

AGAINST AUDITOR MOORE

Commissioner General Garneau's Judgment Sustained by the Supreme Court.

LONG DRAWN OUT CONTROVERSY SETTLED

Prizes Paid for Furnishing the Nebraska World's Fair Building as Low as Circumstances Would Permit—Claims to Be Honored.

LINCOLN, March 7.—(Special to The Bee.)—The long-drawn-out controversy between Auditor Moore and Commissioner General Garneau was ended this afternoon by a decision of the supreme court, before which the matter had been brought for final adjudication. The case came before the supreme court in the shape of an appeal from the decision of the district court in and for Lancaster county. The supreme court decided against the auditor, affirming the decision of the district court. The grounds upon which the court decided against the auditor, as well as a history of the case, which is one of importance to the state in future, will be seen from the brief summary of Chief Justice Norval's opinion submitted below:

The record before us discloses that Commissioner General Garneau, the commissioner general for this state at the Columbian exposition, entered into a contract with the Henry Dibble company of Chicago whereby the latter agreed to furnish certain materials, fixtures and decorations required for the Nebraska state building and the exhibits of this state in the various exhibition buildings for the stipulated sum of \$42,000. In pursuance of said contract all of said furniture, fixtures and decorations were furnished and delivered. Subsequently, under other contracts with the commissioner general the Henry Dibble company furnished and delivered on the exposition grounds for the use of the state in making its exhibits certain other furniture and property for the stipulated price of \$2,355. The aggregate of the several purchases is \$44,355, on which there has been paid \$3,925 and no more. The claim for the balance of the account was filed with the auditor, who allowed thereon \$372 and rejected the remainder of the claim. A warrant was drawn for said last named sum, which the claimant declined to accept, but prosecuted an appeal to the district court.

Upon the trial in the court below the auditor did not offer any proof to establish the first defense interposed. On the contrary, the evidence introduced by the other side conclusively established the claim presented to the auditor was actually furnished and delivered by the claimant to Garneau on the exposition grounds. The auditor's decision in refusing to pay the claimant was arbitrary and capricious so furnished were necessary for the proper carrying into effect the act of the legislature. Nothing further under this branch of the case need be said.

As to the form of the voucher submitted for audit and allowance, we do not understand that the auditor now seriously urges this objection. In fact, the auditor's office the voucher was not in proper shape, in that there was no itemization of the articles furnished and the prices charged for each article.

Subsequently, at the request of the auditor, the claimant brought itself within the above decision, for a smaller bill was furnished the auditor which was attached to the original voucher and presented for allowance. The voucher, with the exhibits thereto attached, was filed with the auditor, who in default of which he stands committed to jail to await the convening of district court. Physicians report his victim in a serious, but not dangerous condition.

Pretty Wedding at Afton. ALDA, Neb., March 7.—(Special to The Bee.)—Last night the residence of Mr. and Mrs. John Fleisher was the scene of one of the prettiest weddings in this part of the country for some time, the participants being Mr. George Crawford and Miss Ida Fleisher of this city. The ceremony was performed by Rev. Mr. Martin of Grand Island. The bride was attired in a very becoming dress of brown silk. After the ceremony the guests were treated to an excellent wedding breakfast. Those present were: Mr. and Mrs. John Fleisher, Mr. and Mrs. J. W. Jodgett, Mr. and Mrs. G. E. Crawford, Mr. and Mrs. Charles Moberg, Mr. and Mrs. C. A. Judy, Mr. and Mrs. J. M. Clark, Miss Agnes Mahoney, Eleanor Fleisher, W. H. Fleisher.

Mr. and Mrs. Crawford took the evening train for the east, to be gone for some weeks.

Foul Play Suspected. BEATRICE, Neb., March 7.—(Special Telegram to The Bee.)—Coroner Fleisher has been called to attend to an inquest over the body of E. Cressley, who died suddenly and under somewhat peculiar circumstances last Saturday. It is believed by some of Cressley's neighbors that the old man was put out of the way after having been prevailed upon to make a transfer of the title to his farm to a step-son. Since the death occurred the deed has been presented for record and an order has been obtained from the district court restraining the register of deeds from recording the same, the deed being somewhat irregular in its acknowledgment. It is not expected that the inquest will be concluded today.

O'Neill Impeachment Case. O'NEILL, Neb., March 7.—(Special Telegram to The Bee.)—In the Skirring impeachment case nothing of importance occurred today. The entire day was spent in taking testimony. A large number of witnesses having been examined. It is the opinion among those who have heard the case that the plaintiff has not proven the charges made. The evidence was all in at 5:30, and the board adjourned until 9 o'clock tomorrow morning, when the attorneys will make their pleas and the supervisors will probably take a vote tomorrow afternoon.

Closed on a Mortgage. TALMAGE, Neb., March 7.—(Special Telegram to The Bee.)—The Central roller mill, owned and operated under the firm name of J. G. Tangeman & Sons, was closed this morning by Sheriff Hubert. A mortgage deed was filed yesterday at Nebraska City to secure a claim of \$7,500 against the mill by Becker & Tangeman of this place. This doubt being attached to attachment proceedings which were commenced today by several parties. The liabilities are estimated at \$15,000, and the mill property is valued at \$16,000.

Nebraska Postmaster Resigns. NEBRASKA CITY, March 7.—(Special Telegram to The Bee.)—Postmaster F. E. Helvey today sent his resignation to the department, to take effect April 1. Mr. Helvey will assume the secretaryship of the Nebraska Live Stock Commission company, with headquarters at South Omaha, as soon as relieved. His resignation has caused a scramble among democratic aspirants for the place.

York Entertainment. YORK, Neb., March 7.—(Special to The Bee.)—The cantata "Rose Maiden" was given at the Congregational church Monday and Tuesday evenings by the local talent of this city. Sixty voices, under the direction of Prof. A. A. Parks, and accompanied by Mrs. Mabel Jeffrey, rendered the music to the satisfaction of the most critical.

Old Soldier Laid to Rest. DAVID CITY, March 7.—(Special to The Bee.)—The remains of John I. Nelson, who died at Knoxville, Ill., were buried here today. The funeral was conducted by the Masonic fraternity, the Grand Army of the Republic acting as escort, the deceased having been a member of the post here a number of years ago.

Kicked by a Horse. GRAND ISLAND, March 7.—(Special to The Bee.)—D. A. Rice, living seven miles northeast of Grand Island, was kicked by a horse last evening while leading another animal. The injury is so serious that it may prove fatal.

Three at a Time. OVERTON, Neb., March 7.—(Special to The Bee.)—Mrs. Otto Anderson of Logan precinct gave birth to three handsome baby girls last night, weighing five and one-quarter pounds each.

under his right arm and came out at the back of his neck near the spine. Death was instantaneous.

The 3-year-old son of Peter Pierson, while wrestling, had his right arm broken at the shoulder joint.

Kansas Fugitive Captured. FIRMONT, March 7.—(Special to The Bee.)—One W. F. Baker, who took up his residence in this city about two weeks ago, was arrested yesterday by Marshal Nelson in compliance with dispatch from Sheriff Baker of Parsons, Kan., on a charge of criminal assault committed at that place February 15. He was committed to jail to await the Kansas officials, who are expected today.

One Frank Ripley is in the city jail awaiting the sheriff of Douglas county on a charge of larceny.

A complaint from the Woman's Christian Temperance union was filed with the school board against the janitors of the district schools smoking about the school houses. They were ordered to abstain from the habit during school hours.

John Fitzgerald is in receipt of a letter from an anonymous source warning him that there is a plot on foot to assassinate him. The communication appears to be in a lady's hand and states that she overheard two men discussing him and one of them declared that his death had been determined upon. The respondent gentleman does not appear greatly concerned over the matter and cannot conceive of the threatened violence.

In the designation of Fremont Old Fellows went up to Leigh last night to demonstrate some of the excellent work of Centennial lodge to the lodge at that place.

Fred De Lamary and wife left for the Pacific coast this evening to visit friends and relatives in that locality. A. Truesdell and wife will leave in a few days.

School Teacher Under Arrest. BEATRICE, March 7.—(Special Telegram to The Bee.)—Cyria B. Miller, a young woman who has been teacher in the Gage county schools for some time, was arrested and placed in jail last night to answer to a charge of stealing two horses, two carts, a lot of hard ware and other articles from the schoolhouse at Ed Acom, near Filley, and the other horse and cart from W. W. Barhouse of Adams. Miller does not deny his guilt and expects a term in the penitentiary.

The southwest Nebraska Grand Army of the Republic will hold its annual encampment in this city tomorrow. Leading members of the Grand Army of the Republic from the various states are booked for speeches at the camp fire to be held in the Auditorium in the evening.

John Parker, found guilty of incest, his daughter and taken before Justice Giam, this afternoon in the district court and will spend six years in the penitentiary.

Murphy Bound Over. FULLERTON, Neb., March 7.—(Special to The Bee.)—George W. Murphy, the young man who shot and seriously wounded Charles W. Bailey, a young farmer in Prairie Creek township, this county, Sunday, was given a preliminary examination in Justice Dean's court today. Murphy was arrested by Constable Parker immediately after the shooting at this state at the residence of William of Prairie Creek, before whom he pleaded guilty to the shooting of Bailey.

This time Sheriff Snyder arrived on the scene and the justice turned the criminal over to him. From the evidence adduced the court concluded that Murphy was not a safe man to run at large, and held him in the district court and fixed his bond at \$1,000, in default of which he stands committed to jail to await the convening of district court. Physicians report his victim in a serious, but not dangerous condition.

Mollyneux against Wittenberg. Error from Clay county. Reversed and remanded. Opinion by Justice Harrison.

Where real estate in certain lots and the buildings thereon is sold, and in the granting portion of the deed conveying the same a clause is inserted stating that the property is not to be conveyed for a period of two years; held, that such restriction as to use of the property being in violation of public policy and not an unreasonable restraint of trade in view of the facts developed by the pleadings (the case having been decided upon the pleadings alone), and that such agreement was not within or covered by the prohibitions of public policy, chapter 51A, entitled "Trusts," Compiled Statutes 1892.

A plaintiff, in replying to new matter set up in an answer may allege new matter not inconsistent with the petition contained in a defense to such allegations contained in the answer. Cobey against Knapp, 23 Nebraska, 579.

Where a breach, by defendant, of an actually existing contract between plaintiff and defendant is pleaded, plaintiff is entitled to at least nominal damages.

The pleadings in the case examined and held that the court erred in sustaining the motion of defendant to judgment on the pleadings and in rendering judgment for defendant thereon.

Aldrich against Bruus. Error from Nance county. Affirmed. Opinion by Commissioner Ryan.

An appeal from the county court to the district court, dismissed upon proper motion when the transcript was not filed within thirty days from the date of the judgment and no reason is shown for the delay. Following cases: Dym, 35 Nebraska, 882; Barry against Barry, decided this term.

Affidavits used on the hearing of a motion in the district court, considered in the supreme court unless embodied in a bill of exceptions. Following cases: Maggard against Van Dym, 35 Neb., 862; Barry against Barry, decided this term.

Slade against Sweedberg Elevator Company. Appeal from Saunders county. Affirmed. Opinion by Commissioner Ryan.

A compromise of honest differences whereby a less sum than that claimed has been paid and accepted in full of plaintiff's claim bars the right of plaintiff to insist upon recovery of the amount originally claimed by him.

Where there is sufficient evidence to justify a finding that there has been an executed compromise of all differences between the parties to the action, the judgment of the trial court will be sustained. St. Clair et al. against Sedgwick et al. Appeal from York county. Affirmed. Opinion by Commissioner Ryan.

An action against one in possession of real estate to restrain alleged commissions of waste thereon was properly dismissed when the court found that the plaintiff had no legal right to complain or to be committed by either of the defendants.

Where one has instituted proceedings to prevent the conveyance of real property and the defendant in such suit who has pleaded and proved his rightful possession of certain real estate, the plaintiff, in the premises to secure part of the purchase price of said stock remaining unpaid; held, that the court in conformity with the prayer of said defendants answer properly decreed that such nursery stock should be sold on execution to pay the amount found remaining due.

situation is now in the hands of the State Banking Board. Liabilities about \$4,000, with resources double that amount. The depositors will not lose by the failure.

SUPREME COURT SYLLABY

Points Passed on by the Court in Deciding Cases Appeared.

Following are the syllabi of the decisions handed down by the supreme court at Lincoln Tuesday:

Real against Honey. Error from Fillmore county. Reversed. Opinion by Chief Justice Norval.

Where a plaintiff on an action is designated in the pleading and process by the initials of his christian name, it is not error for the court to allow him to and by inserting his full christian name.

2. An action should not be dismissed because the plaintiff failed to amend his complaint from the title of the cause, until an opportunity has been given the party to correct the defect by amendment.

Rev. Father Fitzgerald is in receipt of a letter from an anonymous source warning him that there is a plot on foot to assassinate him. The communication appears to be in a lady's hand and states that she overheard two men discussing him and one of them declared that his death had been determined upon. The respondent gentleman does not appear greatly concerned over the matter and cannot conceive of the threatened violence.

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alight at Cass street, in which he answered: "Yes, ma'am;" that when the car reached the Cass street crossing she rang the bell; the gripman applied the brake and brought the car to a stop; that she stepped on the platform and stepped on to the street, when the car came to a full stop; and while in that position and seen by the gripman, he released the brake and suddenly accelerated the car's speed with a jerk, which threw plaintiff into the street, and in not using the handbrake on the up-rights, were questions of fact for the jury.

2. That the jury's finding that plaintiff was thrown from the platform by the cause was not supported by the evidence because two witnesses testified that she saw the car stop on the street; and because two witnesses swore that she saw no sudden acceleration of the speed of the car; and three witnesses swore that they did not see any such acceleration.

3. The court will not weigh conflicting evidence nor pass judgment upon the credibility of witnesses.

4. Certain questions given by the trial court to the jury set out in the opinion and approved.

5. Expressions as "slight" negligence and "slight" want of ordinary care should never be used in instructions to juries, as such expressions tend to obscure and confuse what should be stated in plain and concise language.

6. To qualify a person to act as a juror he should not only be unbiased and unprejudiced, but also indifferent as to the suit, but he should stand indifferent as to the success of either party thereto; and a person called as a juror who testifies that his acquaintance with one of the parties will interfere with his judgment and finding in the case should be excused.

Hunzinger against State of Nebraska. Error from Lincoln county. Affirmed. Opinion by Commissioner Ryan.

The proviso in section 1, chapter 1, Compiled Statutes 1892, that "provided such county is not a city or village or town or city or incorporated village or within two miles of the same," is not obnoxious to the provisions of the constitution which prohibits the inhabitants living within two miles of the corporate limits of the cities and villages.

The state, situated in counties not having 150,000 inhabitants, is a Christian liquor, deprived of the privilege of having the sale of liquors licensed within their territory. Plaintiff against State, 11 Nebraska, 547, affirmed.

2. The legislature, in the exercise of the police power of the state, may not only control the sale and sale of intoxicating liquors therein, but may entirely prohibit such license and sale.

3. The proviso in said section 1, in said chapter 1, "provided in counties having 150,000 inhabitants, the county commissioners may also issue licenses within two miles of any city in said county," is not obnoxious to the provisions of the constitution as assuming to "regulate county and township officers," nor is said proviso obnoxious to said constitutional provision as class or special legislation.

4. An act of the legislature will not be declared special legislation, within the meaning of the constitution, solely because at the time of its enactment there was only one county in the state to which its provisions were applicable. If the law is general in its terms and restricted by its terms to no particular locality, an operation equally upon all of a group of objects, it is not a special law. McClay against City of Lincoln, 32 Nebraska, 412, followed.

5. An indictment for selling liquors in this state without a license is no defense that such sale was made at a time or place, or under circumstances which rendered the most rendered therefrom impossible. Soehl against State. Error from Douglas county. Affirmed. Opinion by Commissioner Ryan.

On authority of Hunzinger against State, decided at this term, the judgment in this case is affirmed.

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Moore Baker Turns Over the Bed Whereon His Wife Was Murdered. NEW BRUNSWICK, N. J., March 7.—Representatives of a New York museum visited Franklin park yesterday to secure the bedroom effects in the house of Moore Baker, where his wife and child were murdered by him. The effects were in the hands of Pierson, who were in turn killed by the frenzied husband and father. Mr. Baker, without any show of feeling, took down the bed and crib, rolled up the bed, and turned over all the articles, together with the axe and shotgun, to the museum representatives. He was paid a district court, although the murder had not been burning the things, but was prevailed on not to do so. The scene of the tragedy will be represented with the figures in wax.

To Take in the Troy Trouble. ALBANY, March 7.—Senator Mullin today introduced in the senate a resolution providing that the senate committee now investigating the elections in cities shall have their power extended so that the election in Troy and the murder there yesterday may be investigated.

PERSONAL PARAGRAPHS. J. G. Tate of Kearney was at the Millard yesterday.

S. J. Johnson of Minden is stopping at the Metairie.

George Rogers of Lincoln was at the Arcade yesterday.

B. J. Rogers of Grand Island is registered at the Merchants.

W. H. Erford of Seward stopped at the Merchants yesterday.

O. M. Walling of Leigh patronized the Arcade yesterday.

Alex Johnson of McCook was an Arcade arrival yesterday.

C. C. Clapp of Shelby, Ia., was at the Mercer yesterday.

HIS APPEAL FOR PARDON.

Threatening Letter Writer Donjan Sends Another Epistle to the President.

BALTIMORE, March 7.—Joseph Donjan, who was sentenced to eighteen months in the Maryland penitentiary for sending a threatening postal card to Vice President Stevenson, has written to President Cleveland asking for pardon as follows: "Begging pardon for addressing you so, but I feel as only one who is innocent can feel. The old question over again—why if John Sherman is honest did he not appear against me, or why was I not tried before the letters written by me to the different senators, and to yourself, and say if I was not willing to prove with legal evidence anything that looked like a charge. I am now cursing the hour when I enlisted myself in such services. I say cursed be my own brains for having thought themselves more intelligent than the thought of the population of the United States, and I say devil do I care how many Crokers, Sheremans, etc., move this country when intelligence is a worse crime than stealing a million."

"Will I also find an obliging president that will let me off when I humble and degrade myself so that I am sending to swear that I shall never try to bring this Godforsaken and sacred society-blessed country of liberty? I promise to never write a newspaper, or will I continue to be myself in the foreground unless it is to serve my own interest without disturbing other people. Liberty is health to me. Incompetence will soon prove my destroyer. I ask mercy."

BISHOP COXE WRITES AGAIN.

He Requests Mgr. Sattoli to Pray for His Suffering Flock in Lepanto.

BUFFALO, March 7.—Bishop Coxhe has written another letter to Mgr. Sattoli in which he says the most presidential content will not turn on silver bills and custom houses and nominations to office. "All signs point to a restoration of the land of Washington to the maxims of Washington and the constitution as he and his contemporaries understood it. They have had enough of your gratuitous expositions and too much of the practical commentary upon them furnished by your allies; by Messrs. Sherman, Hill and Maynard, and the American people." The bishop then devotes two columns to the discussion of the Jesuits and closes as follows: "With all my heart I wish you the blessings of God if you are now disposed to reflect upon your great commission as a Christian bishop. Do let our politics and politicians alone and, at least, do pray for your suffering flock in Lepanto. There is such a flock and that you archbishopric is not imaginary. I have assumed to be the case. If it is a reality those ancient canons and constitutions of the church which are so honored and exemplified in my religion, might justify an inquiry. Why do you not reflect that a good shepherd has no right to be absent from his flock so long?"

SHE STARTED IN EARLY.

Extraordinary Career of a Woman of Only Twenty-One Years.

BOSTON, March 7.—Mrs. Harriet F. Belcher, the wife of a wealthy Brockton shoe manufacturer, and Ed A. Stiles, a printer who has a wife and several children, were arrested at 47 Myrtle street, where they had been living as man and wife, and in the municipal court were held for the grand jury. The arrest added another epoch to Mrs. Belcher's phenomenal career. She is a very handsome woman about 21 years of age and was married, when but 15 years old, to C. E. Belcher.

Her married life was unhappy and she ran away to this city. She repented and was taken back. A year later she again ran away. She came to Boston and the life she led led to the breaking up of three prominent families in Newton and Alton. Soon after she eloped with Head Walter David Roberts of the Hoffman house, New York, and spent \$1,500 which she obtained from her mother. Roberts deserted her in Philadelphia and she came back here. Stiles met her again in the breaking up of three prominent families in Newton and Alton. She and as a result of numerous quarrels his wife left him and went to her home at Binghamton, N. Y. Since then Stiles has been living with the Belcher woman. Mrs. Belcher's husband and relatives of Mrs. Stiles caused their arrest.

SOLD THEM TO MUSEE.

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KNOWLEDGE

Bring comfort and improvement and tends to personal enjoyment when rightly used. The many, who live better than others and enjoy life more, with less expenditure, by more promptly adopting the world's best products to the needs of physical being, will attest the value to health of the pure liquid laxative principles embraced in the remedy, Syrup of Figs.

Its excellence is due to its presenting in the form most acceptable and pleasant to the taste, the refreshing and truly beneficial properties of a perfect laxative, effectually cleansing the system, dispelling colds, headaches and fevers and permanently curing constipation. It has given satisfaction to millions and met with the approval of the medical profession, because it acts on the kidneys, liver and bowels without weakening them and it is perfectly free from every objectionable substance.

Syrup of Figs is for sale by all druggists in 50c and \$1 bottles, but it is manufactured by the California Fig Syrup Co. only, whose name is printed on every package, also the name, Syrup of Figs, is blown in the glass of each bottle. If you are well informed, you will not accept any substitute if offered.

DR. WILLIAMSON THE ALOE & PENFOLD CO. 1408 Farnam Street, Retail Druggists and purveyors of Medical Supplies.

Invalid Chairs, Supporters, Atomizers, Sponges, Batteries, Water Bottles, Rupture Trusses. Satisfaction guaranteed. All the latest improved Trusses.

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WEAK MAN CURE YOURSELF FIFTEEN DAYS. I will send FREE to any man the prescription of a new and powerful medicine to relieve weak, thin, nervous, and all other ailments. It is a powerful medicine, and will cure you in 15 days. It is a powerful medicine, and will cure you in 15 days. It is a powerful medicine, and will cure you in 15 days.

EVERY WOMAN WOULD LIKE TO LIVE IN THE WHITE HOUSE YOU can make your house a WHITE HOUSE if you scrub it with SANTA CLAUS SOAP SOLD BY ALL GROCERS. MADE ONLY BY N-K FAIRBANK & CO. CHICAGO.

CHINA MATTING

We have received a quantity of fine Checks and Damask effects in China Matting that will be opened for early spring lower than ever offered. You can cover a room for the least bit of money and have a most desirable effect. The prices begin at 10c a yard for a quality not bad. We have the Japanese Rugs, too, that finishes the effect. Call and see them.

Orchard & Wilhelm Carpet Co.

1414-16-18 Douglas Street Omaha, Neb.

Have you visited our Drapery Department on second floor?

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