VICTORY FOR RAILROAD

STATE SUPREME COURT REVERSED BAMBERG CASE.

Right of Way of the Company and Use of a Street by Citizens of Town Involved.

Columbia, April 6.—The Southern Railway gained a victory when the Supreme Court to-day reversed a Bamberg case in which the right of way of the company and the use of a street by citizens of that town are involved. The opinion follows:

The State of South Carolina, in the Supreme Court, November term, 1909, W. P. Blume, plaintiff-respondent, vs. Southern Railway Company (Carolina division,) defendant-appellant. Reversed. Opinion by D. E. Hydrick, A. J.

Plaintiff recovered judgment against defedant for obstructing an alleged street in the town of Bamberg, by building thereon a depot and platform, and thereby blocking the way to and from plaintiff's residence.

The alleged street is a part of defendant's right of way. Plaintiff attempted to prove title by prescription in the town to that portion of the defendant's right of way in question by showing an adverse use thereof by the public as a street for more than twenty years.

It appears that a part of the town of Bamberg has been built up along defendant's right of way, and that at least since 1894, the right of way has been laid out on a map of the town as a street, and that for many years, a part of it has been worked and kept up as a street by the town authorities, and property bounding on it has been sold with reference to it as a street. It does not appear, however, that the defendant or any of its predecessors in title knew that the right of way was laid out on the town map as a street, but they knew that a part of it was worked by the town and used as a street.

The testimony shows that the portion of the right of way now in question was not worked or used by the public as a street prior to the year 1897, when plaintiff purchased and built a dwelling house on the right of way, which is described in his deed as a "street, known as North Railroad avenue." But, for some twenty or thirty years previous to that time, there had been a path, or road, along that portion of the right of way opposite to the lot bought by plaintiff, and for some distance along the railroad. Over this road crossties and wood had been hauled and deposited on the right of way for railroad purposes; and a few persons, who lived in the section peyond plaintiff's lot, went along the right of way to and from their houses; but the road, or path, was not generally used by the public. The depot and platform were built in 1905.

The South Carolina Canal and Railroad Company was incorporated by an Act of the Legislature, and built the railroad now owned by the defendant. The Act of 1833, (11 Stat. 384,) provides that, in the absence of contracts with owners of the lands through which the road was built, it shall be presumed that the land on which the road was built, together with one hundred feet on each side of the centre of the road, has been granted by the owners thereof to the company, and that the company and its successors shall have good right and title thereto, so long as the same shall be used for the purposes of said road. In 1833, that company acquired, by purchase, the fee simple title to a tract of land, which includes that portion of the right of way now in question. The defendant is the successor in title to the rights and property of that company.

When all the evidence was in, defendant moved the Court to direct a verdict in its favor, on the ground that no use of its right of way had been proved incompatible with its use by defendant and its predecessors in title for the purposes for which it had been acquired; and, therefore, no prescriptive right to the use thereof as a street could have been acquired by the public. The motion was refused.

The facts of this case bring it squarely within the principles announced in Matthews vs. Ry., 67 S. S., 499, where it was held that the public cannot acquire by prescription the right to use the right of way of a railroad company in a manner inconsistent with the company's use of it for corporate purposes.

The doctrine was announced that, under our statutes, and the general principles of law, the public has an interest in the construction and operation of railroads as highways, which are burdened with duties to the public. Therefore, a railroad cannot dispose of or so use its right of way as to impair or destroy its ability to serve the public; and that, even under the condemnation statutes, another highway cannot be laid out over the right of way of a railroad, if the construction of such other highway operates as a hindrance to the use and enjoyment of the right of way for the purpose for which it was previously procured. Prescription rests in the presumption of a grantor dedication, and as the railroad company has no power either to grant or dedicate its right of way for any other purpose for which it was acquired, the presumption cannot arise, and therefore, neither private individual nor public, can acquire by prescription of a railroad, which is incompatible with the purposes for which it was acquired, or which would hinder or impair the railroad company in discharging its duties to the public, imposed upon it by law.

The Circuit Court seems to have taken the view that the doctrine of adverse possession was applicable to the case and the jury were charged accordingly. But the facts of the case do not bring it within the principles laid down in Beaudrot vs. Ry., 63 S. C., 266, and Hill vs. Ry., 67 S. C., 584. In each of those cases, a part of the alleged right of way was enclosed by a substantial fence, and held in possession for the statutory period under claim of right, exclusive of any right or interest therein by the railroad company. It was held in those cases that such an assertion of right to the exclusive occupancy of the land in question was incompatible with the easement. But in this case, no such possession of any part of defendant's right of way was shown, and no use thereof was proved, which is incompatible with the purpose for which it was acquired.

The fact that fendant owns the fee in the land, and not merely an easement, can make no difference, for if defendant cannot alien or lose by prescription an easement acquired by purchase or condemnation, neither can it alien or lose by prescription the fee in the right of way acquired by purchase. It is not the character of the estate, but the public purpose for which it was acquired, and with which it is burdened, which takes it out of the general rule.

The verdict should have been directed for defendant. Judgment reversed.

Women in Queer Professions.

The mere fact that women "do things" signifies that they have lost their old occupation, a fact which can not be concealed by the problems of bridge or the problem of Bridget.

The inventive faculty, commonly and properly supposed to be masculine, is moht naturally directed to domestic advantage when possessed by a woman. A new mechanical device for a woman's work-basket, invented by a woman, is less surprising to-day than was the fact that Mrs. Nancy M. Johnson, of Washington, was the first person to take out a patent for an ice-cream freezer, in 1843, selling the right for $41,500; yet both of these inventions pertain to woman's traditional occupations. The broom has been an accepted symbol of woman's sovereignty in all ages, but Mrs. Bissell has found a successful business career, not by sweeping cobwebs from the sky, but with the purely mundane carpet-sweeper.

The Business Men's League of New Orleans has given Miss Kate M. Gordon a gold medal in recognition of her services to the city as president of the Women's Drainage and Sewerage League. It was largely through the efforts of Miss Gordon that the women of New Orleans got tax suffrage, and, as president of the Drainage and Sewerage League, she is said to have cast more votes than any other citizen of the United States. The women, if they so prefer, may vote by proxy. Miss Gordon, it is declared cast more than one hundred of these proxy votes.

The latest developments mark the new day by completely ignoring the economic traditions of woman. Women are serving as guides in Maine; there is a woman wireless operator, Mrs. R. H. Tucker, on a steamship on Puget Sound; Captain Mary B. Green is a pilot on the Ohio and Mississippi rivers; the granddaughter of Elizabeth Cady Stanton and the daughter of Mrs. Harriot Stanton Blatch is a civil and hydraulic engineer, a member of the American Society of Civil Engineers.—The Delinator for May.

Chorus Lassies Sleep in Prison.

Fort Wayne, Ind., April 8.—Bluffton is a dry town and to this is due, the anti-saloon people say, the fact that there are no prisoners in the wet county jail which houses the chorus of a light opera company.

The Methodist conference is in session, and all the hotels were packed to the limit, so there was no other place open to the girls. The company arrived during the afternoon, and the manager found every hotel and lodging house crowded.

After male members of the company succeeded in securing quarters, no place could be found for ten girls. Finally it was suggested to him that sleeping room could be secured at the county jail. He broached the matter to the girls and they consented to go there.

GREAT CRASH, AWFUL REPORT.

Strange Occurrence Excites People of Cherokee.

Gaffney, April 8.—The people of the Aratt section, about ten miles from this city, were greatly terrified last Friday night, about 8 o'clock, when a series of blinding flashes were seen in the sky, followed by a great crash and awful report. The houses for a distance of two miles around were shaken and the glasses in the windows became loosened by the report. The whole neighborhood was aroused but all were too frightened to investigate the matter on that night. The following morning a squad was formed and several people went to the place from which the report came and a yawning hole was found, about fifteeen by twenty feet, and a little over six feet deep. Nothing else was found.

It is generally believed by the people of the Araat section that it was a meteor which fell, causing the blinding flashes and the great noise. They are all firmly convinced that it could have been nothing else, and the fact that Halley's comet has now become visible in Gaffney lends color to the opinion, they believing that his may have in some way been responsible for the occurrence. No theory other than that it was a comet has been advanced, as it is the only possible thing that would have come through the air and caused such a disturbance. No effort has been made to see whether or not it is hurled in the hole, and the speculations as to whether or not it was really a comet are rife in Gaffney and the above named community.

Doubtless an effort will be made at once to dig into the hole and if possible to locate the object and doubtless some interesting developments will arise. If it be a meteor and is anywhere near as large as is the hole that was made, it must indeed be wonderful. Meanwhile the people of Araat are much excited over the question, and are very anxious to learn the cause of the peace of the community being disturbed.

Opposition to Negro Enumerator.

Spartanburg, April 7.—The citizens of Pacolet station and Trough Shoals are very much opposed to having the negro, R. L. Moore, as census enumerator in their section of Pacolet township. A petition signed by more than 100 prominent citizens, asking that Moore be removed and a white man appointed in his place, has been forwarded to George M. Pritchard, supervisor of census, Greenville. The people of Pacolet tnd Trough Shoals think that a negro is not the person to greater statistics for the census. They do not belive that the people will give him the information and so state in their petition to the census supervisor at Greenville.

R. L. Moore is a negro who has taught a colored school at Pacolet and also at White Stone. He now carries the mail between Trough Shoals and Pacolet station. Pacolet township is divided into three sections tnd each section given to a separate enumerator. So opposed are the people to having a negro enumerator that it is believed if one began to serve that it would be made so unpleasant that the friction would result in serious trouble.

Burglar for Excitement.

Savannah, Ga., April 10.—Confessing that nightly, with two exceptions, for over two weeks he has committed burglaries in Savannah, William Blackburn Runyan, aged 17, is prisoner at police headquarters, and a large part of the valuable loot he admits he stole has been recovered. Runyan states that he is the son of a woman practicing physician at Richmond, Va., but that she is well to do and willing to provide for him. He declares he commits burglary merely for the excitment he gets in the work and that he never carried a pistol in his life.

As a sample of his work Runyan stated that he took two watches, eight diamonds, watch chains and necklaces from the Wood home here. He entered also the homes of Harvey Granger, John Calhoun and other wealthy Savannahians. He also robbed the Screven house. He stated that before coming to Savannah he committed two burglaries at Norfolk.

State of Ohio, City of Toledo, Lucas County.

Frank J. Cheney makes oath that he is senior partner of the firm of F. J. Cheney & Co., doing business in the City of Toledo, County and State aforesaid, and that said firm will pay the sum of One Hundred Dollars for each and every case of Catarrh that cannot be cured by the use of Hall's Catarrh cure.

FRANK J. CHENEY.

Sworn to before me and subscribed in my presence, this 6th day of December, A. D. 1886.

A. W. GLEASON,
(Seal) Notary Public.

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REACHED FIGHTING STAGE.

Sensational Scenes in Mississippi Senate.

Jackson, Miss., April 8.—Senators Banks and Tucker made frantic efforts to lay hands upon one another during the senatorial bribery investigation late to-day, and a personal encounter between the angry, shouting men was only averted by strenuous work on the part of their fellow Senatrs. Tucker, who is counsel for Senator Bilbo, angered by the use of the shorter and uglier word, rushed at Banks. Banks, white with anger, rushed toward Tucker. Other Senators intervened and roughly pulled the men apart.

Dulaney Denies Charge.

The quarrel came suddenly and unexpectedly. L. C. Dulaney, charged by Senator Bilbo with having paid him a bribe, had been on the stand. He had denied the charge flatly, and was being cross-examined by Senator Tucker, of counsel for Senator Bilbo.

The witness was unshaken in his denial of any crookedness, but declared that Bilbo repeatedly hinted that he could be bribed, and repeatedly asked for and received bottles of liquor. He declared that Representative Cowart intimated that he would not be averse to selling his vote.

Senator Anderson Angry.

Then came the explosion. Dulaney was asked by Tucker if Percy had not paid the expenses of all Senatorial candidates except Vardaman. Senator Anderson, who was a candidate, arose, stern and angry.

"It is an absurd and insulting question," said Dulaney.

A number of senators were on their feet demanding recognition, President Pro Tem Dean was pounding for order, a dozen men were shouting, and above the uproar could be heard the trembling voice of Senator Anderson, shouting:

"I resent that question; I resent the insinuation that I permitted any one to pay my expenses."

From the rear of the Senate, slender Senator Banks came rushing to the front. In a lull in the uproar, he got the floor and shouted:

Uses Plain Language.

"Any man who says or insinuates that anybody paid the expenses of my friend, Congressman Byrd, is a liar, as false as hell."

Senator Tucker made a rush at Banks, and Banks charged to meet him. Senators turned over tables and chairs to get between the angry solons. It looked like a personal difficulty could not be averted, but some rough handling of the two belligerent Senators ended in their being jerked apart. After another wrangle, the question was withdrawn.

"Keep My Name Out."

Then several Senators demanded that the newspaper men be "instructed" not to mention either the quarrel or the wrangle between Senators Banks and Tucker.

"It was stricken from the record," said President Pro Tem Dean, "and the newspapers cannot print anything not in the record, or the result of anything not in the record, including our little personal disagreements."

Then everyone apologized. Dulaney was excused, and when things quieted down a bit, the testimony was resumed. Several witnesses testified to Dulaney's good reputation for veracity and integrity.

At the night session W. W. Mitchell, circuit clerk, of Poplarville, Senator Bilbo's home, testified that he knew Senator Bilbo's reputation for truth and veracity, and that he would not believe the Senator on oath.

Bad on Bilbo.

W. A. White, an attorney from Biloxi, told of trying out Senator Bilbo in 1908. A bill was drawn and sent by a man named Bob Moseley to Bilbo. Moseley returned and said:

"Bilbo did not give me a chance to make him a proposition, he made us one."

Robert Moseley, formerly town marshal of Biloxi, said:

"I went to see Bilbo, and when I explained the bill he took out a little book, figured a while and said, 'It will cost you three hundred dollars.' I offered him a check, but he said he wanted money."

After Moseley had testified, the Senate adjourned until to-morrow.

Saved from the Grave.

"I had about given up hope, after nearly four years of suffering from a severe lung trouble," writes Mrs. M. L. Dix, of Clarksville, Tenn. "Often the pain in my chest would be almost unbearable and I could not do any work, but Dr. King's New Discovery has made me feel like a new person. Its the best medicine made for the throat and lungs." Obstinate coughs, stubborn colds, hay fever, la grippe, asthma, croup, bronchitis and hemorrhages, hoarseness and whooping cough, yield quickly to this wonderful medicine. Try it. 50c and $1. Trial bottles free. Guaranteed by Peoples Drug Co., Bamberg, S. C.

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