

HAIRSPPLITTING ISSUE CONCERNING PLEADING INTERESTS LAWYER

Judge Had Scored the Time "Wasted" on Discussing "Negative Pregnants."

MATERIAL FACTS RELATED

Supreme Court Decision Remands Case and Plaintiff Is Given a Chance to Amend Her Reply.

The recent decision of the supreme court, written by Justice McBride and concurred in by Chief Justice Moore and Justices Burnett and Benson, reversing the case of White vs. East Side Mill & Lumber company, is causing widespread comment among the lawyers of Portland.

This is particularly so in view of the fact that a new trial has been ordered because the attorneys for Mrs. White, in their pleadings, denied that White had "carelessly and negligently" turned his back instead of having denied that he had "carelessly or negligently" turned his back.

Facts in the Case. The facts in the case are that James R. White, a traffic policeman stationed at Union avenue and East Burnside street, was run over and killed on the evening of November 19, 1914, by an auto truck belonging to the East Side Mill & Lumber company.

His widow, Lulu R. White, filed suit in January, 1915, charging that the company had been guilty of negligence in operating the truck. The case was tried before Judge McGinn in June, 1915, and the jury gave a verdict for Mrs. White in the sum of \$7500, the full amount asked.

Trial Cost Country \$300. The trial of the case occupied four days before Judge McGinn, and the cost to the county was not less than \$300. This included attorneys' fees to either litigant, while the cost bill filed amounted to more than \$400.

A year and a half has elapsed between the filing of the suit and the decision, ordering a new trial, the case must now go to the foot of the docket, take its turn for trial, and probably go once more to the supreme court before being finally determined.

Case Turns on "And," "Or." The defendants in their answer before trial charged that White had "carelessly and negligently" turned his back upon the company's auto truck, after signaling it to go forward, and that while his back was turned he had "carelessly and negligently" stepped backward and in front of the rear wheels of the truck, with the result that he was run over and killed by his own negligence and not that of the company.

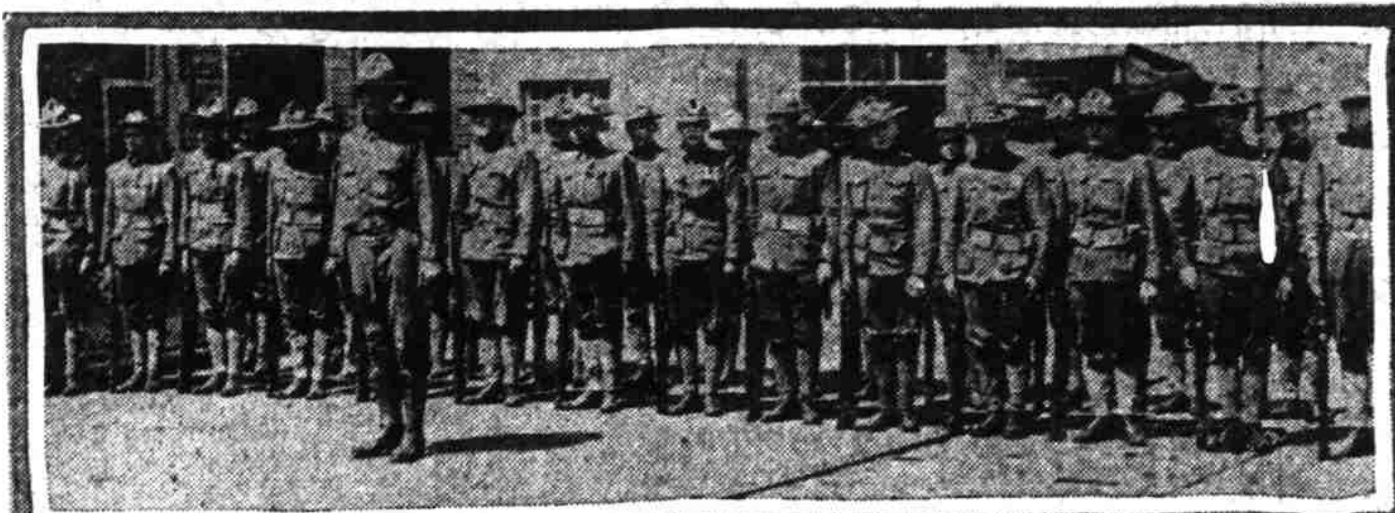
Mrs. White, in her reply, denied that White had "carelessly and negligently" turned his back upon the truck or had "carelessly and negligently" stepped in front of the wheels.

Demurrer Based on "And." The defendants interposed a demurrer to this reply before trial, contending that the use of the conjunctive "and" rather than the disjunctive "or" constituted, in effect, an admission that he was either careless or negligent.

Judge McGinn overruled the demurrer and in passing upon the point said: "We used to waste a lot of time when I was a boy talking about negative pregnant, and I don't suppose any boy after he has gone through the subject knows much about the affirmation contained in a literal denial, but there has been entirely too much time taken up with that slush.

"Subtleties of Schoolmen." "Where it is manifest that an issue has been joined it is about time we get away from that stuff and come to the substance of the lawsuit, and not the subtleties of the schoolmen. Ecclesiastics used to devote a lot of time to telling how many souls could stand

UPSTATE MILITIA COMPANIES ON DUTY EARLY



Upstate companies of the National Guard have been enthusiastic in their haste to recruit up to strength and to get under way to Clackamas. In the above picture at the top is Company G, Oregon City, Captain E. L. Blanchard in foreground, First Lieutenant William R. Logus is the first man at the left. Below is Company M, Salem, first company to get under way, at the Southern Pacific depot just prior to entraining. There was a crowd to bid the boys farewell, and a patriotic program was given at the station.

on the head of a needle, but we do not talk that language now." Justice McBride in writing the decision of the supreme court says: "We greatly regret being compelled to reverse this case upon a question of pleading, but we see no way to do so without violating all the established rules of pleading both as prescribed by the code and as they existed at common law."

Justice McBride Continues. After a discussion of the subject of negative pregnant, Justice McBride continues: "The reply in the case at bar consists wholly of conjunctive denials. It denies that deceased failed to look out for himself and keep a careful watch over the traffic on said street, which in its final analysis is an admission that he might have been negligent in one or the other of these respects."

"It denies that he carelessly and negligently turned his back upon the defendant's auto and failed to look out for danger of being struck which is entirely consistent with the theory that he might have turned his back to the approaching truck, but that the act was not done in a careless or negligent manner, or that he might have turned his back without negligence and yet have failed to look out for danger of being struck."

Wrong Kind of Denial. "It denies that he carelessly and negligently stepped back in front and directly in the path of the moving rear wheels of the auto truck, which amounts to an admission that he stepped backward in front and directly in the path of the truck, but that he did not do it negligently and carelessly. This is exactly the class of denials condemned by the cases above cited and explicitly declared by them to raise no issue. The plaintiff should have confessed the demurrer and obtained leave to amend, which would have been cheerfully granted by the court. Having persistently refused to do this, we cannot remedy the omission here. "Court Can't Be Too Liberal. "This case has been exceedingly liberal in regard to defects in pleading,

but I cannot extend that liberality so far as to condone the omission of material averments or denials. This view of the case renders it unnecessary to consider the other questions so ably discussed upon the hearing. The judgment is reversed and the demurrer to the reply sustained and the cause remanded to the circuit court with leave to plaintiff to apply there for permission to amend her reply."

What the Constitution Says. Section 3 of article VII of the constitution says if the supreme court, in the consideration of a case upon appeal, is of the opinion that the judgment was such as should have been rendered, such judgment shall be affirmed notwithstanding any error committed during the trial.

There are many lawyers who contend that the court in the White case based its decision upon a "refined technicality" and that it would have been in the interest of ultimate justice and of the taxpayers had it not held so closely to the age-old rules of common law pleading.

JUAREZ EVACUATED BY MEXICAN TROOPS, WHO CONCENTRATE TO SOUTH

(Continued From Page One)

to retire. According to Gonzales, the Carranzistas hold Carrizal today and the Americans are camped in the nearby foothills. The Americans captured Juarez under heavy guard, according to General Gonzales. A trainload of Mexican wounded also were taken to the hospitals in the state capital.

To Leave Border Towns. It is thought the de facto government intends evacuating practically all border towns and mobilize at interior points which are now being fortified to resist American forces. It is reported Carranzista agents visited bandit camps south of Namiquipa for the purpose of securing their cooperation in fighting the United States troops. The bandits are

said to have refused, preferring to work alone. Mexican Consul Andres-Garza in Juarez today denied by telephone that he intends remaining on the Mexican side where he went last night. He stated that the consulate would remain open in El Paso and that he would return to it this afternoon.

Juarez Streets Deserted. Garza admitted he crossed the border because he considered himself safer in Juarez. Asked if Juarez would be evacuated if the court in the White case based its decision upon a "refined technicality" and that it would have been in the interest of ultimate justice and of the taxpayers had it not held so closely to the age-old rules of common law pleading.

Bell Without News. El Paso, Texas, June 22.—(U. P.)—General Bell at Fort Bliss said today that copy of the Mexican report of the Carrizal battle forwarded by General Gonzales of Juarez was the only information Bell had shortly after 3 p. m. No report had been received from General Pershing.

Pershing Hears Nothing. San Antonio, Texas, June 22.—(U. P.)—General Funston received a message this afternoon from General Pershing stating that Pershing had heard no report of the Carrizal battle except the one wired him by General Bell from El Paso. Pershing said he had dispatched a squadron of the Tenth cavalry to investigate and would report as soon as he learns anything officially. Funston said he would make no new orders until he hears again from Pershing.

Ceremony Takes Place in Bar Harbor, Me., Today; Only Few Intimate Friends Present at Ceremony. Bar Harbor, Me., June 22.—(U. P.)—Mrs. Madeline Astor completed her sacrifice of money for love at the altar today. Dressed in a simple blue serge traveling suit, with a straw hat to match, the widow of Colonel John Jacob Astor was married late this afternoon to William Karl Dick of New York. In doing so she automatically forfeited an income from the \$50,000 principal left her by the Titanic's wealthiest victim. The officiating clergyman today was Rev. Albert C. Larned. The ceremony took place in St. Saviour's Protestant Episcopal church. Only a few intimate friends were present. The couple will spend their honeymoon in a cottage at Santa Barbara, Cal., loaned the bridegroom by Mrs. E. C. Cushman. Everything was confusion in Bar Harbor during the morning and with the report that the New York train bearing guests was an hour late, it appeared certain that the wedding would be postponed until late in the afternoon. Dick was excitedly hurrying around town with Scott Pyle, making final arrangements, with "movie" camera men taking the dead run taking potshots at him at every corner.

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Utmost Principally Was That Army Must Be Demobilized; Other Demands Not Made Public. Paris, June 22.—(U. P.)—Greece has accepted all the conditions imposed in the allies' ultimatum. The chief demand made by the allies was for the immediate demobilization of the Greek army, the allies fearing that the Greek forces might be used against them. A number of other demands, the nature of which was not made public, were made on Greece, resulting in the overthrow of the Greek cabinet.

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Choice assortment of Caramels, Rolls, Kisses, Chocolate Creams, Clusters and Chips in all the different flavors. Special, Pound, 29c

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FOND FAREWELLS ARE GIVEN AS SOLDIERS TAKE THEIR DEPARTURE

Loved Ones Left Behind on Hand to Extend and Receive Cheering Words.

APPLAUSE FOR MARCHERS

Column Accorded Ovation As It Moved From Local Army to the Railroad Depot Today.

"There's Bill now. See what all he's got to carry. Hoo, hoo, Bill!" "Goodbye, mother, I'll remember." "Now, Henry, I don't know how the children and I are going to get along. Get off as quick as you can, won't you?"

These were some of the comments heard at the Army yesterday afternoon, just before the remaining companies of the Oregon National Guard set out for the train that was to take them to the mobilization at Clackamas. But among the voices from the crowd of several thousand that packed around the building and swarmed the galleries over the drill floor, came one little piping voice.

Child Say: Goodbye. The voice belonged to a wee toddler. The child leaned far over the gallery railing and waved tiny hand at a soldier who was rolling up his kit. "Goodbye, papa," cried the little voice.

And the soldier stopped in his preparations long enough to wave a hand at the gallery rail. Oregon's soldiers strode forth from the Army at 1:30 o'clock this afternoon. Not all the soldiers were uniformed, some were without equipment, but all wore looks of cheerfulness. Some of the looks were forced, particularly as they dwelt upon persons in the crowd. But most of the men were inclined to joke with those about them and exchange chaff about Mexico and Villa and army beans and trench-foot.

As the soldiers marched out of the Army and joined the column on Eleventh street moving south, with the Third Infantry band playing "America, I Love You" and "Listen to the Mocking Bird," and "Maryland," the jokes somehow were replaced by more sober words of farewell.

Recruits Are in Line. The newly recruited troop of cavalry, as yet unmounted, was in the column. For the most part the ranks

were full, but some vacant files showed where further recruiting will make the complement. The column marched on Eleventh to Washington street, turning east to Sixth. North sides of the street were crammed with people, cheering Oregon's soldiers as they marched away to camp. At Sixth, the column turned north again, reaching the Union Station in time and the special cars parked there by the Southern Pacific company for transporting the forces to Clackamas.

REPORT OF PERSHING AWAITED BY FUNSTON BEFORE ORDERS ISSUE

Additional Requests for Militia to Depend on Word of Carrizal Fight.

San Antonio, Texas, June 22.—(U. P.)—General Funston stated today that he would issue no new orders until he has received General Pershing's official report, and is fully acquainted with the details of the battle at Carrizal, in which 40 American troopers are reported to have been killed, many wounded and 17 taken prisoners. Funston had received no report from Pershing regarding the Carrizal battle up to 9:45 a. m. He declined to say what orders were to be issued as a result of the attack.

Funston's latest information from Pershing contained no reference to any scouting parties so far from the lines of communication—about 70 miles. Funston said he wired Pershing at 6 o'clock for a report on the battle. He said any additional request for militia would depend on Pershing's report.

25,000 Volunteers Raised. Galveston, Texas, June 22.—(U. P.)—Fervent military activity continues in Mexico. A cablegram received here today states that 25,000 volunteers have been raised in the state of Puebla alone, and that corresponding numbers are being recruited in all parts of the republic. Cable messages from Buenos Aires quote the press of that city as being emphatically opposed to American intervention in Mexico.

WORKS INTERVENTION RESOLUTION BROUGHT BEFORE THE SENATE

Senator Asks Why Delay in Report; Thinks Congress Should Step In.

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which he introduced five months ago directing intervention. He demanded to know why the foreign relations committee, to which it was referred, had not acted. Chairman Stone of the senate committee was hurriedly sent for by administration leaders. Stone told the senate his committee had thought it best to take no action and that he could not say when it would. "Then I move to discharge the committee from consideration of the bill," said Senator Works. "I have no desire to force a debate today, but I think that if the executive departments continue their inaction, congress should step in."

May Evacuate Lemberg. Rome, June 22.—(U. P.)—A Bucharest dispatch today reported that preparations for the military evacuation of Lemberg were made at a special Austro-German war council.

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GROUND GRIPPER ? If you are not entirely satisfied with the shoes you are wearing, you should look into the merits of the Famous Ground Gripper Shoes. They will correct your foot trouble and give you real foot-comfort. All sizes carried in stock for men and women. See that "Ground Gripper" is stamped on the sole, as there are some salesmen that will not hesitate to say that they have the "Ground Gripper," which is a gross misrepresentation and an injustice to the buying public. The only place these shoes can be purchased in Portland is at the GROUND GRIPPER Shoe Shop, 381 1/2 WASHINGTON STREET.

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