case of Blackwell Lumber Co. v. Empire Mill Co., 28 Idaho 556, 155 Pac. 680. It was there held, one judge dissenting, that where a temporary logging road was necessary to the complete development of the

\*Compiled by staff assistants.

material resources of the state the necessary use of land for a right of way was a "public use" and might be acquired as provided by statute. In the majority opinion occurs the following language: "The history of this state, as well as the allegations of the complaint, clearly show that the timber of the state is one of its great material resources; that much of the timber is ripe and ready to be marketed or for manufacture, and the mountainous conditions of the state make much of it almost inaccessible, and unless logging railways are permitted to be constructed, by means of which the timber may be delivered to the mills at a reasonable expense, the complete development of this great material resource cannot be made. . . . Because of the topography and mountainous conditions of the state, the needs of the people and the welfare of the people of large sections of this state depend upon the timber industry. Roads, tramways and logging roads are as necessary to the development of this great industry as are ditches to the development of the arid regions of the state, or tunnels and shafts to the development of the mines; and by the provisions of said sec. 14, art. 1, of the constitution, the people did not make, and did not mean to make, any discrimination between the great timber industry and the mining or irrigation industry of the state."

**Liability of Street Car Company For Injuries to Passenger Being Transferred by Footpath.** One Sarah Pins, at about 10 P. M., became a passenger in one of the suburban trolley cars of the Connecticut Company bound for the city of New Haven. When the car had proceeded part of the way it reached a section of the highway which, by reason of public work there in progress, was impassable, a condition which had existed for several weeks. In order that travel might not be wholly obstructed, the contractor doing the street work had prepared a path for foot travelers through a wooded tract which bordered the side of the road. The street car company was compelled to cause its through passengers to alight from the car first taken, walk through the path some 360 feet, and transfer to another car beyond the obstruction. When the car in which Mrs. Pins was riding arrived at the obstruction the conductor and all the passengers got off, and, led by the conductor, walked along the path to the forward car. When she had

proceeded about halfway, Mrs. Pins fell and received injuries which she claimed were due to the unsuitable condition of the path.

The Supreme Court of Errors of Connecticut in the case of *Pins v. Connecticut Co.*, 102 Atlantic Reporter, 595, held that the defendant was required to exercise at least ordinary care to see that the path was reasonably safe under the circumstances, it being unnecessary to the case to determine whether a greater degree of care was requisite. The court reasoned as follows as to Mrs. Pins' rights: "Her contract of transportation was one which extended beyond the place of accident. At the time she left the car she first boarded and was making her way over the path for the purpose of reaching another in which she might continue her journey, she was subject to the reasonable direction of the defendant's servants as to how she should proceed to reach its end. The place at which she alighted was not the terminus of her trip. . . . She alighted when she did because she could not proceed further as the defendant's passenger without so doing, and because she was directed by the defendant's agents to do so in order that it might be enabled to carry out its contract with her to transport her to New Haven. She traveled the path under the direction of the conductor and followed his leadership and guidance. When she fell she was doing just what she had been told to do to accomplish her trip, and was just where she had been invited and directed to be as incidental to her transportation. These facts and circumstances certainly are sufficient to impose upon the defendant a duty in respect to Mrs. Pins' safety. Whether that duty was one arising from the relation of passenger and carrier, or from that of invitor and invitee, or from both in combination, is immaterial in so far as a determination of the existence of a duty imposed upon the defendant in the matter of the plaintiff's safety is concerned." The opinion was written by Chief Justice Prentice.

**Cemetery—Equitable Lien Against Lot.** That no equitable lien or mortgage can be charged upon or enforced against a lot in a public cemetery for material purchased to improve and beautify the lot is held in the Alabama case of *Kerlin v. Ramage*, 76 So. 360.

**Presumption of Sobriety.** In *Richardson v. Sioux City*, 172 Iowa 260, 154 N. W. 430, the facts warranted a finding that the plaintiff's intestate while driving a team of horses hitched to a hack was thrown over a steep embankment and killed in consequence of the city's negligence in failing to provide a barricade at the place of the accident. In the hack were found two or three bottles of beer and a broken whisky bottle. On appeal, among the errors assigned was a ruling on the admissibility of the testimony of a witness who testified that a hackman had brought to her house, some three blocks beyond the place of the accident, three adults and five children, at about 8:30 o'clock in the evening; that the driver was there about five minutes, during which time she conversed with him, but did not know who he was. She was then asked: Q. "What do you say as to whether this hackman was under the influence of intoxicating liquor that night or not, if you know?" (Defendant objects for the reason no proper foundation has been laid, to show the conversation had with deceased. Objection overruled. Defendant excepts.) Court: "Did he appear to be under the influence of intoxicating liquor that night or not?" A. "No, sir, he did not." Holding that the ruling was erroneous but harmless the court said: "We are inclined to regard the ruling as without prejudice. Everyone is presumed, until the contrary appears, to be sober, and there is no evidence in this record tending to show that the deceased was otherwise. True, liquor was found in the hack; but without more, it could not well have been inferred from this alone that he had been drinking excessively."

**What Constitutes Excessive or Intemperate Use of Intoxicants.**

*Wising v. Brotherhood of American Yeomen*, 132 Minn. 303, 156 N. W. 247, was an action by the beneficiary on an insurance certificate issued by the defendant. The defense was predicated on the charge that George Falk, within a year prior to his death, became intemperate in the use of intoxicating liquors, and that thereby his contract of insurance became null and void; that the certificate and by-laws provide that if any member shall become addicted to the excessive or intemperate use of intoxicants his certificate shall be null and void. The following instruction to the

jury, as to what constitutes excessive or intemperate use of intoxicants was held to be a correct statement of the law: "Excessive or intemperate use of intoxicants, as used in the by-laws and policy, means 'that the conduct of the member in this regard must be of such a nature and the habit so intemperately followed so as to impair his health, his mental faculties or otherwise render the insurance risk on his life more hazardous.' The occasional indulgence in intoxicating liquors, even to the extent of becoming intoxicated, or the daily use of liquors for the same period, if you find such use, does not necessarily void this policy. It is to be held null and void only in case you find from the evidence, by a preponderance thereof, that the insured, George Falk, used intoxicating liquor so intemperately so as to impair his health or his mental faculties, or otherwise render the insurance risk on his life more hazardous; that is, to increase the risk."

**State Law Prohibiting Attempts to Prevent Enlistment in Army Held Valid and Construed.** Chap. 463 of the Laws of Minnesota, approved April 20, 1917, provides that it shall be unlawful for any person to advocate by oral speech, or by means of printing, publishing, or circulating in any manner any written or printed matter, that men should not enlist or assist in prosecuting the war. One Holm and others were indicted upon a charge of violating this statute by circulating a pamphlet containing an attack upon the Selective Draft Law, and asserting, among other things, that "this war was arbitrarily declared against the will of the people;" that "the people are ten to one against it;" that "the President and Congress have forced this war upon the United States;" that now "they are attempting by military conscription to force us to fight a war to which we are opposed;" "that this war was declared to protect the investments;" and that "Wall Street is the bonds of the allies." It then asks: "Why should the entire population be called upon to suffer and die because a few individuals have invested their surplus wealth unwisely? Are you ready to give your life to save their dollars?"

The Supreme Court of Minnesota in the case of *State v. Holm, et al.*, 166 Northwestern Reporter, 181, held this a violation of the statute, Commissioner Taylor in the opinion stating: "The pam-

phlet impugns the motive which induced the President and Congress to enter into the war, and attempts, by unfounded and unwarranted assertions, to incite opposition to the war, and to create a feeling that we have been brought into it for mercenary and unworthy purposes. It manifests not merely opposition to conscription, but opposition to the war and to carrying on the war in any manner. Without saying in so many words, 'that men should not enlist,' the whole tenor of the article is calculated to incite opposition to the war and to deter men from enlisting or otherwise aiding in carrying it on. To violate the statute it is not necessary that the pamphlet circulated should directly and expressly urge men to refrain from enlisting, but the statute is violated if the natural and reasonable effect of the pamphlet circulated is to deter men from doing so." The act was held not to infringe the constitutional provision conferring upon Congress the power to raise armies, nor that preserving freedom of speech and of the press.

The opinion, further holding that the so-called Espionage Law of June 15, 1917, passed by Congress, did not abrogate or supersede this statute, says: "There is nothing in the statute which is inconsistent with the federal law, nor which in any manner interferes with, hinders, or delays the operation of the law. . . . That the state is inhibited from exerting its police power to obstruct the operations of the national government, or to regulate matters controlled and regulated by the national government, does not mean that in time of war it may not make the national purposes its own purposes to the extent of exerting its police power to prevent its own citizens from obstructing the accomplishment of such purposes."

**Evidence—Declarations—Suicide.** Declarations by one subsequently killed on a railroad track that when he got ready to go he would throw himself in front of a train and that one on the track at the point where he was killed could not be seen by the engineer are held not admissible in evidence as tending to show suicide in *Greenacre v. Filby*, 276 Ill. 294, 114 N. E. 536.

**Constitutional Law—Police Power—Regulating Billboards.** The erection of any billboard or signboard over 12 square feet in area in any block in which one-half of the buildings on both sides

of the street are used exclusively for residence purposes, without first obtaining the written consent of the owners of a majority of the frontage on both sides of the street in such block, may be prohibited, it is held in *Thomas Cusack Co. v. Chicago*, 242 U. S. 526, 61 L. ed. 472, 37 Sup. Ct. Rep. 190, in the exercise of state's police power, and such prohibition works no denial to a corporation engaged in outdoor advertising of either the due process of law or equal protection of the laws guaranteed by the 14th Amendment of the Federal Constitution.

#### **Exposure to Contagion as Ground For Expulsion From School.**

That reasonable regulations may be adopted for the conduct of a school, and that for a violation thereof the school authorities may if they act in good faith and with a view to enforce the regulation, exclude or suspend a pupil from the school, has never been doubted. In *Bright v. Beard*, 132 Minn. 375, 157 N. W. 501, the question presented itself in a rather novel aspect. In that case it appeared that a case of smallpox had developed in the public school wherein the plaintiff was a pupil and that the defendant as a member of the board of education, voted for a resolution requiring the pupils of that school who had been exposed to the contagion to be vaccinated and in default thereof to be excluded from attendance until the lapse of two weeks. The plaintiff refused to be vaccinated, was thereupon excluded from the school and brought action to recover the statutory penalty prescribed against any member of a school board or board of education who "shall vote for the exclusion from school of any person, without sufficient cause or on account of race, color, nationality, or social position." Verdict went for the plaintiff, but on appeal the judgment was reversed, the court holding that the school authorities, including members of boards of education, have authority to temporarily exclude from school attendance pupils who have been exposed to contagious and infectious diseases, and that the danger of contracting and spreading the disease to which such pupils have been exposed is sufficient cause for voting so to exclude them. It was said by the court that a "person carrying the germs of infection may spread the disease perhaps as readily before the disease has become epidemic as after it has arrived at that stage. Unless the power still remains in the



school authorities to temporarily exclude those from school attendance who have come in contact with smallpox patients we may expect epidemics of that disease to be started in short order in our public schools. We do not believe a reasonable construction of this statute herein referred to invites such calamities."

**Workmen's Compensation—Employee Going for Pay—Injury Growing Out of Employment.** An employee of a logging camp which is near a town where the company's office is located, and between which and the logging camp employees are furnished transportation by the company on trains used in its business, is held in *Hackley-Phelps-Bonnell Co. v. Industrial Commission*, 165 Wis. 586, 162 N. W. 921, to be an employee of the company when on a train going to the office for his pay after notifying the company that he intends to lay off a few days and receiving his time slip, and an injury received through the negligent management of the train grows out of his employment.