DES MOINES AT THE RACES

Excellent Track to Be Provided and Speedy Horses Are Expected.

LARGE TAX SHOWING OF IOWA ROADS

Return of $166.11 Per Mile is Made to the State—Case of Well Known Attorney for Breach of Trust is Being Heard.

DES MOINES, March 11.—(Special Telegram.)—Two big race meetings will be given in Des Moines this year. The first meet will be held this spring and the other later in the summer, possibly following the Davenport meeting in July. The meetings will be under the management of Alexander & Bush, backed by the same capitalists as the Seni-Om-Sed meeting of last fall. The first move in the matter of bringing about a local meeting was the leasing today of the mile track west of the city. The owners of the track have leased it to Alexander & Bush for a term of years, and it is the intention of the backers of the enterprise to create an interest in horse racing in this city. The exact dates of the meetings have not been decided, but already blanks are being printed for entries to the races. It is understood that large purses will be offered for the events. The meeting will be under the American Racing association, but will not be in the western circuit.

Judge Bishop refused to appoint a receiver for the German Savings bank and refused to enjoin it from collecting assessments on stock, in a decision handed down today in the case of Cooper and forty others against the Bank, seeking the two orders which the court refuses. The court held the bank to be in good condition and commended the work of the directors in reorganizing the institution.

The railroads of Iowa paid the state, county and municipal governments of this state $1,599,090.79 in taxes during the year ending June 30, 1898. That was at the rate of $166.11 per mile. These figures, given out today, are compiled from the forthcoming report of the Iowa Railroad commission.

Of the $1,599,090.79 paid in taxes the trunk lines of and running through the state paid about $1,200,000 as follows: Burlington, Cedar Rapids & Northern, $128,215; Burlington, $174,499; Great Western, $70,641; Milwaukee, $236,378; Rock Island, $225,125; Northwestern, $229,347; Illinois Central, $498,239; Iowa Central, $43,987. In Michigan the rate is $81.57 per mile, in Missouri it is $157.65, in South Dakota $89.52, in Minnesota $180 and in Nebraska $190.

Client Sues His Lawyer.

The case of William C. Barber against George H. Olmsted is now drawing to a close. Olmsted, who was county attorney for four years until January 1 of this year, is charged with having taken $3,000 in money belonging to Barber a year ago and placing it in trust in a safety deposit vault. Olmsted, it is charged, then proceeded to us the $3,000 himself. This suit, which has lasted since February 14, has been one of the most sensational ever held in the county.

Today A. N. Boeye opened for the plaintiff. He commenced his argument with an impassioned plea for the purification of the bar of Hamilton county and urged the court to make an example that would not be forgotten soon of the attorney who had violated his oath in trying to swindle a client out of $3,000. When Boeye finished he was vigorously applauded by the crowd.

Cady then began for the defendant. He said he wanted the case stripped of popular prejudice and decided in accordance with the law and evidence. When he was in the midst of his argument the court adjourned till Monday, the judge stating that the case would be finished the last of the week.

Edward Burton, colored, escaped from the police today while being taken from the city jail to the police court, where he was to be tried for attempting to kill his wife.

MEETING OF THE SHEEP BREEDERS.

Interesting Papers and Shearing and Slaughtering Contests.

AMES, Ia., March 11.—(Special.)—The program for the sheep shearing festival and slaughtering contest of the Iowa Sheep Breeders' association is being issued. It will be a three days' session, from April 5 to 7, inclusive. On Wednesday, the 5th, shearing will commence at 1 p. m. There will be five classes and the prizes in this contest will aggregate $50. The evening of this day will be spent in addresses and papers. Among the speakers will be President Beardshear of the Agricultural college, President G. W. Franklin of the breeders' association, Hon. J. Lewis Draper of Chicago and W. O. Tritchman of Muscatine.

April 6 papers will be read by H. Skinner of Ames, on "The Care of a Pure Bred Flock;" by J. G. Rogers of Moulton, on "Shelter for Sheep in Southern Iowa," and by Jacob Holtz of Ottumwa, on "Difficulties Confronting the Future Sheep Industry of Iowa," and others. Officers will be elected at this day's business session.

During the afternoon will occur the slaughtering contest, which will be something novel and unusually interesting and instructive. There will be five classes and the prizes will aggregate $80. The evening will be spent in the college chapel. The features of the evening will be papers on topics of breeding and an address by Hon. Peter Jansen of Jansen, Neb.

Friday the slaughtering contest will be continued, with additional prizes. Sweepstakes will be determined and prizes awarded.

No entry fee will be charged and the list of entries is already very large. All interested in sheep can find no better opportunity for studying all the breeds under the most favorable conditions. Various appliances for handling wool and sheep will be exhibited and a sheep shearing machine will be on exhibition. It is expected that this meeting will call out every wool grower in the state.

DAMAGES FOR TAILOR'S FINGERS.

Saloon Keepers Asked to Pay for the Digits of Andrew Faire.

SIOUX CITY, Ia., March 11.—(Special.)—Four Sioux City saloon keepers find themselves defendants in four $10,000 damage suits because they sold liquor to a man who was later badly frost-bitten. The plaintiff in the suit is Mrs. Andrew Faire, whose husband suffered the loss of all his fingers and several toes from spending the night in the snow. He is a tailor by trade, and so is incapacitated for work. The defendants in the suits are John Manderscheid, John Arensdorf, David Ritz and E. J. Kessagien. Under the law the wife is thought to be entitled to damages.

Garretson Goes Into Journalism.

SIOUX CITY, Ia., March 11.—(Special Telegram.)—A. S. Garretson, the Sioux City promoter and the man who failed for several millions in 1893, is going into newspaper work. He will go to the Paris exposition as special correspondent for a number of western papers, which ones he declined to say at present. Mr. Garretson is one of the best known men in the northwest and last fall made the race on the fusion ticket for congress from the Eleventh district of Iowa. He was defeated by Lot Thomas of Storm Lake.

Opera House Employes Strike.

SIOUX CITY, Ia., March 11.—(Special.)—Manager A. B. Beall of the Grand opera house of Sioux City has a difference with his stage employes regarding wages and the men have struck. The manager has put a non-union force of men to work. The striking stage hands have appealed to the other labor organizations of the city to help them and are making a decided effort to get a boycott placed on the house.

Collender Will Build a School House.

FORT DODGE, Ia., March 11.—(Special.)—The town of Collender held an election this week for the issue of new school bonds. It voted to issue school bonds to the amount of $4,000 and a new brick school house will be erected. H. W. Sutter, the present principal, has tendered his resignation to the school board and the place will be filled by C. M. Erickson of Dayton.

IDA MITCHELL GOES FREE

(Continued from Eighth Page.)

this year the actual cash value of the property has been fixed by the appraisers under the state inheritance tax law at $16,000. A fourth of this would be $4,000 and on this basis it must be assessed by Mr. Hardin. In this case, therefore, there will be a reduction of $2,000. These two instances will show that there is good cause for the city authorities to feel alarmed at the prospect of the city's assessed valuation shrinking from $4,500,000 to about $3,000,000.

Big, juicy oranges at Klein's.

Plenty of oysters at Sullivan's.

Think! If only thirty people start in on the first Bee wheel contest the average number of subscribers they have to get will only be ten. Of course more will start, and if you are one of them why should you not get a wheel? You choose any make

Church Notes.

At the First Congregational church this morning the pastor, Rev. G. W. Wilson, will preach on "A Strange Idea of Prosperity." In the evening his address will be for the young people on the theme "The Triumphs of Youth the Inspiration of Age." Sunday school will be at noon and Christian Endeavor society meeting at 6:30 p. m.

The regular services will be held today at the Broadway Methodist church with preaching by the pastor, Rev. Myron C. Waddell, both morning and evening. Sunday school will be at noon and Epworth League meeting at 6:30 o'clock.

Rev. G. W. Snyder will preach at St. John's English Lutheran church at the morning service at 10:30 o'clock. At the evening service the children of the Sunday school will render a foreign mission service prepared especially for the occasion. Sunday school will be at noon and Young People's meeting at 7 p. m.

At the Fifth Avenue Methodist church the pastor, Rev. G. P. Fry, will preach at 10:30 a. m. and 7:30 p. m. Sunday school will be at noon, Junior League meeting at 3 p. m. and Epworth League meeting at 6:30 p. m. Morning class will be at 9:45.

The services at Grace Episcopal church will be as follows today: Sunday school at 9:45 a. m., morning service and sermon at 11 o'clock, evening prayer and sermon at 7:30 o'clock

Rev. Alexander Litherland, pastor of the Second Presbyterian church, will take as the subject of his sermon this morning, "Limitations of Sin," and in the evening "Limitations of Selfishness."

At the First Presbyterian church this morning the pastor, Rev. W. S. Barnes, will preach on "Our Cleansing from Sin." In the evening he will deliver an address to the young people on "Companions." All services will be as usual.

The services at St. Paul's Episcopal church, Rev. George E. Walk, rector, will be as follows today: Morning prayer, litany and sermon, 10:30 o'clock; evening prayer and sermon, 7:30 o'clock. Sunday school will be held at the close of morning prayer.

At the First Baptist church there will be regular preaching services at 10:30 a. m. and 7:30 p. m.; bible school at 12 o'clock noon; Baptist Young People's Union meeting at 6:30 p. m. Sunday school at Bethany Mission, corner of Sixteenth avenue and High street, at 2 p. m., and preaching at 7:30 p. m.

If you can't find 'em anywhere else—that is, fresh fish and oysters—always come to Sullivan, the grocer. He keeps plenty of both.

If you don't eat meat during Lent try some of those nice fresh fish at Sullivan's, the grocer.

Davis sells drugs.

Oysters at Sullivan's, 343 Broadway.

Charged with Embezzlement.

A. P. Calkins, a clerical looking old man who removed to this city about three weeks ago from Glenwood, was arrested yesterday afternoon at his residence, 624 South Sixth street, at the request of the authorities of Fremont county. He is wanted to answer a charge of embezzlement from a fraternal society in Sidney. He was taken to Sidney last evening by Sheriff Tate of Fremont county, who arrived here with a warrant for him. Calkins, who claims to have been formerly a minister in the Methodist church, said the charge was entirely unfounded and he would have no difficulty in proving his innocence.

Telephone 161 for oysters. That's Sullivan.

Great Men.

And Famous Women and all kinds of magazines bound by Morehouse & Co.

Get oysters at Sullivan's, the grocer.

ITCHING LIMBS

For Three Years. Nights Itching and Burning Terrible.

Wife Suggests CUTICURA. Uses it. Presto! What a Change.

Feels Like Kicking Doctors for Three Years' Suffering.

The itching and burning I suffered in my feet and limbs for three years were terrible. At night they were worse, and would keep me awake a greater part of the night. I consulted doctor after doctor, as I was travelling on the road most of my time, also one of our city doctors. None of the doctors knew what the trouble was. I got a lot of the different samples of the medicines I had been using. I found them of so many different kinds, that I concluded I would have to go to a Cincinnati hospital before I would get relief. I had frequently been urged to try CUTICURA REMEDIES, but I had no faith in them. My wife finally prevailed upon me to try them. Presto! What a change. I am now cured, and it is a permanent cure. I feel like kicking some doctor or myself for suffering three years when I could have used CUTICURA remedies.
Sept. 11, 1898. H. JENKINS, Middleboro, Ky.

BABY'S FACE SOLID SORE

My little nephew, John Staunton, was afflicted with the worst sores I ever saw all over his body. His head and face at times were a solid scab and he suffered dreadfully. He was a pitiable sight. His father used all the remedies that he heard of, and doctored with all the doctors. He wore a tar cap also, which did no good, but got no relief until he used the CUTICURA Ointment and CUTICURA Soap. Now he is a clean, healthy child.
March 9, 1898. P. E. POLTZ, Pugh's Run, Va.

CUTICURA

Begins with the Blood and Ends with The Skin and Scalp.

That is to say, CUTICURA RESOLVENT, greatest of blood purifiers and humor expellers, purifies the blood and circulating fluids of HUMOR GERMS, and thus removes the cause, while warm baths with CUTICURA SOAP, and gentle anointings with CUTICURA Ointment, greatest of emollient skin cures, cleanse the skin and scalp of crusts and scales, allay itching, burning, and inflammation, soothe and heal. This are specially, permanently, and economically cured the most torturing, disfiguring humors of the skin, scalp, and blood, with loss of hair, when all other remedies fail.

Sold throughout the world. Potter D. and C. Corp., Sole Props., Boston. "How to Cure Every Humor," free.

SAVE YOUR SKIN Hands and Hair by using CUTICURA SOAP.

SIX TO FOUR IS THE SCORE

Americans Come Out Ahead with Flying Colors in the Silent Game.

GREAT ENTHUSIASM OF THE SPECTATORS

Americans Get Best Position on the Majority of Boards—Showalter, Barry and Hodges the Leaders—The Score.

NEW YORK, March 11.—The American chess players came out with flying colors against the Britishers in the cable chess match which was begun in London and Brooklyn on Friday morning and concluded this evening at 6:30 o'clock, the score being 6 to 4.

Nearly from the start of this great annual contest the Americans seemed to get the better positions on the majority of boards and although only three matadors, namely, Showalter, Barry and Hodges, scored a win for America on each of the boards that they were engaged on, no fewer than six games were drawn, but Champion Pillsbury had to resign his game against the British champion, Blackburne.

Following are the results as recorded:

United States.	Won.	Great Britain.	Won.
H. N. Pillsbury		J. H. Blackburne	1
J. H. Showalter	1	H. E. Atkins	0
J. F. Barry	1	T. F. Lawrence	0
A. B. Hodges	1	E. Jackson	0
E. Hymes	½	D. H. Mills	½
H. C. Voight	½	H. Jacobs	½
S. P. Johnston	½	C. D. Locock	½
F. J. Marshall	½	G. E. Walbwright	½
C. J. Newman	½	G. E. Bellingham	½
D. G. Baird	½	H. W. Trenchard	½
Total	6	Total	4

Great Enthusiasm Manifested.

The match at this end was played at the assembly rooms of the Brooklyn Academy of Music and today the big hall was filled with an enthusiastic crowd of spectators throughout the hours of play. It is needless to say that every result of the game, whether won by an American player or only drawn, was cheered to the echo. Very often moves which were registered on the giant boards came in for hearty rounds of applause when the spectators thought the move was a good one. The games today proceeded as follows:

During the morning session it became evident that Pillsbury could do no more than draw against Blackburne. The latter, however, played splendid chess and downed his man on his first board after seventy-one moves. Showalter's brilliant play on the second board against Atkins caused general admiration and when at his forty-fifth move he announced a mate in seven moves the spectators nearly went crazy with excitement. Atkins, of course, resigned.

Barry, too, played excellent chess today and after fifty-one moves he had beaten Lawrence on the third table. On the fourth board Hodges played very strongly and managed to beat Jackson after fifty-one moves.

Voight, who at first tried to play for a win against Jacobs, had to be satisfied with a draw after forty-five moves.

The Brooklyn champion, Marshall, let an opportunity slip to win his game right out and he, too, had to be satisfied with a draw after sixty-two moves against Wainwright.

Newman and Bellingham, who contested their game right up to the finish, ended on a draw after sixty-six moves and Baird and Trenchard also drew their game after seventy-one moves.

After the conclusion of the match dispatches of thanks were exchanged by the clubs and by promoters of the contest.

LONDON, March 11.—A great crowd of American and British spectators watched the conclusion of the match and the keenest interest was manifested in the game between Blackburne and Pillsbury, continuing until the close of the contest.

Secretary Cooper's announcement of the draw between Marshall and Wainwright was received with surprise and cheers. Marshall's play throughout was highly praised.

The best of feeling prevailed throughout and the Americans were heartily cheered when the play was finished.

NOTRE DAME BOYS WIN OUT.

Get Thirty-Six Points to Chicago's 28—Mile Run a Feature.

SOUTH BEND, Ind., March 11.—Notre Dame won the triangular meet with Chicago and Illinois here today. The final results were: Notre Dame, 36; Chicago, 28; Illinois, 25.

Each event was hotly contested and the victory was not won until the last event had taken place. The meet today marked the dedication of the new Notre Dame gymnasium and the games were witnessed by 1,000 people.

The sensational work of the day was in the mile run. Connor made a brilliant spurt on the last lap and was just ready to step ahead of Smith when he fell from exhaustion, within three feet of the tape.

Besides the regular medals offered for first and second places a magnificent loving cup was presented to the Chicago team for winning the relay race. Each actor was also presented with a crown of olive leaves, as a special honor. Officials of the meet were: Dr. George K. Herman, First regiment, Chicago, referee; judges, George Worthen, jr., University of Illinois; Earl P. Wagner, Purdue; J. E. Raycroft, University of Chicago, starter, O. E. Dupless. Summaries:

Forty-yard dash: Borden, Illinois, won; Fair, Chicago, second; Donoghue, Illinois, third. Time: 0:04 4-5.

One-mile run: Smith, Chicago, won; Russell, Chicago, second. Time: 4:39.

Running high jump: Powers, Notre Dame, won; Smith, Illinois, second; Byrne, Chicago, third. Distance: 5 feet 11 inches.

440-yard race: Maloney, Chicago, won; Herrick, Illinois, second; White, Chicago, third. Time: 0:57.

Pole vault: Powers, Notre Dame, won; Herschberger, Chicago, second; Smith, Illinois, third. Distance: 10 feet.

Forty-yard hurdles: Hoover, Illinois, won; Floyd, Illinois, second; Calhoun, Chicago, third. Time: 0:05 4-5.

Sixteen-pound shot put: Powers, Notre Dame, won; Eggeman, Notre Dame, second; Sutter, Illinois, third. Distance: 41 feet 5 inches.

Running broad jump: Powers, Notre Dame, won; Kealor, Illinois, second; Glinn, Notre Dame, third. Distance: 21 feet 6¾ inches.

220-yard dash: Duane, Noire Dame, won; O'Brien, Notre Dame, second; Fair, Chicago, third. Time: 0:25 2-5.

880-yard run: Maloney, Chicago, won; Herbert, Notre Dame, second; Corcoran, Notre Dame, third. Time: 1:21.

WINNERS ON NEW ORLEANS TRACK.

Feature of the Card is Trolley Handicap Won by Cherry Leaf.

NEW ORLEANS, March 11.—The $10,000 Trolley handicap at a mile was the feature of today's card. Cherry Leaf, the favorite, landed the prize by an extremely narrow margin. Eva Rice, who was coupled with Laurel Wreath, being trained in the same stable, set the pace to the stretch, where Cherry Leaf came through under strong persuasion and won out by a neck in 1:46¾, at the fastest mile of the meeting. Bright Night was the only other winning favorite. Weather showery, track fast. Results:

First race, handicap, one mile: King Barleycorn won, Gold Fox second, Elmer S third. Time: 1:48¾.

Second race: 2-year-olds, four furlongs: Jack Willis won, Panjette second, Countessa third. Time: 0:53¾.

Third race, selling, six furlongs: Bright Night won, Sheik second, Colonel Eades, third. Time: 1:16.

Fourth race: Trolley handicap, one mile: Cherry Leaf won, Alfresco second, Eva Rice third. Time: 1:40¾.

Fifth race, selling, six and one-half furlongs: K C won, Prince Zeno second, Yo No Se third. Time: 1:22¾.

Sixth race, selling, seven furlongs: Lillian Belle won, Tom Kingsley second, Mordecai third. Time: 1:28¾.

CLEVELAND BUYS MIKE GRIFFIN.

He Refuses to Have His Salary Cut on Brooklyn Team.

NEW YORK, March 11.—Mike Griffin, who refused to sign with the Brooklyn Base Ball club for less than $2,500, has been released to Cleveland for $4,000. He has been asked to report to President Robinson on Monday. Griffin was secured last December to manage and captain the Brooklyn team. His salary was fixed at $2,500, but when Hanlon took charge this salary was cut to $2,000. Griffin refused to accept this amount and was placed on the market. Griffin was offered to the New York club by Manager Hanlon, but Andrew Freedman refused to buy him and the Clevelands at once opened negotiations.

Gymnasts from Three Colleges.

NEW YORK, March 11.—Yale, Princeton and Columbia gymnasts met in friendly competition last night in the big gymnasium on Morningside Heights. While it was purely an exhibition, rivalry between the three teams was very keen. Inasmuch as different scores were done by different colleges, there was no way of comparing the work of the teams. The Princeton men went in largely for trapeze work, which always is spectacular, while Yale and Columbia displayed their skill on the rings, bar and side horses, in some things Yale excelled, in others Princeton, and in others Columbia.

Smith Will Now Retire.

SAN FRANCISCO, March 11.—"Mysterious" Billy Smith announced today in an interview with a reporter that he would retire from the ring for good. He will fight Walcott and possibly Tom Tracy before he casts the gloves aside forever, and will journey east to meet Walcott as soon as arrangements can be made. He will fight Tracy anywhere, but prefers to meet him in this city.

Will Row May 30.

ITHACA, N. Y., March 11.—Cornell's rowing authorities today announced the date of the Cornell-Pennsylvania second crew races as May 30. It will be decided at a meeting to be held in Philadelphia Monday whether the crews will meet on the Schuylkill river or Lake Cayuga. The distance has been fixed at two miles.

Sale of St. Louis Ball Park.

ST. LOUIS, March 11.—The disposal of the Sportsmans Park and Club property at sheriff's sale will take place from the front door of the St. Louis county house on Thursday next. On that day it is announced, all the players of the Cleveland club have been ordered to report in St. Louis.

Sloan Returns to England.

NEW YORK, March 11.—"Tod" Sloan, the jockey, sailed for England today on the Lucania. He will ride for the prince of Wales at the Easter races, and will continue to ride for the Beresford stables.

For frost bites, burns, indolent sores, eczema, skin disease, and especially Piles, De Witt's Witch Hazel Salve stands first and best. Look out for dishonest people who try to imitate and counterfeit it. It's their endorsement of a good article.

Ladies' shirtwaists and skirts made to order, modern and stylish. Burgess & Co., 438-439 Paxton block.

SUPREME COURT PROCEEDINGS

LINCOLN, March 7.—Court met pursuant to adjournment. Howne against Pease, Omaha Savings Bank against Phillips, Omaha Savings Bank against English, Stevens against Bank, New Church Board of Publishers against Rich, Nebraska State Bank against Abbott and Kramer against Knudsen, affirmed. Omaha Street Company against McTague, First National Bank of Elm Creek against Lumley, Stead against Dobner, Gardner against Woods, Omaha Savings Bank against Chase, Nebraska Mortgage Company against Gordon and McCall against Nebraska Loan and Trust Company, dismissed. Woodard against State ex rel Tomssen, leave to file additional transcript. Wilde against Homan, Dufrene against Johnson and Omaha Savings Bank against Chase (two cases), orders of revivor. Society of Home for Friendless against State, advanced.

March 8.—Clark against Missouri, Kansas and Texas Trust Company, motion for order to file briefs overruled. Biddle against Spatz, suggestion of diminution allowed. Meng against Coffee, motions to advance and dismiss overruled. Cobb against Hadley, motion to dismiss overruled. Warren against Wales, motion for receiver overruled. Barry against State ex rel Hampton, motion for rehearing overruled, injunction dissolved. Gooding against Ransom and Hargadine, etc., Company against Krug, dismissed unless plaintiffs serve and file briefs in thirty days. Wiley against Wiley, restraining order continued in force. Lauer against Hauser, cross-appeal advanced. Ankeney against Rawhouser, motion to advance overruled. Christie against Wagner, motion to submit overruled. Pettibone against Fitzgerald, motion to dismiss overruled. Nelson against Farmland Security Company and Nelson against Alling, motions to set causes for hearing overruled. Lincoln Street Railway Company against Lincoln, suggestion of diminution allowed; cause advanced for hearing at the September term. Sperling against Alling, advanced.

March 9.—Meyers against Smith, advanced. S. S. Bishop, esq., admitted to practice.

Court adjourned until March 21, when the following cases will be called: Farmers and Merchants' Insurance Company against Newman, Murphy against Illinois Savings Bank (two cases), Doak against Reynolds, Sands against Everett, Globe Loan and Trust Company against Wood, Dillon against Chicago, Kansas & Northern Railroad Company, Folsom against Paling, City National Bank of York against Vandruff, Root against Fast, Home Fire Insurance Company against Kuhlman, Mercantile Trust Company against O'Hanlon, Van Wagnen against Cooper, Rombe against Stephan, Hofmann against Tuner, Burchard against Walther, Turner-Frazer Mercantile Company against Henshaw, Kemper, etc., Company against Renshaw, Chadron Loan and Building Association against Smith, Richardson against Missouri, Kansas and Texas Trust Company, Albright against Peters, Vernon against Union Life Insurance Company, Michigan Mutual Life Insurance Company against Richter, Adams against Conrad, Enterprise Ditch Company against Moditt, LaBonty against Lundgren, Walker against Allen, Chapel against Franklin County, Fletcher against Co-operative Publishing Company, Wilson against Vandruff, Clark against McDowell, Fiske against Osgood, Farmers' and Merchants' Insurance Company against Jensen, Blaco against State, Woodard against State ex rel Tomssen, First National Bank of Omaha against Goodman, Bookman against Clark.

Supreme Court Syllabi.

No. 8783—Lannadon against Winntersteen, Affirmed. Error from Gage county, Irvine, C.

1. Affidavits used on the hearing of a motion for a new trial in order to be considered in this court must be embodied in a bill of exceptions.

2. To lay a foundation for the admission of testimony as to the value of goods in common use it is sufficient to show that the witness, by purchasing and by prices similar goods, is in a general way familiar with their value. The weight of the opinion then given is for the jury.

3. Where error is assigned to the admission of a large number of written instruments en masse the assignment is bad unless all were improperly admitted.

4. An instruction is not prejudicially erroneous although awkward in phraseology and ungrammatical, provided its meaning is clear.

5. It is the duty of a mortgagee of chattels in selling under foreclosure to give a reasonable opportunity to persons desiring to purchase to see the goods and to offer bids. Failing in this the mortgagee may hold him accountable for the sacrifice thereby resulting.

6. It is not error to refuse an instruction the substance of which has been already given.

No. 10447.—State ex rel Pankonin against Cass county. Affirmed. Error from Cass county, Ryan, C.

1. The adjudication in Dutton against State, 42 Neb. 864, held to determine this case.

2. Ordinarily, where a stream of water constitutes the boundary line between two political subdivisions, each subdivision holds to the middle of the stream and accordingly is liable for bridge repairs, as laid down in Dutton against State, 42 Neb. 864, irrespective of the volume of flowage being nearer one bank than the other.

No. 8749.—Nebraska National Bank against Clark. Affirmed. Appeal from Douglas county, Harrison, C. J.

1. Directors of a corporation each made a loan of money to it, with the understanding or agreement that in payment or enforcement of the debts thereby created no one should have or obtain a preference over another. It was subsequently ordered, all being present and acting, that negotiable promissory notes be executed and delivered to the parties evidencing the debts which originated in the loan transactions. Held, that the later adjustment was under such circumstances and attendant facts as evinced the intention to annul and abrogate the agreement which accompanied the loans.

2. A director of an insolvent corporation may not through any advantage gained by reason thereof or which may be taken of his directorship obtain or secure a preference of debts of the corporation to him or in which he is materially interested, but a judgment for such debt secured without any such advantage will be upheld, even though it may work a preference of the debt.

3. One of the directors of the corporation who had made it a loan and who, under the order of the managing board relative to issuance of promissory notes to members who had made loans to the company, was entitled to receive such a note, died and his son was appointed administrator of the estate; also became a director of the company and applied for and there was executed and delivered to him as administrator a note of the corporation in the amount of the loan debt. The corporation became insolvent and thereafter there was recovered a judgment against it and in favor of the administrator by default for the amount due on the note. Held, from the evidence that there had been no advantage taken by the son of the deceased director and administrator of his estate of the former's position of director of the corporation to obtain in the suit and judgment on the note a preference over other creditors of the corporation.

No. 336.—O'Neil against Flood. Affirmed. Error from Douglas county, Norval, J.

1. In a cause submitted under section 1 of rule 2 of the supreme court on an agreed printed abstract the court will not look beyond the abstract, and, unless error affirmatively appears therefrom, the judgment below will be affirmed.

2. Where a cause brought to this court on error is submitted under section 1 of rule 2 the printed abstract must include the petition in error or an abstract of the assignment of error thereto contained, and a failure in that regard will work an affirmance of the judgment.

No. 362.—Chicago, Rock Island & Pacific Railroad Company against O'Neil. Affirmed. Error from Lancaster county, Sullivan, J.

1. When a railroad has been constructed and put in operation an adjacent land owner may sue at once for consequential damages to his property and recover in the action full compensation for all injuries which he has sustained, or which will ever afterwards accrue, from a prudent and careful operation of the road.

2. But such action need not be commenced immediately. A party may wait within the period of limitation until the extent and character of the injury to his property has been ascertained by experience and made susceptible of absolute proof.

3. Where property has been taken or damaged for a public use the owner is entitled to recover as compensation the difference between the value of such property immediately before and immediately after the completion of the improvement from which the injury results.

4. In ascertaining the damages sustained by a land owner in consequence of the appropriation or injury of his property for a public use, may take into account every element of annoyance and disadvantage resulting from the improvement which would influence an intelligent purchaser's estimate of the market value of such property.

5. Where evidence improperly received is afterward stricken out and expressly withdrawn from the consideration of the jury the error involved in its reception is ordinarily cured.

6. Where distinct causes of action are blended in the petition the only appropriate remedy is a motion for an order requiring a separate statement and designation.

7. It is a general rule, to which the record in this case presents no exception, that objections not urged in the trial court will not be considered here.

No. 8787.—Tidball against Young. Reversed. Error from Saline county, Raban, C.

1. To constitute a valid administrator's bond some person or officer must be named therein as obligee.

2. A writing purporting to be an administrator's bond signed by a principal and sureties approved and filed by the probate court in which no person or officer is named as obligee is neither a statutory nor a common law bond; it is simply a promise in writing, made to no one, and is void.

No. 8785.—Cate against Hutchinson. Reversed. Error from Nuckolls county, Sullivan, J.

1. An answer in an action on an account for services, which contains a general denial of the essential facts of the petition and avers that the charges in the itemized account are unreasonable and unjust, does not present inconsistent defenses.

2. A defendant may plead as many grounds of defense as he may have, provided they are not so repugnant that if one be true another must be false.

3. Prejudicial error cannot be predicated of an order allowing a pleading to be amended when the amendment does not change the issues nor affect the quantum of proof as to any material fact.

4. In an action to recover for services rendered it is error to exclude the testimony of a witness who has shown himself qualified and competent to testify as to the character and value of the services.

No. 8779.—Davis against Culver. Affirmed. Error from Lancaster county, Ragan, C.

1. Under a general denial in replevin the defendant may prove any facts which amounts to a defense to the plaintiff's cause of action.

2. Evidence examined and held to sustain the finding of the jury that the plaintiff in error and his assignor purchased the note in suit after its maturity.

3. That when the action was brought there was nothing due on the note.

4. In a replevin action for property covered by a chattel mortgage given to secure the payment of a note owned by plaintiff the defendant under a general denial may show that plaintiff at the commencement of the suit was and still is indebted to him for labor in an amount equal to the amount due on the note.

No. 8780.—Chase County against Chicago, Burlington & Quincy Railroad Company. Affirmed. Error from Chase county, Irvine, C.

The statutes provide two methods of recovering back illegal taxes paid under protest. When the tax is imposed on land not subject thereto or which has been twice assessed for the same year the person paying the tax must present a claim to the county board, and, if it be not allowed, he must, if he wishes further to contest, appeal to the district court, but if the tax be levied for an illegal or unauthorized purpose, or if the tax be had for any other cause not falling within the first class, he may maintain an original action therefor. (Chicago, Burlington & Quincy Railroad Company against Nemaha County, 50 Neb. 252, followed.)

2. When taxes levied by a county exceed the maximum permitted by the constitution the excess is levied for an illegal and unauthorized purpose. (Same case followed.)

3. The constitution permits a levy of taxes by a county in excess of 15 mills on the dollar valuation in only two classes of cases: First, to pay debts existing when the constitution was adopted, and, secondly, when authorized by a vote of the people. The latter class includes limitation taxes levied to pay judgments rendered against the county on debts not contracted before the constitution was adopted, when such additional levy has not been authorized by vote of the people.

No. 10348.—Slobodisky against Curtis. Affirmed. Error from Douglas county, Norval, J.

1. The filing of a petition in error in the supreme court is alone insufficient to invest jurisdiction. It is indispensable to jurisdiction that there should be filed with the petition in error, and within the time fixed by statute, a transcript of the proceedings of the district court containing the final judgment sought to be reviewed.

2. Where a party files a petition in error within the time limited by the law for the prosecution of error proceeding he thereby abandons the appeal which he had previously docketed in the case.

3. The mere failure to file a motion for a new trial in the court below is not of itself sufficient reason for dismissing a petition in error by the supreme court.

4. The ruling of the district court on a motion to require its clerk to pay out moneys in his hands may be reviewed, although there was made no motion for a new trial.

5. An order drawn on a particular fund creates an equitable assignment thereof, although not accepted by the drawee.

No. 10347.—Carter against Union Life Insurance Company. Motion overruled. Error from Douglas county, Harrison, C. J.

1. If there is room for construction, that given to its rules by a court or a judge thereof will generally be accepted as conclusive.

2. Notice of an application to a judge of the district court for an extension of time within which to prepare and serve a bill of exceptions is not indispensable to jurisdiction.

3. The rules of this court are not necessarily governable in matters before the district courts or the judges thereof. The portion of section 809, Code of Civil Procedure, which made them so, applicable when enacted, to the courts as then organized and the existing conditions, but the constitutional changes in the organization of the courts and the changes in the conditions have rendered it inapplicable.

4. No notice of the presentment of the bill of exceptions to the trial judge for settlement and allowance is required unless amendments to the bill have been proposed and not accepted.

No. 8810.—Western Union Telegraph Company against Call Publishing Company. Affirmed. Error from Lancaster county, Harrison, C. J.

1. The circumstances under which the contract by which the telegraph company agreed to transmit to the other party to the contract the news reports of the Associated press and received and held out to know the contract to be elemental of the consideration of the agreement by the Associated press to furnish the news reports to the party to the first mentioned contract other than the telegraph company.

2. A public service corporation is amenable to the rules of the common law relative to discrimination in rates between patrons for like state or interstate services rendered under like conditions, the latter in the absence of congressional legislation on the subject, and courts will enforce the rules of general jurisprudence in such matters.

3. The evidence in regard to the difference in night and day rates for several certain classes of services held to furnish a basis for ascertainment of the measure of the difference in night and day rates in the services involved in litigation, in the absence of evidence to show reason for a greater distinction.

No. 10361.—Knights against State. Reversed. Error from Washington county, Sullivan, J.

1. In the trial of a criminal case the court is not ordinarily justified in assuming the existence of any material fact put in issue by the plea of not guilty, but there is not an assumption of any fact in an instruction plainly professing to be a mere statement of the material averments of the information.

2. In a criminal prosecution it is reversible error to instruct the jury, upon the question of insanity, that the burden of proof shifts from the prisoner to the state during the progress of the trial.

3. But the court in its charge may properly say that when the presumption of sanity encounters opposing proof, the burden is upon the state to satisfy the jury by evidence beyond a reasonable doubt that the accused was sane at the time he committed the alleged criminal act.

4. One suffering under a defect of reason to such an extent that he was incapable of distinguishing between right and wrong with respect to a particular act is not amenable to the laws against crime for having committed such act.

5. And it is prejudicially erroneous to inform the jury in a criminal case, where the defense is insanity, that want of capacity on the part of the prisoner to understand the nature of the act in question at the time of its commission is necessary to render him irresponsible.

6. Whether the court might properly permit private counsel, in a criminal case, to make an argument to the jury on behalf of the state when such counsel did not appear in his professional character until the evidence was closed, quære.

7. It is competent to prove the ownership of a store building by parole evidence when it does not appear that such building is real estate.

8. Where a person is charged with the commission of a specific crime testimony may be received of other similar acts, committed about the same time, for the purpose only of establishing the criminal intent of the accused.

9. On the trial of a person informed against for burning property with intent to prejudice an insurance company, where the accused refuses to produce the policies of insurance, secondary evidence is competent to show the contents of the policies, that they were made out and delivered by an authorized agent of the companies and that defendant was claiming indemnity under them.

No. 9245.—State ex rel Broatch against Moores, Irvine, C. Sullivan, J., dissenting.

The question of the sufficiency of a petition or information to state a cause of action is, when the defect is substantial, open for consideration throughout the proceedings, and may even be raised on a motion for rehearing.

2. Want of legal capacity to sue refers to a general legal disability. If such do not exist the failure of a plaintiff to show a right of action in himself goes to the sufficiency of the pleading to state a cause of action, and is not waived by failure to demur for want of capacity.

3. The provisions of Session Laws of 1897, page 54, chapter 10, the so-called charter of cities of the metropolitan class, examined and held to demand that in case of ineligibility of the person receiving the highest number of votes at the first general election for mayor the president of the council should exercise the office, and not the former incumbent.

No. 8799.—Wakeley against Omaha. Reversed. Appeal from Douglas county, Ryan, C.

1. Notice of the sitting of the city council as a board of equalization under section 21, chapter 12, page 121, Sessions Laws 1889, for at least six days prior thereto, is an indispensable prerequisite to legal action.

2. The mere fact that an owner of adjacent property signs a petition for paving a street in a prescribed manner does not furnish grounds for the presumption that the petitioner assents to irregular or void proceedings of the city council in the performance of such duties as may devolve upon it after the pavement shall be completed.

3. A void special assessment is not validated by the mere fact that payments thereon have been voluntarily made.

No. 10376.—Mulloy against State. Affirmed. Error from Box Butte county, Norval, J.

1. An information will sustain a conviction of a lower offense involved in that charged.

2. An information for an assault with intent to commit great bodily injury, framed under section 126 of the Criminal Code, will sustain a conviction for an assault and battery when the information discloses, by proper averments,