

roadbed should have been given. But it is not necessary to go into a detailed statement of the facts. As stated before, I am satisfied that the master has reached a correct conclusion, and that there was negligence on the part of the receiver and his subordinates in undertaking to move that train over that track in its condition at that time.

The question, however, about which I have been more perplexed, is the amount of damages awarded by the master. He has given the basis upon which that award was made. The earning capacity of these two men was shown. Their probable future life was established by the annuity tables, and the master, giving due allowance for the extra hazard to life because of the nature of the employments of the deceased, made his calculation, and allowed to Cassie Alberts the sum of \$9,935, and to Ida Beaulieu the sum of \$11,606. It is evident in this estimate that the master has given to these petitioners the full benefit of all the probable years of life before them, and the full benefit of their present maximum earning capacity. One of the most difficult questions for a court to determine is a correct and just measure of damages in a case of this kind. It is hard to say that a human life is not worth such a sum as the master has given in this case, because the record shows these men were men of excellent habits, fond and affectionate husbands, and in every way a help and comfort to their families and useful to the public, and it is with great reluctance that I interfere in any way with this award. But in a large number of states where the limit for the loss of life has been fixed by legislation the sum of \$10,000 has been fixed as the maximum allowance to be made. This is a legislative construction of a fair maximum sum to be awarded in such cases. I think the court may properly, therefore, accept this concurrent judgment of so many different state legislatures as justifying it in saying that the maximum ought not in any one of these cases to exceed that sum. So that, if the petitioner Ida Beaulieu will remit sufficient of the award made to her to reduce it to the sum of \$10,000, and if the petitioner Cassie Alberts will remit sufficient of the award made to her to reduce it to \$8,500, the court will then approve an award to that amount, and order the receiver to pay the same.

MILLER v. MORGAN.

(Circuit Court of Appeals, Fifth Circuit. December 18, 1894.)

No. 327.

BILLS OF EXCEPTIONS—TIME OF FILING—EXPIRATION OF TERM.

A bill of exceptions allowed and filed after the close of the term, without authority or any standing rule or consent of the parties, and not within the time specially allowed or any extension thereof, is improvidently granted, and cannot be considered. U. S. v. Jones, 13 Sup. Ct. 840, 149 U. S. 262, followed.

In Error to the Circuit Court of the United States for the Northern District of Texas.

This was an action brought by George B. Morgan, receiver of the Ninth National Bank of Dallas, Tex., against W. B. Miller and his wife, E. A. Miller, to recover \$3,000, being an assessment of \$60 made by the comptroller of the currency of the United States upon each of 50 shares of the stock of the bank held in the name of E. A. Miller. The court charged the jury that the stock on which the assessment was made was the community property of W. B. Miller and his wife, and directed the jury to find for the plaintiff, as against defendant W. B. Miller, but not to find anything against defendant E. A. Miller. A verdict was returned in accordance with these instructions, and the court entered judgment thereon against W. B. Miller for \$3,172.50, and in favor of E. A. Miller for her costs. W. B. Miller brings error.

Barry Miller, for plaintiff in error.

U. F. Short, for defendant in error.

Before PARDEE and McCORMICK, Circuit Judges, and BRUCE, District Judge.

PARDEE, Circuit Judge. Judgment was rendered in this case on May 30, 1894, and on June 1, 1894, a motion for a new trial was made, which, on July 2d, was overruled; the overruling order reciting that "the defendants be allowed twenty days from this date within which time to prepare, submit, and file bills of exception herein." The court adjourned for the term on July 11, 1894. No bills of exception were prepared and filed within the 20 days allowed by the order of the court, but some 8 days after the expiration of the time, to wit, on the 30th day of July, 1894, the plaintiff in error, without notice to the defendant in error, and without his consent, and without any standing rule of the court authorizing the same, applied to the judge who tried the case, and obtained an order, to wit: "In this case the defendants are allowed until August 10, 1894, to prepare and present bills of exceptions." No exceptions were filed within the time allowed by this order, but bills of exception were prepared and submitted to the trial judge, and by him signed and delivered to the clerk, who, on the 20th day of August, 1894, indorsed thereon: "Filed as of date Aug. 10th, 1894, by order of John B. Rector, U. S. Dist. Judge."

The bills of exception were improvidently allowed. U. S. v. Jones, 149 U. S. 262, 13 Sup. Ct. 840, and cases there cited. See, also, Railroad Co. v. Russell, 60 Fed. 501-503, 9 C. C. A. 108; U. S. v. Carr, 61 Fed. 802, 10 C. C. A. 80. As the errors assigned arise wholly upon the bills of exception, we are compelled to affirm the judgment; and it is so ordered.

CENTRAL TRUST CO. v. CONDON et al.

(Circuit Court of Appeals, Sixth Circuit. March 5, 1895.)

No. 207.

1. CONTRACTS—INTERPRETATION.

One E., in April, 1890, made a contract with the K. Ry. Co. for the construction of its road. The contract was dated back to August, 1887, to cover the time during which a construction company had been engaged in building a part of the road, under a contract which had been assigned to E. The first clause provided that E. agreed to build and complete the road on the designated route, according to specifications. By the second clause E. agreed to furnish the money to pay for right of way and depot grounds, and for legal proceedings necessary to acquire the same, and it was mutually agreed that all works, materials, and plant theretofore constructed, equipped, and provided by either party, then in use about the construction or operation of the road, should be deemed works, materials, and plant provided under the agreement by E., and should be his property. By the third clause the K. Ry. Co. agreed, whenever required by E., to survey and lay out its road, and acquire by purchase or condemnation such rights of way, etc., as were necessary. The fourth and fifth clauses provided that the railway company should execute a mortgage to secure its bonds, or the bonds of any other company taken or used by E. in payment, to the amount of \$20,000 per mile, and to pay E. for the railroad construction \$20,000 per mile in first mortgage bonds and \$20,000 per mile in stock. The last clause provided that the road should be fully constructed, and furnished with all the appurtenances contracted for, before August 13, 1890, but that E. might sooner deliver to the railway company any completed portion of the road, and the same should then be operated by the railway company, E. paying all expenses and receiving all the earnings. *Held*, that this contract did not impose upon E. an obligation to furnish the road with an equipment of rolling stock.

2. SAME—DAMAGES—FAILURE TO DELIVER WORTHLESS STOCK.

E. received a large amount of the stock of the railway company, but less than he was entitled to receive. At the time when he first made a demand for the stock, however, it was worthless. *Held*, that E. was not entitled to any damages for the failure to deliver such stock.

3. SAME—CONSTRUCTION OF RAILROAD.

In order to complete the road within the time limited, and to secure certain stock subscriptions, made conditional upon such completion, E., with the assent of the railway company, constructed a temporary line around a difficult part of the road, and afterwards constructed a part of the permanent line by a more direct route, which required more difficult and slower work. E. received the stipulated rate per mile for the temporary line. *Held*, that E. was entitled to payment and a lien for so much of the permanent line as he completed as it was reasonably worth.

4. SAME.

Held, further, that E. was not entitled to extra pay for building cattle guards, water tanks, stop gaps, slides, sidings, or Y's, the same being all parts of the complete construction of the road; nor was he entitled to a lien, under the Tennessee statute (Mill. & V. Code, § 1774), for a steam shovel, purchased by E., and which passed into the possession of the railway company.

5. SAME.

Held, further, that E. was entitled to be repaid for expenditures for engineering of the road.

6. SAME—PAYMENT OF INTEREST ON BONDS.

Pursuant to an arrangement between the K. Ry. Co. and the M. Ry. Co., a line owned by the same persons who had projected the K. Ry. Co. as an extension of the M. Ry., bonds of said M. Ry. Co. were issued to E. in part payment of the amounts due under his contract. Before the contract was completed, certain interest on these bonds fell due,