IN THE MATTER OF BENEFIT SOCIETIES

Judge Edwards Discusses the Question of Forfeited Membership.

AFFIRMATIVE ACTION NECESSARY

Under Ordinary Circumstances the Clause Prescribing Expulsion for Arrearages Is Not Self-Executing. There Must Be a Vote of Expulsion or Some Such Action Is Necessary to Make the Clause Effective--New Trial Refused in the Wheeler Case.

In an opinion refusing a new trial in the case of Maria Wheeler against the Lackawanna Coal Company Accidental association, Judge Edwards yesterday made an important ruling in the matter of expulsion for arrearages in dues, deciding that the expulsion clause of by-laws in such societies is not effective until reinforced by some kind of affirmative action. The opinion in full is given below:

When this case was tried we directed a verdict in favor of the plaintiff for the full amount of her claim. We considered at the time that the facts which were material in this disposition of the case were undisputed. In reviewing the evidence, the charge of the court and the authorities, we are satisfied that the instructions were correct and that, therefore, the verdict should stand.

The defendant is an incorporated beneficial association, whose members consist of the employes of the Lackawanna Coal company colliery and other persons working in other mines in the same vicinity. William Wheeler, the husband of the plaintiff, during his lifetime, was a member of the association. It was claimed by the defendant that Wheeler was in arrears in his dues to the amount of $1.25, at the time of his death. His arrearage, if there was any, accrued some time in 1894, about six or eight months prior to Wheeler's death in May, 1895. There was some dispute as to the fact of arrearage. According to the books of the association Wheeler was in arrears; but according to the testimony of the plaintiff and other witnesses, he was not. It seems that occasonally dues would be paid to the secretary at his house, or office, or on the street, as a matter of convenience to the members who could not attend the meetings of the association. According to defendant's by-laws the secretary had no authority to receive money in this way.

TO BE PAID TO TREASURER.

All moneys were to be paid to the treasurer at the regular meetings of the association. This custom of paying to the secretary had been recognized to some extent by the defendant. But this disputed question of fact was not submitted to the jury because the case was decided on another point. One of the undisputed facts in the case was that the association took no action in reference to Wheeler's arrearage and membership, until after his death, when he was declared to be in arrears and not entitled to be considered a member and that the association as such would not attend the funeral. This was the first affirmative action on the part of the association in the Wheeler case. For several months after the alleged arrearage had accrued, Wheeler continued to pay his dues regularly and these payments were entered upon the books of the defendant. No effort was made to adjust any dispute by the appointment of a committee or by a hearing. Everything went on as usual and Wheeler's membership in the association was not questioned or disturbed until after his death. He was not "dropped from membership" which may be done according to the by-laws, when a member is in arrears to the amount of $1.25, having failed to do this and having continued to recognize Wheeler as a member receiving his monthly dues, we are of opinion that the association is now estopped from denying the claim of the widily for the burial expenses.

Section 2, Article V, of the by-laws of association is as follows:

"Any member in arrears for dues two months after the regular pay-day of the Lackawanna Coal company's colliery, shall not be entitled to benefits; and any member in arrears to the amount of $1.25 shall be dropped from membership."

When a member dies the family is entitled to $75 for burial expenses. The first clause of the section quoted is evidently self-executing. It requires no action on the part of the association. The second clause requires affirmative action on the part of the association before it can be enforced. The member "shall be dropped from membership." Various courts in construing clauses of this nature have differed in their views, but we adopt the view which is least favorable to a forfeiture without notice. The question is discussed by Niblack in his work on benefit societies. We quote from section 287, second edition:

MUST TAKE ACTION.

"In order to work a forfeiture of the rights of a member, the society must, as a general rule, take definite action upon the default of a member and declare the contract at an end. By the express and unequivocal terms of the contract the default of the member may of itself work a forfeiture, but a construction that will summarily cut off the substantial rights of a member is never favored. * * * * Where it is provided that any member who shall not pay within a certain time 'shall forfeit his claim to membership and have his name stricken from the roll,' this provision is not self-executing, but requires affirmative action on the part of the society declaring the forfeiture in order to terminate the membership. The society must ascertain the fact of delinquency and impose the penalty, and until that is done, his membership is not terminated."

The same doctrine is enunciated in the case of the Commonwealth vs. the Pennsylvania Beneficial Institution, 2 S. & R. 140. The facts of this case show that according to the rules of the defendant society, each member was to pay 50 cents as a monthly contribution and if any member should neglect to pay for three months, he should be expelled. The names of John Hansell and others were struck from the rolls but without a vote of expulsion on the part of the society. Tilghman, C. J., says: "There was no vote of expulsion, because in the opinion of the officers who have made return to the mandamus, the non-payment of their contribution for three months, was ipso facto, a forfeiture of membership; but this appears to me to be a misconstruction of the charter. The provision is that should any member neglect to pay his arrearages of the society, then, declaring the expulsion, and this cannot be without a vote of expulsion, after notice to the member supposed to be in default; for it may be that he may either prove that he is not in arrears or give such reason for his default as the society may think sufficient."

SAME PRINCIPLE AFFIRMED.

The same principle is also affirmed in Commonwealth vs. the German society, 15 Pa. 251, and in Diligent Fire company vs. Commonwealth, 75 Pa. 291. Our attention has been called by defendant's counsel to the case of Phillips vs. Aid society, reported in 6 Pa. Superior court 157, and decided recently. We have examined this case carefully and without our views as expressed in this opinion. In the Phillips case the provision in the policy reads thus: "Any member in arrears for more than three weeks' dues shall not be entitled to benefits, but such members can be reinstated by paying such arrears, and passing an examination, though they will not be entitled to benefits should sickness, accident or death occur within five weeks from date of reinstatement." Mrs. Phillips died within the period of five weeks following her reinstatement. The beneficiary was therefore not entitled to recover. The insured was in default according to the terms of her contract. The provision referred to is self-executing and by the most liberal construction required no action on the part of the defendant company. Herein, in our opinion, rests the distinguishing feature of the case at bar and the other cases cited, viz., that where it is provided that a member shall be expelled or suspended, or that he shall be dropped from membership under certain circumstances, the forfeiture must be declared by legal and affirmative action on the part of the society.

The binding instructions given to the jury are justified by the facts of the case. The material facts are undisputed. The verdict is a just one. The rule for a new trial is therefore discharged and a new trial refused.

INJUNCTION MADE PERMANENT.

Judge Gunster Hands Down His Opinion in the Mine Case.

Judge Gunster yesterday handed down his opinion in the Richmond mine injunction case, deciding in favor of Mine Inspector Roderick, by making the temporary injunction permanent.

Inspector Roderick claimed that the Elk Hill Coal and Iron company, which operates the colliery in question, violated the mine law in working men at mining coal for market in Dunmore No. 2 vein, which has but one opening and in not keeping the second opening from the upper or Clark vein fitted at all times with proper and safe appliances for escape, the particular complaints in this respect being that a bucket was used instead of a protected cage fitted with guides and "dogs;" that the bunting was in a bad state of disrepair and that steam was not kept in the boilers and no engineer was kept at hand to hoist men through this second or safety opening in case of an emergency.

The company contended that it is making a second opening from the Dunmore vein, and that the law permits it to work as high as twenty men even at mining coal during the progress of the cutting of the second opening. As to the absence of a cage in the secondary shaft, the company explained that the bucket is only to be used while the repairing of the damaged bunting is going on. In relation to the keeping of steam in the boilers constantly and an engineer always on hond, the company maintained that the law did not strictly impose this very apparent hardship and that the court in its discretion could be justly applicable to the case in hand. The colliery in question is such a small one, it was contended, it could not be profitably worked if the strict reading of the law as contended for by the inspector was insisted upon.

Judge Gunster's opinion covers sixteen type written pages. It is epitomized in the following excerpt, with which he introduces his findings and conclusions in detail

"In the present case the enforcement of a compliance with the law will no doubt make the defendants' mine less profitable, but it will make it also correspondingly more safe. The question of profit is not a factor in the case; the question of safety, is; and unless the defendants carry on their operations in such a manner and with such appliances as the law directs they must not mine at all."

By a modification of the opinion previously made, the company is permitted to work men on the second openings and this work is now being pushed forward with due haste.

COONS DECLARED INSANE.

He Will Be Sent to the Hillside Home.

"King of the Hoboes," Fred. Coons, arrested Sunday by Special Officer John Ceslett for burning timberlands owned by the Lackawanna Iron and Coal company, was declared insane by medical examiners yesterday and will be sent to the Hillside Home. He was examined by Doctors P. F. Gunster and Albert Kolb.

The "king" was adjudged harmless, as far as doing physical injury to another person is concerned, but a menace to property fastened or loose and so confinement was considered best for him and the public. He told the police that secret organizations were "keeping things down;" that it was hard on that account "for a feller to make an easy living nowadays." When asked to explain this statement he said secret organizations had fixed things so that only very little work is done now as compared with former times; consequently, men, like himself, who wanted to work, couldn't find any work to do.

When asked by the physicians to close his eyes tight and walk straight ahead, he ambled off at an angle of 90 degrees; an evidence that his brain was as crooked and uncertain as the paths he had for months been trying to follow while roaming the woods. "Jus' 's sun be there 's anywhere," the "king" said when asked if he would like to go to the Home.

PAPERS NOT COMPLETED.

Application for Writ of Quo Warranto Not Made Yesterday.

It was found impossible to have the papers prepared in time to make an application yesterday for a writ of quo warranto on the part of the men elected to the offices of poor directors at the last election.

Yesterday it was stated that it would take another day or two to complete the papers and the commencement of the quo warranto proceedings may be deferred until next Monday.

The Universal Trick.

"There is one falsehood that even the best of women will tell."

"It is not so! What is it?"

"That she never uses facepowder—to make her look white—but just to take the shine off her nose."—Puck.

GRAND JURY MAKES ANOTHER REPORT

Large Batch of True and Ignored Bills Presented to Court.

THE CAFFERY MURDER CASE

Bill Against the Men Accused of the Crime Ignored -- Similar Action Taken with Reference to the Leete Libel Cases Against the Free Press. Powell Petrust Indicted for Perjury at the Instance of Chief-of-Police Robling.

In its second report to court yesterday the grand jury ignored the bill against Thomas Bushchenski, Gusta Bednor, John Peranda and Mike Lemshak, charged with the murder of Pencil Peddler Caffrey, at Olyphant, several months ago. The cases against Richard J. Beamish, editor of the Free Press, charging libel, were also ignored. Edward and Elizabeth Leete were the prosecutors.

It is not likely that the jury will be able to complete the work before it and make its final report to court until Wednesday. The true and ignored bills returned yesterday were:

TRUE BILLS.

Assault and Battery—Michael Ruane; Thomas McHale, pros. Mrs. Charles Stanton; Alice Elleby, prox. John C. Thomas; William More, prox. John Barkus; Albert Buchta, pros. Frank Stanovitch, William Kitis; William Sarpolis, pros. John Pinkow; William Richards, pros. Julius Troy; Amanda Schommer, prox.

Larceny by bailee—Joseph Green; Peter Haettich, pros. Julius Troy; Amanda Schommer, prox. Samuel Clinkshank; C. Smith, pros. Mathew Warness; Adam Kumnuska, pros.

Perjury—Powell Petrust; Frank Robling, jr., pros. Andrew Szominiak; William Craig, pros.

Malicious mischief—Winifred Moran; J. D. Eastman, pros. Charles Jordan; Bridget Conner, prox.

Felonious wounding—Frank Stanovitch; Thomas Leyshon, pros. Guiseppe Longo; Frank Robling, jr., pros. Adolph Shafer; Frank Robling, jr., pros.

Fornication and bastardy—James E. O'Boyle; Nellie Murphy, prox. John Gilboy; Lizzie Collins, prox.

Defrauding boarding house—F. D. Lanahan; T. C. Melvin, pros. John Hancock; Mary A. Connor, prox.

Larceny and receiving—Jessie Saundry; Mary King, prox. Michael Caveston; Ellen Corrigan, prox. Patrick Noonan; Mrs. Edward Grier, prox. David Schleider, Samuel Schleider; Charles Hoffman, pros. Vetense Maruttso; William Jankow, pros. Edward Rollison; Charles H. Banker, pros. Frank Backus; Frank Robling, jr., pros. George Smith; Frank Robling, jr., pros. George Littlejohn; Michael McGuire, pros. John Morgan; Frank Robling, jr., pros.

Statutory burglary—John Barrett, John Kelly; Frank Robling, jr., pros.

Selling liquor on Sunday—Joseph Scheck; Esther Wayman, prox.

Attempt at rape—Walter Major; Fred W. Major, pros.

Keeping bawdy house—Lottie Smith; James McDavitt, pros.

Rape—George Shoemaker; Charles Bishop, pros.

Indecent exposure—John Andrews; Frank Robling, jr., pros.

Robbery—Dinnifred Ruane; John McDermott, pros.

IGNORED BILLS.

Assault and battery—Michael Early; William Westherill, pros., to pay costs. James McDavitt; Tishie Whitney, prox., to pay costs. Mrs. William Hull; Mary A Mitchell, prox.; county pay costs. Mrs. William Hull; John R. Mitchell, pros.; county pay costs. Maggie Lynch; Mary Hartwell, prox.; county pay costs. Claud Newton; William Bollard, pros.; county pay costs. John G. Thompson; Edward J. Neary, pros.; county pay costs. E. A. Fitzsimmons; Hugh Collins, pros.; county pay costs. Vetense Maruttso, alias James Maruttso; Frank Egli, pros.; county pay costs. Thomas Morgan; Nellie Williams, prox., to pay costs. Thomas Cummings, jr.; Michael Healey, pros., to pay costs, Elizabeth Dennison; D. Dennison, pros.; county pay costs. Joseph Neby; Paskow Piroth, pros., to pay costs.

Keeping gambling house—Thomas Fidler; W. D. Lawrence, pros., to pay costs. John Hall; W. D. Lawrence, pros., to pay costs.

Defrauding boarding house—Thomas Gilgallon; Kate Cusick, prox.; county pay costs. Patrick Noonan; Mrs. Edward Grier, prox.; county pay costs. George Climsey, alias George Richards; Rebecca Frey, prox.; county pay costs. Gus Williams, alias Gus Buesner; Patrick Phillips, pros., county pay costs.

Selling liquor without license—Anthony Roth; John Walsh, pros., to pay costs.

Selling liquor on Sunday—Anthony Roth; John Walsh, pros., to pay costs. John Hall; W. D. Lawrence, pros., to pay costs. Thomas Fidler; W. D. Lawrence, pros., to pay costs.

Obstructing execution of legal process—Vetense Marruttso, Rose Settrello; Frank Egli, pros.; county pay costs. William E. Weyandt; Frederick Weyandt, pros., to pay costs.

Malicious mischief—Kate Mulhern; Fannie Middleman, prox.; county pay costs. Maggie Davis; Mary Ann Davis, prox., to pay costs. Elizabeth Dennison; pros.; county pay costs. Mary Stead; Mary Maxwel, prox.; county pay costs.

Perjury—Bridget O'Horo; G. O. Caldwell, pros.; county pay costs. Anthony Clems, Rose Clems; Rebecca Frey, prox.; county pay costs. William Kropinsky; John Zowotzki, pros., to pay costs.

Larceny and receiving—John J. Manley, Joseph Wooley; John Bailey, pros. John Mulhart. George Smith; Henry Doyle, pros. Michael Kane; Michael Moran, pros.; county pay costs. Patrick Durkin; P. F. Coyne; Edwin Allin, pros.; county pay costs. Thomas Thomas; Wilford Fletcher, pros., to pay costs. James Neary; Frank Robling, jr., pros. Michael McAndrews; G. A. Miller, pros. Elizabeth Dennison; D. Dennison, pros.

Fraud—J. W. Smothers; Fred Weyandt, pros., to pay costs.

Robbery—John Reap; T. C. Burke; pros.

Attempt at rape—George Smith; Maggie McArdell, prox., to pay costs. William Olchefski; George Savage, pros., to pay costs. John McDermott; Winifred Ruane, pros., to pay costs.

Embezzlement—C. E. Spoerl; Arthur L. Collins, pros.

Embezzlement by partner—Joseph Franks; William Matthews, pros.; county pay costs.

Fornication and bastardy—Anthony Kigolis; Dominick Nezinskey, pros., to pay costs.

Adultery—Philiza Nezinskey; Dominick Nezinskey, pros., to pay costs. Vetense Maruttso; Thomas Setrello, pros., to pay costs. Rose Setrello; Thomas Setrello, pros., to pay costs.

False pretences—Martin Devine; T. W. Knowles, pros., to pay costs.

Murder—Thomas Bushchenski, Gusta Bednor, John Peranda, Mike Lemshok; Thomas Leyshon, pros.

Cutting timber trees—William H. Scutt; Joptha C. Richards, pros., to pay costs.

Libel—Richard J. Beamish; Elizabeth Leete, prox., to pay costs. Richard J. Beamish; Edward A. Leete, pros., to pay costs.

Kidnapping child—Rebekah Fry; Rose Clems, prox.; county pay costs.

COAL AN IMPORTANT FACTOR.

Ought to Make the American and English Navies Invincible.

"Warfare has become an exact science wherein personal valor counts for little and victories are won by machinery and its intelligent and skillful manipulation," says the Philadelphia Stockholder. "Should the complications now menacing the peace of Europe, in connection with the partition of China, and those which threaten the friendly relations hitherto existing between the United States and Spain eventuate in armed conflict, the world is likely to be given at least one impressive lesson as to the elements which govern modern war. Should there be an outbreak of hostilities in the east, with Great Britain on the one side, opposed by France or Russia or Germany or all of them, it is certain to be a naval war.

"It may be timely to point out at this juncture that to carry on war upon the sea a greater essential than armor and armament is the steam power requisite to the handling of fighting ships. Even the hoisting of the shot into the big modern guns require steam. What can be accomplished by France or Russia or Germany in Asiatic waters depends, not upon the weight of guns or thickness of armor, or courage of men, but upon coal—plain everyday, inert coal. If England can deprive her possible antagonists of fuel she has them whipped without the firing of a shot. Great Britain controls absolutely all the supplies of coal contiguous to the probable field of operations, excepting such as are controlled by Japan. Moreover, the British government has taken measures to intercept and purchase all cargoes of coal entering those waters. The powers now engaged in a scramble for choice slices of territory and concessions of various sorts on the Chinese coast must realize that England has them, to an extent, at her mercy."

"The same state of affairs may be said to exist with respect to the situation which appears to be looming up on this side of the world, as between the United States and Spain. In the event of war a Spanish navy in American waters would be very likely to be rendered helpless by its inability to obtain coal. Few vessels of the Spanish navy are able to carry across the ocean with them such fuel supplies as would be required in making a demonstration upon our coasts. Spain hitherto has purchased her navy coal from Great Britain, and has stored it at Havana. Of course, in the event of war the harbor of Havana could be closed against all Spanish vessels within a few days. Nor is it likely that Great Britain as a neutral power would permit armed vessels to coal in any of her ports in the West Indies.

"Considerations of so material and unsentimental character must be exceedingly distasteful to the haughty Spaniard, but if the Spanish ministry can bring itself to contemplate such a prosaic factor, it may even yet hesitate to bring on hostilities by continued resistance to the just demands of this country. It needs but a cursory survey of conditions the world over to bring the conviction that, however it may be upon land, in war upon the ocean the United States and Great Britain, by their control of the world's fuel supplies, are practically invincible.

CONSTABLES WERE ANGRY.

Didn't Like the Postponed Hearing of Perjury Charges Against Them.

The hearings of Constables John Moran and Joseph Woelkers, accused of perjury by C. W. Traver, were to have been given a hearing yesterday morning before Alderman Wright. Under protest by Moran the hearings were continued to Saturday of this week.

Mr. Traver requested the postponement and it was at once granted. To Attorney Taylor, Mr. Traver's counsel, Moran's arrest was demanded by that gentleman himself. He objected to being pulled and hauled about from one day to another, he said. Attorney Taylor assured him the prosecutor was willing he should go on his own recognizance until Saturday, when he would be sent for if he failed to appear.

Prosecutor Traver left the office with his attorney. Before Woelkers departed he said he would have Traver arrested.