

TO JURY TO-DAY

Brannin Will Contest Draws Near To a Close.

ARGUMENTS BY COUNSEL NOW HALF COMPLETED.

MRS. ANITA BROWN NAMES SISTER AS BENEFICIARY.

IN THE COURTS YESTERDAY.

Two out of the four attorneys who address the jury which is sitting in the A. O. Brannin will contest have spoken, the remaining two will make their arguments to-day and the case is expected to go to the jury at the close of the session this afternoon. All of yesterday was given over to the hearing of the arguments of A. Scott Bullitt, who opened, speaking for the contestants, and of David W. Baird, who made the first address for the propounders. Today Burwell K. Marshall will make the first speech for the contestants and Charles H. Gibson, who, with Mr. Baird and Charles H. Shields is counsel for the propounders, will conclude.

It was agreed at first that counsel should be limited to four hours a side for arguments. Judge Batson said, however, that he would not call time on any speaker and at length things worked themselves out so that two days were to be given over to the addressing of the jury, two of counsel to speak each day. Mr. Bullitt, beginning at 10:30 o'clock yesterday morning, spoke straight through until court adjourned some time after 1 o'clock for lunch, and then completed his address in a short time after court reconvened at 2:30 in the afternoon. Mr. Baird spoke from then for a little over two hours, when court adjourned until 10 o'clock this morning.

Both speakers, of course, reviewed the evidence given in the trial. Mr. Bullitt alluding rather insistently to what might have been shown had the contestants been allowed to introduce what they thought they should have been allowed to show. Both he and Mr. Baird charged each other with having attempted to lead the jury away from the issues of the case at bar. Mr. Bullitt said counsel in the case was not on trial and Mr. Baird said the suit was a lawyers' suit. All will cases are suits from which the lawyer profits most, he said. He gave in his address what he styled "the story of grandpa."

According to the instructions of the court to the jury, the approved instructions used in will cases being read, the jury must decide whether A. O. Brannin at the time he wrote his will was possessed of testamentary capacity, whether he was unduly influenced in the writing of his will or whether his mind was sound and he adhered to a fixed purpose in disposing of his estate. The jury's verdict will say whether the will is the true last will and testament of A. O. Brannin or whether it does not contain what they believe to have been his true desires. Should the jury find for the contestants and the verdict be upheld the estate will be disposed of according to law, one-fifth to each of the five daughters or their heirs.

Sister Named as Beneficiary.

By her will, which was dated September 8, of this year and offered for probate in the County Court yesterday, Mrs. Anita Muldoon Brown directed that the residue interest of her estate shall go to her sister, Hannah Muldoon. To Thomas D. Brown, husband of the testator, is left her stock in the "Car and Foundry Company." Her two nieces, Margaret M. Norton and Alice L. Hilliard, are given two rings that belonged to the testator's mother. The rest of the estate goes to the Fidelity Trust Company in trust for her sister during her life. At her death the property goes to the heirs of the testator's mother. The Trust Company qualified, giving bond of \$10,000.

Dena B. Nichols by her will, dated November, 1907, leaves all her property to her children, naming her son, Clarence J. Nichols, executor without bond.

Mary A. Dupre, by her will, dated January 31, 1905, leaves her property to her daughter, Minnie Dupre, naming her executrix without bond.

Archie Hand to Plead Insanity.

Archie Hand, charged with the willful murder and conspiracy to murder County Patrolman H. C. Conner last May, will submit to an inquest as to his sanity on November 29 in the Criminal Court. The plea of insanity will be set up for Hand and the officials at the county jail declare him to be a raving maniac.

John Augustus and Eugene Augustus, Thomas Maloney and Wallace Schuck, who were indicted with Hand, and on the same charges, will be tried on December 4. Aaron Kohn made an effort to get a reduction in bond for the Augustus brothers, but Judge Pryor refused to reduce it from \$5,000. They executed bond in this sum and were released. Mr. Kohn is associated in the defense of the five men with Norton L. Goldsmith and Herman Morris.

Eugene Bates Gives Bond.

Eugene Bates, colored, charged with the murder of Patrolman Simon Cannon and whose trial is set for December 13, was released on bond of \$2,500. This was recommended by the Commonwealth in view of the fact that Bates surrendered voluntarily twenty months after Cannon was killed in December of 1907.

Will Lease to Manufacturers.

The Snead Manufacturing Company will erect buildings in Louisville to be leased to manufacturers. Yesterday in the County Clerk's office the company filed its charter listing its capital at \$130,000. This is divided into shares of \$100 each, half preferred and half common. Indebtedness of \$100,000 is allowed. The incorporators, each of whom holds three shares, are Alex Humphrey and James C. Murphy, of Louisville, and Udolpho Snead, of New York. The life of the company is fifty years.

Short Fiscal Court Session.

Payrolls amounting to about \$30,000 were passed by the Fiscal Court at a short session yesterday, the first of the November meetings. This total is less than usual. It includes salaries, expenses and payments on county work. No other business came up.

Court Paragraphs.

- Louis T. Bradford sued John W. Mann for \$245, alleged due on a note.
- Albert Mitchell sued the Louisville Woolen Mills Company for \$15,000 as damages for injuries suffered when in the employ of the defendant company.
- The Home and Savings Fund Company Building Association sued C. F. Thomas and others for \$3,111.42, alleged due on a note for \$3,500.
- Willie Rees Price sued Albert Price for divorce, alleging five years' separation. They were married in Brandenburg on January 31, 1901.
- Ferdinand Seim sued Charles Kendall seeking to recover possession of certain property which he says the defendant is wrongfully withholding.
- Addie K. Mellett sued W. Clinton Mellett for divorce, alleging cruel treatment. They were married on September 7, 1903.
- Emma Pillow sued Charles Pillow for divorce, alleging five years' separation. The date of the marriage is not given.
- Anna Chadwick sued the Continental Casualty Company for \$266.66, alleged due on an accident insurance policy.
- Katie Farris sued James H. Farris

for divorce, alleging abandonment and asking for the restoration of her maiden name of Katie Troutman. They were married on January 3, 1900.

—William R. Kinney sued May S. Kinney for divorce, alleging abandonment. They were married in September, 1906, and lived together until August of 1909.

Court of Appeals.

- Frankfort, Ky., Nov. 4.—Present: Eastern division sitting.
- City of Owensboro vs. Gabhard, Daless; reversed.
- Howerton vs. Commonwealth, Crittenden; reversed.
- Calor Oil and Gas Co. vs. Franzell, etc.; affirmed on cross appeal and reversed on original appeal.
- Martin vs. Spurlock, Floyd; reversed.
- Phillips vs. Hundley, etc., Marion; affirmed.
- Covington and Cincinnati Railroad and Transfer and Bridge Company vs. Mulvey's Administrator, Campbell; reversed.
- Fidelity Trust Company vs. Zehnder, Jefferson; appellant's motion to dismiss without prejudice sustained.
- Clinger's Administrator vs. C. and O. Railway Company, Mason; motion to advance sustained; motion for oral argument overruled and case submitted.
- Bennet vs. Bennet, Crittenden; appellant given thirty days to file petition for rehearing.
- Reliance Textile Dye Works vs. William Kenton; motion to submit overruled.
- Dayvort, etc., vs. Green River Deposit Bank, Butler; appellant given to November 7 to file brief.
- Lancaster's administrator vs. Central City Light and Power Company, Muhlenberg; case continued.
- Browder vs. Commonwealth, Logan; agreement filed and case reassigned for oral argument December 2.
- Wynn vs. Commonwealth, Hopkins; appellee filed motion to submit; motion submitted.
- Martin vs. Bently, Letcher; appellee filed statement and moved for twenty days' additional time to file brief; motion submitted.
- New York Life Insurance Company vs. Evans; agreement filed and appellant allowed ten days' extension to retain record and print brief.
- Cincinnati, Newport and Covington Railway Company vs. Robert Cook, Campbell; appellee filed answer to petition for rehearing.
- Commonwealth vs. Ward, Jefferson; argued by Herman Morris for appellee and Jacob Solinger for appellant and submitted.
- Court adjourned until to-morrow morning at 11 o'clock.

Court of Appeals Decisions.

- Hardison vs. Pace, County Judge.—Filed October 19, 1909.—(Not to be reported.) Appeal from Muhlenberg Circuit Court. Opinion of the court by Chief Justice Nunn, affirming.
- Mandamus—Circuit Court Has No Power To Control Judgment of Inferior Courts.—In this action of mandamus to compel a Judge of the Quarterly Court to set aside a judgment and permit an amendment to be filed. Held—The lower court properly refused to grant the writ. The writ of mandamus cannot be issued to compel an inferior court to act in any particular way. Here the inferior court acted and the Circuit Court had no power to control the judgment.
- Robert H. Hardison, Jr., for appellant; Willis & Meredith for appellee.
- Runyons, etc., vs. Burchett.—Filed October 20, 1909. (To be reported.) Appeal from Floyd Circuit Court. Opinion of the court by Judge Hobson, affirming.
- Pleading—Cured by Verdict and Judgment.—In this action, involving the cutting of timber trees, the amended answer and reply complained of as not being sufficient to state a cause of action made up an issue as to whether certain trees were cut, but if there was any doubt as to the sufficiency of the pleading, it was good after verdict and judgment.
- Walter S. Harkins, Jas. Goble for appellants; May & May for appellee.
- Stevens, et al., vs. City of Louisville.—Filed October 20, 1909. (To be reported.) Appeal from Jefferson Circuit Court, First Chancery division. Opinion of the court by Judge Hobson, affirming.
- Ordinances—Pawnbrokers—Sale of Pistols.—Appellants took out license under Section 66 of the license ordinance of appellee, but did not take out license to sell pistols by retail in accordance with Section 72 of the ordinance. In this action to enjoin the city from prosecuting them for selling pistols, their petition was dismissed. Held—The license under Section 66 authorizes the pawnbroker to carry on the business and to deal in all things for which no special license is required, but if a pawnbroker wishes to deal in those things which can only be sold at retail under a special license he must take out the license required for that business.
- Chatterson & Bltz for appellants; Clayton B. Blakey, Elmer C. Underwood for appellee.
- Williamson, etc., vs. Maynard, etc.—Filed October 20, 1909. (To be reported.) Appeal from Pike Circuit Court. Opinion of the court by Judge O'Rear, dismissing appeal.
- Wills—Appeal from Judgment Admitting Will to Probate—Limitation.—In this appeal from a judgment in favor of a will

appellees interpose the plea of limitation of one year in such cases, and in avoidance appellants set up that because of parts of the record being lost they were not able to have the transcript filed within one year from the time the final judgment was entered. Held—Section 4530, Ky. Stats., limits to one year the period in which an appeal in such a case may be prosecuted, and if the appeal was delayed by some casualty they should, while this court had jurisdiction, have applied to it for an extension of time in which to file the transcript.

S. M. Cecil, W. H. Flannery, J. F. Butler, James M. Robertson, Hager & Stewart, W. S. Harkins for appellant; N. J. Auxier, York & Johnson, F. W. Stowers for appellees.

Arnett vs. Cardwell, Jr., Police Judge, etc.—Filed October 20, 1909. (To be reported.) Appeal from Breathitt Circuit Court. Opinion of the court by Wm. Rogers Clay, Commissioner, reversing.

First—Injunctions—Jurisdiction.—Appellant was fined in a number of cases in the Police Court of Jackson upon being convicted for the violation of a town ordinance. He replevied the fines and costs, and in an action in the court below seeks and to enjoin the collection of the replevin bond. Held—While the fine in each case was only \$10, Sections 234-5, Civil Code, have no application to a case like this. The main purpose of the suit is to have the ordinance declared illegal, and the injunction prayed for is only incidental to the relief asked.

Second—Ordinance—Void Because of Uncertainty.—The ordinance complained of is void because of uncertainty. It provides a minimum, but not a maximum penalty. According to the weight of authority penal ordinances must leave a margin for the discretion of the court.

G. W. Fleenor, E. C. Holliday for appellant; W. S. Hogg for appellees.