ON TRIAL

John and Eugene Augustus Charged With Assault.

INDICTED FOR ALLEGED ATTACK ON H. C. CONNER.

TROUBLE RESULTED IN PATROLMAN BEING KILLED.

SHOT BY ARCHIE HANDS

Eugene Augustus and John Augustus, charged with malicious striking and wounding H. C. Conner, a county patrolman, who was shot and killed by Archie Hands in May, 1909, at a beer garden at the crossing of the Preston and Shelby street roads, were placed on trial yesterday afternoon. The Augustus men, it is charged, had had a quarrel with Sam Garr, and it was this difficulty that caused Patrolman Conner, who was in the park in citizen's clothes to interfere and try to make peace. Thomas Maloney was indicted also, but his case will be tried later.

The testimony for the Commonwealth was concluded and peremptory instructions as to John Augustus were argued, but overruled. Court adjourned shortly after 5 o'clock and the case will be resumed this morning.

Dr. C. I. Groves was the first witness introduced. He stated that Conner's skull was fractured at the temple and that he had several contusions on his head and on his lip and one on his shin. He said Conner was hit by a blunt instrumeny or some kind, but he died from the pistol wound.

Sam Garr testified to being knocked down by Eugene Augustus, and he left. Harry Ash and others testified that the Augustus boys assaulted Conner and knocked him down and then kicked him. Harry Ash stated that Thomas Maloney knocked O'Conner down.

William Logan, a negro, who was tried on the charge of shooting at E. T. Sturgeon, a street car conductor, and wounding Sam Garr, was dismissed by a jury.

The indictment, charging Rosa Sloat with knowingly receiving stolen property, on motion of the Commonwealth was filed away.

On the recommendation of the Commonwealth's Attorney the charge of robbery against William Pelton was dismissed.

Grand Jury Report.

The grand jury returned the following indictments yesterday:

Discharging a Pistol on the Public Highway—O. H. Hendricks.

Appropriating Property of a Common Carrier—Riley Henry.

Malicious Cutting and Wounding—Priscilla Medanich.

House Breaking—Lee Harris, Russell Lee and William Cannon.

Malicious Shooting—Dan Medanich.

Grand Larceny—J. C. Hudson.

Malicious Cutting—Edgar Price.

Malicious Cutting—Drew Jackson.

Verdict For $10,000.

The jury in Judge Field's court returned a verdict yesterday afternoon for $10,000 damages in favor of Mrs. Catherine Mabel Estes against the Louisville Railway Company. The jury was only out about twenty-five minutes. The plaintiff sued for $15,000 damages, alleging that she was on a Portland avenue car November 27, 1909, and a collision occurred, which so injured her that she has never fully recovered. She was in a delicate condition at the time and disastrous results followed.

Will Admitted To Probate.

The will of Hattie Smith was admitted to probate in the County Court. The testatrix leaves her insurance money, amounting to $190, to her sister, Nomi Fountain, and leaves her daughter, Mary Hayden, $5. Nomi Fountain is named as executrix of the will, which is dated September 19, 1910.

Court Notes.

—Henry Bettle sued Mary Frances Bettle for divorce, alleging abandonment.

—Western Hat Company sued Manufacturers' Hat Company for $109.49, alleged balance due on merchandise.

—The Kentucky Military Institute sued B. J. Robertson for $257.61, alleged due as tuition fee for attendance at the school.

—James M. Corbitt sued Susan M. Corbitt for divorce, alleging five years' separation. They were married November 23, 1873.

—Guiseppe Vincelli sued T. J. O'Connell & Co. for $5,000 damages, alleging he was injured while in the employ of the defendant.

—Antonio Rotero sued T. J. O'Connell & Co. for $5,000 damages, alleging he was injured while in the employ of the defendant.

—Lillie B. Rawls sued Edgar D. Rawls for divorce, alleging five years' separation. They were married in Durham, N. C., June 21, 1886.

—T. J. Cochran sued the Louisville Railway Company for $10,000 damages, alleging that he was run down by a Walnut street car and injured.

—Allen Kidd sued the Louisville Woolen Mills for $2,000 damages, alleging that he was scalded by hot water while in the employ of the defendant.

—J. K. Walker sued the Louisville & Interurban Railway Company for $1,000, alleging that his wagon was struck by a car and he was thrown out and injured.

—George Robertson sued Henry Bickel Company for $1,000 damages, for personal injuries, alleged to have been received while working in a sewer for the defendant.

—John Lewis sued Henry Bickel Company for $5,000 damages, alleging he was hurt while attempting to put a belt on an engine wheel while in the employ of the defendant.

—Mamie Schaffer sued Albert Schaffer for divorce, alleging cruel and inhuman treatment. The plaintiff asks for the custody of a child. They were married in Indiana in 1899.

—C. A. Carder sued F. H. Miller for $100 damages, alleged due as the result of his delivery wagon being demolished by being run into by an automobile owned by the defendant.

—William Kelly sued the Commonwealth Life Insurance Company for $300, alleging that the amount is due on a policy held on the life of Edward Kelly, who died August 19 last.

—Arthur Cox Duvall, by S. P. Duvall, sued C. J. Brewer for $5,000 damages, alleging that he was run down by an automobile belonging to the defendant and severely injured.

—Joseph Brockus sued the Louisville & Nashville Railroad Company for $10,000 damages, alleging that he lost the sight of his left eye while working for the defendant on the Oak street pass.

—George Sprecker, by Ferdinand Sprecker, sued the Louisville Railway Company for $5,000 damages, alleging a wagon, in which he was riding, was struck by a street car and he was thrown out and hurt.

—Mrs. S. T. Slone sued the Citizens' Warehouse and Transfer Company for $1,000 damages, alleging that the defendant has failed to return to her certain household goods which she had stored with it.

—John F. Rose sued the Louisville Railway Company for $10,000, alleging that while acting as motorman on a car another car was allowed to run into his car, throwing him to the ground and injuring him.

—C. F. Evans sued W. D. Bland & Company for $15,000 damages, alleging that while working for the firm as a butcher he scratched his hand which caused blood poisoning as the result of the unsanitary condition of an ice box.

—William Frazier sued the Louisville Railway Company for $10,000 damages, alleging that while attempting to alight from a car at Twenty-eighth and Walnut streets, he fell and was dragged a considerable distance, thus injuring him.

—Mahala Pickens sued the Louisville & Nashville Railroad Company and the Cleveland, Cincinnati, Chicago & St. Louis Railway Company for $250, alleging that certain household goods were damaged in transportation from Cleveland, O., to Anchorage, Ky.

—A. C. Carpenter sued the Louisville, Henderson & St. Louis Railway Company for $5,000 damages, alleging that while acting as mail clerk on the defendant's train, through negligence of its agents, he was struck by a mail crane at Webster, Ky., and badly hurt.

Court of Appeals.

Frankfort, Ky., Oct. 27. — Kentucky Court of Appeals. Present: Western division sitting.

Donevant vs. Radford's administrator, etc., Henry; affirmed.

Johnson vs. Farris, Laurel; affirmed.

Louisville Water Company vs. Sholtz, Jefferson; reversed.

Hall, etc., vs. Vincent, Carter; affirmed.

Calor Oil and Gas Company vs. Withers' administrator, and same vs. Kentucky Heating Company, Meade; appellees' motion to set aside order of submission and grant cross-appeal and resubmit sustained.

Quigley vs. Franklin, etc., Barren; appellant filed motion for ten days to respond to motion to dismiss appeal; motion submitted.

Salyer vs. Salyer, Magoffin; submitted.

McFerran vs. Fidelity Trust Company, Jefferson; argued by A. P. Humphrey and Ben F. Washer for appellee, Kennedy Helm for appellant, and submitted.

Ordered that court adjourn until tomorrow morning at 11 o'clock.

Court of Appeals Decisions.

Commonwealth, for use, etc., vs. Kentucky Traction Company of Louisville.—Filed October 21, 1910. Appeal from Jefferson Circuit Court, Second chancery division. Opinion of the court by Judge O'Rear affirming.

Corporations—Action to Escheat Title of Property Held by—Dormant Period Should Not Be Estimated—Actual Use of Property.—A railroad may acquire real estate for the purposes of right of way before it has actual use for it, and may hold it without such use for five years without liability to escheat. But there should not be estimated as part of the dormant period such time as the corporation was prevented by litigation from occupying the land for the purposes for which it was acquired.

Lawrence S. Poston, Wallace A. McKay, James C. Poston, for appellant; Humphrey & Humphrey, for appellee.

Kentucky Journal Publishing Company vs. Brock.—Filed October 21, 1910. Appeal from Laurel Circuit Court. Opinion of the court by Judge Hobson, reversing.

First—Special Damages—Absence of Allegation of—Evidence Inadmissible.—There being no allegation in the petition of special damages, evidence as to such special damage should not be admitted.

Second—New Trial—Motion for—Additional Grounds Filed Within Three Days.—Although the motion for a new trial had been overruled, the court has control over the case for three days and there is no reason why the defeated party may not present additional grounds within the three days allowed. The additional grounds here presented such a state of facts as entitled appellant to a new trial.

Hazelwood & Johnson, for appellant; Sam C. Hardin, George G. Brock, for appellee.

Ramsey, etc., vs. Thomas, etc.—Filed October 20, 1910. Appeal from Jackson Circuit Court. Opinion of the court by Judge Carroll, affirming.

Land—Claim to—Occasional Entries Upon—Adverse Possession.—The mere fact that a person and his vendees lived on adjoining land and asserted claim to the land in controversy, and made occasional entries on it for the purpose of cutting timber, did not have the effect of putting them in the adverse possession of it so as to rely on adverse possession as a defense to a recovery by the legal title holder.

J. R. Llewellyn, for appellants; A. W. Baker, for appellees.

Meglemery vs. Weissinger et al.—Filed October 20, 1910. Appeal from Jefferson Circuit Court, First chancery division. Opinion of the court by Judge Carroll, affirming.

First—Fiscal Courts—Appointment of Member as Bridge Commissioner—Rule as To.—The Fiscal Court cannot appoint one of its members to a place that carries with it compensation, nor does the fact that the term of member will expire within a few days of the appointment or that he was not present when the appointment was made change this salutary rule.

Second—Same—Void Appointment—Ratification of It—Does Not Impart Validity to It.—The appointment of appellant to a place by the Fiscal Court where it had no power to appoint, was not rendered valid by its ratification by a succeeding Fiscal Court. The appointment being void, its recognition by a succeeding court did not impart validity to it.

W. W. Davies, R. L. Page, for appellant; A. Scott Bullitt, County Attorney; John L. Sullivan, Assistant County Attorney; Kohn, Baird, Sloss & Kohn, for appellees.

City of Catlettsburg vs. May, etc.—Filed October 20, 1910. Appeal from Boyd Circuit Court. Opinion of the court by Chief Justice Barker, affirming.

Bill of Exceptions—Offer to File Stenographer's Notes of Mistrial—Filing Bill After Time Due.—The filing of the bill of exceptions after the time when it was due to be filed should not have been permitted by the court, and it was properly stricken from the record. The offer to file the stenographer's notes of the mistrial at the time the bill of exceptions was due was as if no tender at all had been made.

L. T. Averett, for appellant; C. B. Wheeler, for appellees.

Charles, etc., vs. Daniels, etc.—Filed October 21, 1910. Appeal from Pike Circuit Court. Opinion of the court by Judge Hobson, affirming in part and reversing in part.

Decedents' Estates—Administratrix and Guardian of Infant Children—Purchase by—Inures for Benefit of Beneficiaries.—Where one was administratrix of her husband's estate and guardian of the infant children, a purchase by her under such circumstances of her husband's land inures to the benefit of the infant children, and the purchaser holds the property in trust for them. But in such a case the purchaser is entitled to be subrogated to the rights of the creditors whose debts he paid.

Cassius M. White, P. B. Stratton, for appellant; J. S. Cline, Butler & Moore, for appellee.

C., N. O., & T. P. Ry. Co. vs. Steele.—(Filed October 21, 1910.) Appeal from Jessamine Circuit Court. Opinion of the court by Judge O'Rear.

Railroads—Contract for Shipment of Grain—Change of Destination of Car—Failure to Change—Action for Additional Freight Toll Paid.—In this action to recover of appellant for additional freight toll paid because the agreement as to change in routing the shipment of grain had not been carried out, which resulted in bringing the car back and shipping it to the place agreed on. Held, that an instruction to the effect that the jury should find for the railroad if they believed it had only agreed to use its best endeavor to carry out the contract as changed, and if it used reasonable effort to do so, otherwise to find for the plaintiff, correctly stated the law, it being competent for the carrier and the shipper to agree upon a change in the routing of the car.

John Galvin, W. L. Bronaugh for appellant; John H. Welch for appellee.

Syck, etc., vs. Hellier, etc.—(Filed October 21, 1910.) Appeal from Pike Circuit Court. Opinion of the court by William Rogers Clay, Commissioner, reversing.

First—Infants—Deed of—Where Valuable Consideration Passes to Him—Purchases by.—The deed of an infant conveying real estate, where any valuable consideration passes to him, is not void, but voidable. But conveyances from an infant are not so easily ratified as his purchases. The mere retention of the purchase money paid to him during his minority does not amount to a confirmation of the deed.

Second—Married Women—Estoppel—Asserting Dower.—A married woman cannot estop herself from asserting dower by acts and declarations except in those cases where to permit her to do so would operate as a fraud. The mere fact that the daughter here continued to enjoy the home farm and that she knew H. had conveyed the tract in controversy to others, and that they were using it as others, and that they were using it as their own and removing the timber from it is not sufficient to work an estoppel against her, and she is entitled to have the deed procured to the tract sold upon her father's death set aside.

P. B. Stratton for appellants; Butler & Moore, J. S. Cline for appellees.

Miles vs. National Bank of Kentucky—(Filed October 21, 1910.) Opinion of the court by Judge Hobson, affirming. Appeal from Jefferson Circuit Court, First Chancery division.

Equity—Older Prevails Over a Junior—Notice—Mortgage.—While an innocent third person may take a second mortgage and thus defeat the equity of the junior mortgage, the holder of the senior equity, when he has notice of the junior equity, stands differently. To allow him to take a second mortgage and thus defeat the junior equity of which he has notice would be to allow him by his acts to take from another a vested right.

Edward W. Hines, Ira Julian, McChord, Hines & Norman for appellant; Humphrey & Humphrey for appellee.

Hoeb vs. Maschinot.—(Filed October 19, 1910.) Appeal from Campbell Circuit Court. Opinion of the court by Judge O'Rear, reversing.

First—Conveyances—Undue Influence—Setting Aside Conveyance—Question of Fact.—Where there exists between two persons a relation of confidence and trust by which one exerts over the other such an influence as to subvert the latter's will and independence, a conveyance by the latter to the former will be set aside as fraudulent upon seasonable complaint. Whether such influence was exerted is a question of fact.

Second—Same—Burden of Proof.—The burden in such a case is on the person benefited, and unless it is shown that the other mind acted of its own volition and freely, the conveyance will be set aside.

Samuel C. Bailey, George Veith, for appellant. Fred E. Bassman, for appellee.

Sizemore vs. Commonwealth—Four cases.—(Filed October 19, 1910.)—Appeals from Lee Circuit Court. Opinion of the court by Judge Carroll, reversing.

First—Liquors—Sale of in Local Option Territory—"Malt Mead"—Evidence—Instructions.—In these prosecutions against appellant charging him with the sale of spirituous, vinous, malt and other intoxicating liquors, the prosecuting witness testified that he had bought a beverage from appellant called "'malt mead," but that it did not have any intoxicating effect upon him, and there was no evidence that the "malt mead" drank by the persons who testified to its intoxicating effect was of the same quality or character as that sold by appellant or that it was made by a prescribed formula, or that it was in fact beer.

Second—Same—Instructions—Evidence.—In view of the evidence as indicated above, it was prejudicial to appellant to instruct the jury that the possession by him of a United States special tax stamp was evidence of guilt. Much of the evidence was incompetent and the whole of it was not sufficient to authorize the submission of the case to the jury, and the presumption of the possession of the special stamp is a rebuttable presumption, and the accused may disprove the inference arising from its possession. (See Gourley vs. Commonwealth, 140 Ky., ante.)

Sutton & Hurst, F. A. Lyon, for appellant. James Breathitt, Attorney General; Thoedore B. Blakey, Assistant Attorney General, for appellee.

Green River Coal Mining Company, etc., vs. Brown.—(Filed October 19, 1910.) Appeal from Ohio Circuit Court. Opinion of the court by Judge O'Rear, affirming.

Coal Lands—Contract With Reference to—Action to Enforce Specific Performance—Evidence.—In this action to enforce the specific performance for the contract price for coal lands, the only defense was that the land was not underlaid with workable coal. Held, that if there was not evidence at all that the land was underlaid with coal, it would nevertheless be competent for the parties to make a binding contract between themselves for the sale of the coal privileges, and in an action by either to enforce the agreement in the absence of a showing of facts which would arouse the suspicion of the chancellor, and no facts were proved here which would authorize such a suspicion, the relief sought was properly granted.

Glenn & Simmerman, Wilson & Crowe, Reese Blizzard, for appellant. W. H. Barnes, S. A. Anderson, for appellee.

Commonwealth vs. Lee.—Filed October 18, 1910. Appeal from Marion Circuit Court. Opinion of the court by Judge Nunn, affirming.

Liquors—Purchasing Liquor for Another—Not Acting as Agent Nor Having Interest in Liquor.—One who purchases liquor for another with money furnished by the latter and who has no interest in the liquor, is not guilty of a violation of the local-option law.

James Breathitt, Attorney General, Tom B. McGregor, Assistant Attorney General, H. S. McElroy, C. T. Hill, for appellant; Finley Shuck, for appellee.

Campbell vs. Ritter Lumber Company.—Filed October 18, 1910. Appeal from Pike Circuit Court. Opinion of the court by Judge Hobson, reversing.

First—Lands—Action for Injury To—Lying in Another State—Rule as to.—Where land lies in another State, the judgment of the court cannot act directly upon the title to it, but judgments imposing a mere personal obligation enforcible by attachment, execution and the like, where they do not operate directly upon the property, are valid.

Second—Same.—The action is one by the lessor against the lessee to recover for waste by the violation of the contract, and like other violations of contract, it follows the person who may be sued where he is found.

Butler & Moore, for appellant; Auxier, Harmon & Francis, for appellee.