Origin and Development of the Arnold Arboretum-Scientific Arrangement of Trees and Shrubbery.

WOST NOTABLE PARK IN THE WORLD

The completion this spring of the Arnold Arboretum as a part of the system of parks which girdles the city of Boston, says a writer in the New York Tribunc, calls attention to the most notable museum of living trees in the United States and one of the most notable to be found anywhere in the world. It is doubtful if there is an institution in the country of so much general value concerning which there is so little popular knowledge. A mere list of the undertakings which have originated in the erboretum and have been carried to completion under its director, Charles S. Sargent, is sufficient to stir the enthusiasm of tree lovers everywhere. Twenty-five years ago, it has well been said, knowledge of the characters, geographical distribution and economic and horticultural value of the trees of North America was fragmentary and mostly beyond the reach of students. Many of our trees were entirely unknown even to botanists, and only the vaguest and most unsatisfactory information could be obtained about many others.

Arnold Arboretum, it may be fairly said that the trees of no other continent have been so carefully studied or are so well known. The result of this study is embodied in Mr. Sargent's monumental "Silva of North

Now, as a result of the work done at the

A Link of Baseries in the street of the stre

ways, in a position of unique independence. The arboretum is, as has been said, a link in the Boston park system, while remaining under the scientific control of the university. To secure this condition permanently the city took the required land. some 225 acres—the larger part of which was owned by the Harvard agricultural school, the Bussey institution—by right of eminent domain, immediately leasing back the whole to the university, with the exception of the land necessary for public drives and walks, for the consideration of \$1 and the term of \$99 years, under an agreement calling upon the city to build

vention immediately leading host the what or the university with the what or the university with the what of the university with the what of the university with the what of the university of the sond property and the cellinger of the sond and related the three differences and excellent the three differences and excellent the three differences and excellent three differences and excellent three differences and excellent to the what of the fair property and the cellinger of the sond differences and excellent three differences and excellen

SUPREME COURT SYLLABI

No. 5,417. Omaha Loan and Trust company, county of Douglas. Error. Douglas, defirmed Opinion by Holcomb, J.

I Nominal damages are not recoverable in an action against a county for damages alleged to have been sustained by reason of the grading of a street adjacent to the property of the owner on the theory that the Board of County Confmissioners were guilty of a breach of official duty to the plaintiff in not serving notice and having an assessment of damages sustained and special benefits received in the manner provided by statute.

2. The determination of the competency of witnesses to testify as to their opinion of the value of real estate, which is the discretion of the trial court and a ruling thereon will not be disturbed on review except when clearly erroneous as a matter of law.

of law.

5. An instruction requested by one of the barties not based on the evidence nor pertinent to the issues to be decided by the jury is properly refused.

4. A written statement of a witness, inconsistent with and contradictory to his peachment, is not admissible unless the witness attention has been called thereto with reasonable certainty, nor until properly authenticated, if not admitted, by the wilness.

witness.
No. 2,446. Boyd against Mutvihill. Appeal,
Douglas. Affirmed. Opinion by Norval, 1. A finding of fact based upon sufficient competent evidence will be sustained on review, although the evidence is confilting and would have upheld a contrary finding.

2. Insanity of the obligor at the time the contract was entered into is a good defense to an action thereon, although no advantage was taken of him by the obliger.

No. 9,465. Grand Island & W. C. Railroad company against County of Dawes. Appeal, Dawes. Affirmed. Commissioner's opinion, department No. 1. Opinion by Day, C.

1. When county commissioners have made a levy of 9 mills for general fund purposes they have no further power to levy an additional tax for payment of outstanding warrants previously issued against the general fund in excess of the statutory limit, unless authorized by a vote of the people of the county.

of the county.

2. "When a tax is void that is when there is no tax which the plaintiff is in equity bound to pay, he may invoke the aid of a court of equity to protect his rights by an injunction, notwithstanding section 144, chapter laxvii, article i, Compiled Statutes." Beliavue Improvement company against Village of Beliavue, 35 Neb., 577, Touzalin against City of Omaha, 25 Neb., 517, followed.

No. 2457, Turkey

corporation. Held the That the annual statement, punished by authority of the trades, showing its debts and assets, is note.

addressed to the world. (2) That a party, dealing with the vendee has a right to rely on such statement. (3) That the source from which such person receives such state. So mind the time of payment of an overdue vendee, showing its debts and assets, is note.

No. 558. Waugh against Davis et al. Opinion by Albert, C. Department of received a sale on the ground of the third of the vendee his intention to restrain the trade in the from the discovery of the fraud he in some way in the fall of the vendee his intention to restrain the bringing of an action or any of the race clearly indicative of such intention and brought to the knowledge of the vendee is sufficiently and the property of the fraud he in some way in the rection and brought to the knowledge of the vendee is sufficiently and the property of the fraud he in some way in the falls of the restrain the current of the vender is sufficiently and the property of the fraud he in some way in the falls of the restrain circumstances no party can be charged as principal upon negotiable note or biff, or exchange unless his namited facts in this case in instance of contract by or in the name of an agent for an undisclosed principal is not proved. But the contrary is clearly established.

No. 688. Omahs National Bank against the falls of the restrain the governed with an option to resent the court in directing a verdict of a contract of sale with an option to resent the court will contine least to have been parchased by the vendee, under a contract of sale with an option to restrain the fall court. The court is decided to the vendee may, if he falls to the restrain the governing body of a municipal is reversed error for the trial court of the court of the contrary is the court of the court of

or public corporation from making an relegal disposition of public funds or property.

7. A taxpayer may, also, commence and prosecute to judgment, an equitable action to enforce for the benefit of a municipal or public corporation, a right of action which its governing body has refused to enforce. In such case the corporation should be made a party defendant.

8. A county board may unlawfully contract with a county judge to perform extra official services in connection with the records of his office, and where such services have been performed without any valid contract the county may accept the product of the judge's labor and pay him therefor. In such case a taxpayer cannot maintain an equitable action against the county judge on the theory that the money received by him for such services belongs in equity and good conscience to the county and should be paid over to the county treasurer.

damus to levy tax for water supply in excess of limit on such tax existing at time of contract.

No. 11711 Hoffman et al against Nelson et al. Error from Knox County. Reversed. Opinion by Hastings. C. Department No. 1.

1. The action of the county beard in reckoning among the petitioners for a call of a special election upon the question of relocation of county seat, certain signers who had subsequently signed a remonstrance and then, before action of the county beard, signed a withdrawal of such remonstrance and a request that their names be counted among the petitioners, held no error.

No. 1178 Swift & Co. against Holoubek. Error from Douglas County. Remittjiur. Opinion by Hastings. C. bepartment No. 1.

1. Judgment for an employe will not be reversed at suit of employer for the giving of an instruction that the burden of proof is on employe to show both defect in machine with negligence in permitting floor on which he stood to operate it to be wet and slippery, when accompanied also, instruction to find for employer if the machine was not defective, although there was no evidence that the admittedly wet and slippery condition of the floor was due to negligence.

2. A statement of the employer's duty to furnish 'a reasonably safe place to work.' where evidence shows employe worked at rear of a machine, close to two swift revolving scrapers, each furnished with several knives which worked against a drum revolving beneath them, against which latter it was the duty of the employer, with his left hand, to press entrails, to draw them out beneath the scrapers, and where it tends to show a defective shield over the scrapers, is not contradictory of an instruction to find for the employer if machine was not defective, and does not assume the existence of negligence in other respects.

3. An instruction that the defendent could not be liable if the machine operated by

passed for cause, and when the right to peremptory challenges was being exercised, not determined because purporter bill of exceptions is not properly authenticated.

9. The certificate of a trial judge to a bill of exceptions "that the foregoing is all the evidence offered by either party on the trial of the cause" is not sufficient to embrace the voir dire examination of a juror. Durfee against State, 53 Neb., 214, followed.

10. Statement of a prisoner charged with a crime, in the nature of an admission or confession, voluntarily made and not induced by hope or fear from those having custody of the prisoner or concerned in the administration of justice, may properly be admitted in evidence.

11. Where testimony is offered, objected to and excluded on the ground that no proper foundation has been laid, and later on the witness is recalled and the proposed testimony received, the first ruling is without prejudice, even though erroneous.

12. Record examined and found free of prejudical error regarding the ruling of the court on the admission and rejection of evidence.

13. The use of words, "as in sound rea-

made before the termination of the life estate.

4. When in an action for a partition of lands the defendant in possession claim title to the premises adversely to the plaintiff he will, by waiving a jury and participating without objection in the trial of all the issues in the cause before the court alone, also waive any objection he might otherwise of had on account of irregularity in the procedure in this respect.

No. 1972 Chapman against State. Error from Sherman county. Affirmed Opinion by Suilivan, J.

1. A statute which denounces an act as criminal does not cease to be effective because another statute declares the same set to be a crime when done at a particular place or under special circumstances.

2. Where a statute states the elements of a crime it is generally sufficient, either in an indictment or information, to charge such crime in the language of the statute.

2. It is not error to refuse a special interesting a beginning the a process.

such crime in the language of the statute.

2 it is not error to refuse a special instruction embodying an idea which has been
given by the court to the jury in the general charge.

4. It is not error to refuse an instruction
which is argumentative and singles out and
gives undue prominence to some portion of
the evidence.

the evidence examined and found sufficient to support the verdict and sentence.

No. 5.53. Norfolk Beet Sugar Company against Joseph Berger et al. Error, Madlson, Reversed. Albert, C.

1. Negotiations and contemporary conversations leading up to a written contract are merged therein and evidence of such conversations is not admissible to contradict or vary the written contract.

2. Where one agrees to buy of another all that part of a crop to be raised which reaches a certain standard as to quality and he accepts a part of the crop, he may refuse the remainder if it falls below such a standard, even though a part of those accepted fell below it and he had full knowledge thereof.

3. Parole evidence is inadmissible to contradict or after a written contract or to inject into it previsions it does not contain, and which cannot be implied from its terms.

terms.

No. 2632 Treat against Hughes. Error Douglas Affirmed. Oldham, C.

To accure the reversal of a judgment in an error proceeding to this court it is not enough to establish that the district court erred, but it must appear from the recording to the such error may have caused or contributed to the judgment under review, and thus have prejudiced the comptaining party, (Tracy against State, 46 Neb., 201, followed).

No. 2661. Wickham against Wolcott. Error, Merrick. Affirmed. Ames, C.

1. A master is liable for the consequences of the negligent or wrengful conduct of his servant committed in the course of the employment of the latter, although the particular act complained of was unauthorized by the former and was done in disobedience to his commands.

2. In an action for negligence, it is no

ixed by the former and was done in disobedience to his commands.

2. In an action for negligence, it is no
ground of complaint that the court, by instructions given upon its own motion, does
not state the rule with respect to the
measure of damages with sufficient definiteness unless a more explicit statement
has been seasonably requested and refused.
No. 9664. Welch against Teppery et al.
Appeal, Burt. Dismissed and remanded.
Ames. C.

A judgment for costs only upon special
findings in favor of one of the parties is
not final nor reviewable in this court.
No. 9666. Wiseman against Jaco. Error
Buffalo. Affirmed. Ames. C.

When in an action pending in justices
court an attachment is issued and levied
upon morigaged property in the possession
of a third person who is summoned in garnishment, and the mortgages intervenes in
the suit and obtains an order discharging
the attachment at least to the extent of
releasing its levy upon the property, he
cannot assign for a further order of the
justice requiring the garnishee to pay a
sum of money into court for the benefit of
the plaintiff in the action.
No. 9,666. Pratt against Galloway et al.
Armed. Antelone Reversed Don.

No. 1367. Coll against State. Error from Dawes county. Affirmed. Opinion by Holomb. J.

The are no valid objections by reason. It may be not the provisions of the constitution to the prosecution of one charged with a capital offense, upon an information by the county attorney, under the provisions of chapter 84 of the Criminal code. — Neb. —; SN. W. Ref., 445, followed. —

judgment.

3. Where a representative of a mutual company, within the 3. Where a representative of a mutual benefit insurance company, within the scope of his authority, accepts a surrender of a benefit certificate and a fee for the issuance of a new one, with knowledge that the holder of the certificate is in arrears for dues or assessments, the effect of his so doing is not avoided by evidence that he acted in ignorance of the legal consequences.

custody of the prigoner or concerned in the administration of justice, may properly be administration of justice, may proposed that he acted in ignorance of the legal consequences.

4. The recognition of the continued validative of a certificate or policy, with knowledge of facts entailing a forfeiture, is a waiver of the forfeiture, as a matter of law, and it is not necessary that there be a new agreement or the elements of an estoppel.

5. A secret intention to insist upon a forfeiture cannot prevail against deliberate acts, with knowledge of the forfeiture, which in law amount to a waiver thereof.

6. The rules of a mutual benefit insurantees the provided that non-payment of dues or assessments should operate as a suspension and that a member under suspension. In order to be retinated, must make proof of continued good health. They also provided that non-payment of law, and it is not necessary that there be a new agreement or the elements of an estoppel.

5. A secret intention to insist upon a forfeiture as a matter of law, and it is not necessary that there be a new agreement or the elements of an estoppel.

6. The rules of a mutual benefit insurantees the fact of the country of the forgetting and that a member under suspension in order to be retinated, must make proof of continued good health. They also provide that one-payment of the formed when the rules of a mutual benef

what you Dyspepsia Cure

can't expect to keep up the wear and strain of an active life with a weak stomach. Our boilers, or rather our stomachs, can't be replaced, and we cannot stop the human machinery while making repairs. But when the stomach is unable to digest enough food to keep the body strong, we can use such a preparation as Kodol Dyspepsia Cure. It digests what you cat, so that you can eat all the good food you want. The use of such a preparation as this is the only certain way to cure indigestion.

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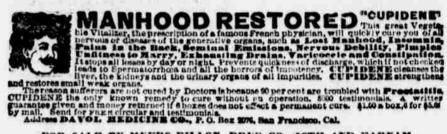
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