

OPINIONS IN FOUR CASES

SUPREME COURT RENDERS THREE AFFIRMING DECISIONS.

Remarriage of a Divorced Wife Affords Strong Grounds for Discontinuing Alimony.

SALEM, Or., Jan. 27.—The Supreme Court today handed down four opinions in appealed cases, in three of which the decisions of the lower courts were affirmed. The principal points of law decided are briefly summarized as follows: When a Constable receives money from a judgment debtor, upon an agreement that the money shall not be applied to judgment, but is to be held in an appeal, the Constable's bondsmen are not liable if the Constable converts the money to his own use, and does so in his private capacity.

Under the laws of Oregon, and especially the acts of 1869 and 1901, surety companies are competent sureties on appeal bonds.

In order to support a conviction of forcible rape, it must be shown that the female made actual, honest and bona fide resistance; that she did not consent, and that she resisted as best she could, but it need not be shown that she resisted "to the full extent of her ability and strength."

When permanent alimony is granted a wife, but maintenance the amount may subsequently be changed or entirely cut off as changed circumstances may warrant.

Where a wife secures alimony it should be cut off when she marries another man, able to support her according to her station in life.

Francis Feller, appellant, vs. John H. Gates et al. Respondents. Judge Burnett, opinion by Justice Moore.

This was an action to recover from a Constable the sum of \$120.40, alleged to have been received by virtue of his office and converted to his own use. Gates was Constable of the town of Gates, and L. W. Gules were his bondsmen. In an action in the Justice Court, Francis Feller obtained a judgment against Francis Feller for \$118.40, and an execution was issued and placed in the hands of the Constable. Gates was about to seize property to satisfy the judgment, when the Constable advised that he would pay into the hands of the Constable \$120.40, to cover the judgment and costs, and not to be applied to the satisfaction of the appeal had been taken. Feller won his suit in the Circuit Court, and then went to Gates for a return of his money. Judge Burnett returned the money, and suit was brought by Francis Feller against him and his bondsmen, on his official bond, Feller alleging that the money was received by Gates in his official capacity. The bondsmen set up as a defense that the money was not received by Gates in his official capacity. Judge Burnett held that "view of the case and dismission of the action, so far as the bondsmen were concerned. Feller then appealed to the Supreme Court, where the lower court was sustained. The opinion says in part:

"The promise of the Constable to repay the money upon the performance of the stipulated condition necessarily shows that he was not received under color of office, for to render the payment a collection under color of office the party must receive the money in the title to the money, relying upon the right of the officer to receive it in trust for the adverse party. It is conclusively shown that the plaintiff herein did not intend to part with the title to the money, nor expect the Constable to say any part of it to the judgment creditor, so that Gates received the money in his official capacity, and not by virtue of his office or even color of office. It would be unjust and impolitic to encourage such dealings by holding sureties responsible for them."

State of Oregon, respondent, vs. Ezra E. Colwell, appellant. Judge Burnett, opinion by Justice Moore.

The defendant was convicted of the crime of rape, committed by forcibly ravishing a female in the City of Hillsboro. He was sentenced to 15 years' imprisonment in the Penitentiary, and thereafter appealed to the Supreme Court. His counsel contended that the lower court erred in giving an instruction to the jury and in awarding a certain amount of damages. The defendant's attorney asked the court to instruct the jury that before they could find the defendant guilty they must be satisfied beyond a reasonable doubt that the prosecutrix resisted the defendant "to the full extent of her ability and strength" from the moment she was first assaulted until the act had been accomplished, and that if she at any time upon that occasion gave her consent, the defendant was not guilty. This instruction was refused, and the case is approved by the Supreme Court. The latter tribunal says that "to make the crime hinge on the moment she was first assaulted, and of making would be a reproach to the law as well as to common sense. Such a test it would be exceedingly difficult, if not impossible, to apply in any case. The instruction requested is, in substance, that if the resistance falls short of the extreme limit that could have been made, the defendant is not guilty, and hence the latter tribunal did not pass upon its sufficiency to support a conviction."

Hiram S. Stone, appellant, vs. William M. Ladd, executor of the estate of Hannah M. Smith, deceased. Judge Burnett, opinion by Justice Wolverson.

This was a suit to require specific performance of a verbal contract alleged to have been made between Hannah Smith and her nephew, Hiram S. Stone. It was alleged that in 1862, in consideration of some \$1000, an accounting agreement was then had, Mrs. Smith agreeing to deed to plaintiff 50 acres of land described in the complaint. The evidence showed that Stone and Mrs. Smith did not keep accounts of their business dealings with each other; that Stone worked for her more than ten years, and that during that time Stone had a living for himself and family; that his dealings with the land after the time of the alleged agreement were such as to support his claim; that while his estimate of the amount due him was \$2400, there should be deducted not only the amount of his living for 12 years, leaving but \$1750 due him, the evidence also shows that no specific amount was agreed to between Stone and Mrs. Smith, but that they "juggled" at the amount. The opinion of the court reviews the evidence at length and concludes, as did the judgment of the lower court, that no agreement, such as the courts can enforce, had been shown.

Alice O. Brandt (now Shurtliff), respondent, vs. A. Park Brandt, appellant, from Lane County, J. W. Hamilton, Judge, modified; opinion by Justice Wolverson.

The plaintiff in this case has had three husbands, of whom Brandt was the second. In 1880 she secured a divorce from Brandt and a decree for \$100 per month. After the divorce, she was living with her second husband, who was granted Mrs. Brandt married Shurtliff, with whom she lived for over six years, when he secured a divorce from her on sufficient grounds. In 1887 she issued an execution to recover the sum of \$128 from Brandt, but the property was threatened to be sold, and she set aside. In March, 1900, Mrs. Shurtliff had an execution issued for the amount of the accrued alimony at \$20 per month. Mrs. Brandt then appealed and moved the court to recall the execution and to remit all the accrued alimony after May, 1890, when Mrs. Brandt married Shurtliff. The lower court refused to grant the motion, and Brandt appealed. The Supreme Court holds that the judgment for \$128 had not matured, that Mrs. Shurtliff should have execution for \$128, and the further sum of \$180, alimony, up to the time of her marriage to Shurtliff, but that defendant's costs and disbursements in this proceeding be deducted therefrom. In reaching this conclusion the court says:

"It seems, somehow, inconsistent, from the

standpoint of morality and public policy, that a woman should receive support from a former divorcing spouse while she is, by reason of existing marital ties, entitled to look to an actual spouse for maintenance of the same amount as she would be entitled to if she were a widow. It is the general opinion among the students of the law that the law should hold that a subsequent marriage will pro tanto dissolve the obligation of the former husband to maintain the wife, and the allowance that he is entitled to pay for her support, and that it affords a cogent and convincing reason for the court to modify or cut off the allowance altogether. The question of accepting support from a third party was a matter necessarily deferred to her own choice, and she must be held to have released the allowance to the extent, at least, of her husband's ability to respond. In this instance he was able and did support her adequately. That support has been cut off by the fault of Brandt, and there are no considerations of right or equity that would require him to assume the obligation again."

George H. Small, respondent, vs. Elmer D. Lutz, appellant, on motion to dismiss appeal, opinion by Justice Moore.

Held that the appellant was competent sureties on appeal bonds under the acts of 1869 and 1901.

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HIGH-DIVE RECORD GOES

BERT KERRIGAN ADDS IT TO HIS TROPHIES.

Multnomah's Great Athlete Sets American Competitors a Pace—Members' Night at Club.

Last night was members' night at the Multnomah Amateur Athletic Club, and the occasion was one of much joy, for Bert Kerrigan, the champion all-around athlete of the club, succeeded in winning new laurels. This time it was the running high-dive record that suffered, the nimble Kerrigan clearing the bar at 8 feet 3/4 inches, breaking the American record, which was 8 feet 11 inches. Kerrigan did the trick without difficulty and received generous applause from the 300 club members who were present.

The programme began at 8:30 o'clock, the first number being a selection by Parsons' orchestra. Then a class of Juniors, protégés of Professor Krohn, did some clever tricks on the rings, after which Hal Rasch and Bob Lamberson

game of next November will be held on the Berkeley campus, and those of future years will alternate between Berkeley and Palo Alto. It is the general opinion among the students of the two universities that the games should continue to be played in San Francisco, as they have been in the past.

Dave Brown, of the Stanford alumni committee, has proposed the following amendments to the present agreement: A one-year residence rule for men who have represented any other university in an athletic event. Allowing men to compete in intercollegiate athletics for only four years, regardless of what university they may have represented.

Giving the baseball umpire the same powers as are given the referee in football games with regard to disqualifying players.

Defining "partial" or "limited" students.

Revising the issue of side-line passes for football and other athletic contests.

Handball Tournament at M. A. A. C. Following are the handicaps for the M. A. A. C. handball tournament, which commences tomorrow evening: Doubles—McAlpin and Cleland, scratch; Dunn and Johns, scratch; Kerrigan and Watson, scratch; Wickersham and Holbrook, 3; Irwin and Zan, 3; Barrett and Honeyman, 3; Gamble and West, 3; Fenton and

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TAX FOR AID OF STRIKERS

UNITED MINERWORKERS DECIDE TO LEVY AN ASSESSMENT.

Miners Propose to Fight the Operators to the End in Disputes Now On.

INDIANAPOLIS, Jan. 27.—The United Mineworkers took today what is regarded by the delegates as the most important action of the convention, when it adopted a resolution from Indiana District No. 11 providing that the convention should levy an assessment on all the members of the organization sufficient for the purpose of carrying to a successful conclusion the fight against all strikes now engaged in by the entire organization. It is the purpose of the miners to fight the operators to the end in all these strikes, as the principle whether the organization is to be recognized is at stake.

An Illinois delegate presented a resolution raising the salary of the National president to \$200 a year. The president now gets \$100. Many of the delegates, it is said, favor the resolution.

Discussion of Delegate Reese's resolution providing for the admission of what states to the interstate agreement, was taken up. Delegate Reese said he had hoped that the resolution might be passed. All the miners, he believed, are for it at heart, but many fear to take in Iowa or any other state on the ground that it may destroy the present agreement which binds Ohio, Illinois, Indiana and Pennsylvania. Several others spoke on the resolution. It was evident that work had been done outside the convention hall against Reese's resolution, as a number of officials who have taken a prominent part in the discussion spoke against it. A counter-resolution of Delegate Evans that the matter be referred to a joint conference of officials who have taken this week, with Reese's proposition, was finally referred to the scale committee and the incoming National executive board.

A resolution was introduced providing for the establishment of competitive districts west of the Mississippi for the purpose of arranging agreements between mine workers and operators there, and asking that the National executive board be instructed to call a joint conference for these states. The matter was referred to the executive board.

CAUSE OF DEATH OF RICE.

Point Reached in the Second Day of the Trial of Patrick.

NEW YORK, Jan. 27.—The second day of the trial of Lawyer Albert T. Patrick, accused of the murder of William Marsh Rice, closed today at the point where the cause of the death of the millionaire is sought to be determined. The first witness along this line of inquiry introduced by the prosecution was Dr. Hamilton C. Williams, an eminent physician attached to the Coroner's staff, who attended the autopsy. The gist of his evidence was that the lungs were congested and that the cause of death was the inhalation of some gaseous irritant and that chloroform would produce such a condition of the lungs. He later said that chloroform could produce the same condition. Dr. Williams was on the stand when the court adjourned.

James W. Girard was recalled and his cross-examination continued. If the 1900 or Patrick will be to be sustained, he said, his clients, the William M. Rice Institute, would receive several million dollars less than they would under the will. He was asked if he would not be satisfied to have a conference with Patrick that the witness told Assistant District Attorney Osborne that Patrick had said: "Why can't you get together and settle this matter up?" He was also called at this conference that Rice's papers should be placed in neutral custody, pending a decision as to who should be in rightful custody.

Charles P. Lowright, the undertaker, who was called in by Patrick to prepare the body of Rice for cremation, testified that he had called Patrick that it would require 24 hours to prepare for cremation, and suggested embalming, to which Patrick consented.

John S. Potter, Lowright's assistant, testified that Patrick had shown him a letter signed by Rice, expressing the wish that after death his body should be cremated. The morning of the day set for cremation he was called on the telephone by Patrick, and told that the cremation must be called off in consequence of a telegram he (Patrick) had just received from Texas, but that it would probably be held for two days later. The letter to which the witness alluded was dated August 3, 1900. It was admitted as evidence.

SHOOTS WIFE, KILLS HIMSELF. Young Couple Resolve to Die Together and Proceed to a Hotel.

CHICAGO, Jan. 27.—Dr. Harry J. Zeigler, of 215 West King street, Lancaster, Pa., fatally wounded his wife, Anna, and then killed himself this afternoon at the Wellington Hotel. A note left by the physician stated that he and his wife had decided to die, and he lacked the nerve, Mrs. Zeigler had promised to commit the act. The woman, before being removed to Samaritan Hospital, declared that the shooting was done by her husband. Dr. Zeigler and his wife arrived at the Wellington Hotel this morning and were assigned to a room. The two were young and apparently happy. They retired to their room and about 9 o'clock a call came to the clerk's office. When the bell boy arrived at the room he found the woman tugging at the door. Blood was flowing from a wound in the back of her head.

"Oh, my husband has shot himself," she cried, forgetting, in her fear for him, the pain of her own wound. The bell boy took her out into the hallway, saying that her husband might kill her, and she let him lead the way from the room. Then he hastened to the office of Dr. B. B. Rice, the house physician. When the latter arrived the husband was dead and the wife was barely conscious. A note addressed to a newspaper was found in the room. It read: "I have decided to die. My photograph belongs to your paper. We decided to die, but I lack the nerve

to shoot, so my wife, Anna, will do it. Send my body home to 215 West King street, Lancaster, Good-bye."

Mrs. Zeigler was conscious for some time after the arrival of Dr. Reis. She confirmed the contents of the note, which showed that the husband lacked at first the nerve to shoot, but that he eventually, she said, her husband shot her, and then, thinking that she was dead, turned the weapon upon himself. Mrs. Zeigler was removed to the Samaritan Hospital. It was at first thought Mrs. Zeigler could not recover. After an operation, however, she showed more signs of life, and although the chances are slim, hope is entertained for her.

Mrs. Zeigler's father is Samuel P. Adams, of this city, who is said to be wealthy.

Zeliger Formerly a Soldier.

LANCASTER, Pa., Jan. 27.—Harry G. Zeigler, who shot a woman purporting to be his wife, and then committed suicide at the Samaritan Hospital, was a native of this city, and lived here until three years ago. He was 25 years old, and a son of William G. Zeigler, station master of the Philadelphia Reading Railroad Company. Young Zeigler, three years ago, enlisted in the regular Army and was sent to the Philippines. The last heard from him was a year ago, when his father received a letter from him, in which he stated that he had entered the hospital service, a circumstance that accounts for his title of "doctor." Zeigler was married about five years ago to Miss Harriet Baker, of this city, who is now at her home, and from whom he had been divorced.

Tragedy in a Church. CHILlicothe, O., Jan. 27.—Joseph Cox shot and killed Howard Ratcliffe at church Sunday evening at Engle Mills, 15 miles east of here. Cox had been paying attention to Ratcliffe's sister, and Ratcliffe strongly objected to Cox's paying attention to his sister. Cox shot Ratcliffe at church last night and when Ratcliffe saw them together in the church he at once assaulted Cox, who drew a weapon and fired. The bullet passing through the body of Ratcliffe, he fell in the aisle and expired, amid the shrieks of terrified women. Both men are of respectable families and are schoolteachers. Ratcliffe was a member of the Episcopalian Church and was taken to McArthur today.

WOMEN WORSE, MEN BETTER. Investigation Sustains Coleman's Statement Anew Intemperance.

NEW YORK, Jan. 27.—The Right Rev. Leighton Coleman, Episcopal Bishop of Delaware, who started his hearers in a mission address at New Brunswick, N. J., by the statement that there is more intemperance among men, has repeated the statement, and added assertions equally interesting. He says that in the past he has formed only a few exhaustive investigations and observation of conditions in this country and abroad.

Bishop Coleman said that a newspaper recently had his views set on foot in New York, with a view of disproving his charge. Committees of impartial citizens went to the various fashionable hotels and women's restaurants, taking notes of the orders of women patrons. They found that to take wines, cordials, even whiskey, with one meal was an almost invariable rule among the wealthy and fashionable set. Not only this, but in so-called tea rooms, restaurants, were served to women who ordered them without even the pretense of ordering a meal.

"Intemperance among women, however," said the bishop, "is not confined to the well-to-do. It is a general and fashionable class. The use of stimulants, medicines, braces, tonics and all similar devices serving as a mask for the liquor habit is becoming more general among the middle classes. In England conditions are worse even than here."

TO USE NIAGARA'S POWER Contract Let for the Largest Dynamometer Ever Built.

NEW YORK, Jan. 27.—Another great step in the utilization of Niagara power is announced by the Electrical World and Engineer. Contracts have just been awarded by the General Electric Company for the construction of three 10,000 horsepower generators for the new plant, whose ultimate capacity, it is estimated, will probably reach 200,000 horsepower. These negotiations have been conducted through the Canadian Power Company, which had the original charter for the enterprise, but whose rights have been acquired by the American company. These dynamometers will be situated, like those of the Niagara Falls Power Company, at the level of the surface of the water, while the turbines will be in a shaft pit directly underneath. Vertical shafts over 100 feet long will connect the water wheels with the generators.

It is asserted that these dynamometers will be the largest ever built. The closest approach to them is made by those being installed in the power-house of the Manhattan Elevated Railway Company of this city. The latter have a nominal capacity of 6000 horsepower, but are designed to develop 25 or 50 per cent more in an emergency.

Lady Mackenzie in New York. NEW YORK, Jan. 27.—Lady Constance Mackenzie, a niece of the Duke of Sutherland and heiress to large property in her own right, is among the passengers on the liner Umbra. She was accompanied by her cousin, Hugo Barling, of the banking firm of Barling Bires, who is a brother of Lord Revelstoke. They were met by Mrs. C. S. Dodge, who will entertain and chaperone Lady Constance while she is in this country. Lady Constance has traveled extensively in Europe and the East, but this is her first visit to America.

Large Philanthropic Hospital. RICHMOND, Ind., Jan. 27.—The Methodists of Indiana, it is announced, have undertaken the erection of a large philanthropic hospital to be located at the state capital. The cost is to be \$200,000 and the endowment \$50,000. The work of raising funds is being pushed over the entire state. Work will begin on the building as soon as \$50,000 is available.

My photograph belongs to your paper. We decided to die, but I lack the nerve

to shoot, so my wife, Anna, will do it. Send my body home to 215 West King street, Lancaster, Good-bye."

Mrs. Zeigler was conscious for some time after the arrival of Dr. Reis. She confirmed the contents of the note, which showed that the husband lacked at first the nerve to shoot, but that he eventually, she said, her husband shot her, and then, thinking that she was dead, turned the weapon upon himself. Mrs. Zeigler was removed to the Samaritan Hospital. It was at first thought Mrs. Zeigler could not recover. After an operation, however, she showed more signs of life, and although the chances are slim, hope is entertained for her.

Mrs. Zeigler's father is Samuel P. Adams, of this city, who is said to be wealthy.

Zeliger Formerly a Soldier. LANCASTER, Pa., Jan. 27.—Harry G. Zeigler, who shot a woman purporting to be his wife, and then committed suicide at the Samaritan Hospital, was a native of this city, and lived here until three years ago. He was 25 years old, and a son of William G. Zeigler, station master of the Philadelphia Reading Railroad Company. Young Zeigler, three years ago, enlisted in the regular Army and was sent to the Philippines. The last heard from him was a year ago, when his father received a letter from him, in which he stated that he had entered the hospital service, a circumstance that accounts for his title of "doctor." Zeigler was married about five years ago to Miss Harriet Baker, of this city, who is now at her home, and from whom he had been divorced.

Tragedy in a Church. CHILlicothe, O., Jan. 27.—Joseph Cox shot and killed Howard Ratcliffe at church Sunday evening at Engle Mills, 15 miles east of here. Cox had been paying attention to Ratcliffe's sister, and Ratcliffe strongly objected to Cox's paying attention to his sister. Cox shot Ratcliffe at church last night and when Ratcliffe saw them together in the church he