

THE DAILY BEE

Thursday Morning, April 30.

LOCAL BREVITIES.

The street railway company received two summer or excursion cars yesterday. The Plattdeutsche Verein at Germania hall, May 24, will give their second grand annual ball. Sells Bros. circus paste brigade is abroad in the town and the bill boards are afloat with posters. On May 10 the Omaha Turn Verein will have a grand exhibition, concert and ball at Germania hall. The Musical Union orchestra will have their first grand rehearsal this evening for the Senegfest which will be held at Lincoln in June. Mrs. Emma Westphal, who was adjudged insane last Monday, will be taken to Lincoln this morning and placed in the asylum. The next rehearsal of the grand chorus for the musical festival will take place Friday evening next at 7:30 o'clock, at Max Meyer's music hall. An old second hand dealer on East Tenth street near the U. P. depot, had a pair of trousers and \$20 in money stolen from his room Tuesday night. A laborer at Murray's brick yard, robbed one of his mates yesterday of \$25 and a gold watch chain, then fled for parts unknown. The police were looking for him last evening. On Friday evening, May 1st, the society people of North Bend will have a grand concert and ball there. A part of the Musical Union orchestra will attend upon this occasion. The gaily painted and festively decorated advertising car, No. 1, of Sells Bros' circus was side tracked at the U. P. Depot yesterday and attracted the attention of a great many curious admirers. It is now reported that Joe Hamill the forty-five year old local sporting circles, has sought out his old haunts in the surroundings of the city of Omaha. He is said to have gone back to his home in Chicago. Pat Casey and John Miller were arrested Tuesday night skulking behind the Brandeis saloon on South Tenth street. A buggy robe and whip were found in their possession, and await an owner at police headquarters. Elder J. B. Marfield and Rev. Robert L. Mash, pastor, have sent out cards of invitation to the citizens of Omaha inviting them to attend the dedication of the Seward street M. E. church on Sunday, May 10th. At the charitable given Officer Kennedy and his bride Tuesday night, it seems that a little cutting affair occurred. It was between a white man and negro, who quarreled and the negro carried the white man with a razor. As yet no arrests have been made. The new home of Mr. Fred Drexel, now on Tenth and Williams streets was the scene of a jovial housewarming Tuesday night. A large number of friends were on hand and participated in the enjoyment incidental to the occasion. Some of the ladies of the Catholic congregations of this city are said to be contemplating the erection of a home for fallen women, on the southeast corner of Ninth and Howard streets, provided the lot can be obtained from the city. The trial of Christian Wirth, charged with desertion from the army, was commenced before a court martial at Fort Omaha, Tuesday. The prosecution closed its case at night and yesterday's defendant introduced his testimony. It is ordered at army headquarters that first lieutenant Guy Howard, 12th Infantry, aide-de-camp, shall on the 30th instant, muster the general service clerks, messengers, and hospital attendants on duty, at these headquarters, for the month of April, 1885. Mr. and Mrs. J. H. McCoy celebrated Tuesday night at their home on Parko Wildo avenue their tin wedding. A number of friends responded to the invitation and a pleasant social time was enjoyed. A variety of gifts in all devices of tin were bestowed upon the celebrating couple. The Good Templars have secured the parlor of the W. C. T. U. over the restaurant, for their meetings, and last evening the first lodge meeting was held there, at which the impressive initiatory vows were taken by new members and new officers elected for the ensuing quarter. The lodge will meet regularly every Tuesday evening hereafter at the above mentioned quarters. Visiting brothers and sisters are cordially invited. False Pretenses. A well known gentleman of this city last night told a BREP reporter of one of the pranks played by one J. H. Willard, who will figure at an early day in the police court, under the name of Hamilton, to answer to a charge of embezzlement of books from F. A. Gavin, as this morning's police court report shows. It seems that Willard, alias Hamilton, rode up to Gavin's house or place of business, in a buggy and stated to Gavin that the horse and buggy he drove had been loaned him by this gentleman, and thereupon Gavin supposed him reliable, and was completely won by his genteel bearing, appearance and speech. It further appears that Gavin commissioned him to dispose of books he had to sell, and Willard, alias Hamilton, worked to get all there was in it. His plan was to get signed by some gentleman a promise to take such and such books, which Gavin was to deliver and collect the "order" or promise; but Hamilton (Willard) would induce the party to make part payment, which sum he pocketed and turned over the "order" (accredited with such part payment) to Gavin. The result was when Gavin delivered the books, the purchaser claimed the price or part of it was paid. A Wedding at Plattsmouth. Last Wednesday H. N. Dorey and Miss Eva Knapp, of Plattsmouth, were united in marriage, the ceremony being performed at St. Luke's church, in the presence of a large number of their friends. The bride is a second daughter of Mr. Grosvenor Knapp, master mechanic of the western division of the C. B. & Q. railroad, and a very charming young lady. She was tastefully attired in a costume of light blue gros grain silk with lace trimmings, and wore a large bouquet of roses at the throat. The groom is a well and favorably known young business man of Plattsmouth and for a long time was teller in the First National bank there. Both have a great many friends in Omaha, who will wish them a long life of happiness and prosperity. They started Monday night on a wedding tour, which will include a visit to New Orleans and other points of interest through the south.

MORGAN-M'FARLAND AGAIN.

Opinions of the Judges Who Heard the Habeas Corpus.

Grounds for Accused's Release.

Elsewhere in this issue of the Bee are the happenings of yesterday in the Morgan-Moore-McFarland case. In the light of those transactions there are many, very many persons in Omaha, among the thinking men, of large interests here, who wish to fully understand this matter and in deference to the request of a number of such citizens this issue publishes the opinions delivered by the two judges.

M'CUULOCK AND STERNBERG, before whom this Iowa convict was brought by the Iowa sheriff who was trying to take him to the penitentiary from which he escaped.

The following, from full notes taken at the time of delivery, Tuesday last, is Judge McCulloch's decision:

By the court: This case has caused me much anxiety and study since the argument began yesterday, (Monday) and I confess that it has raised questions of law with which I was not familiar in the practice touching cases of habeas corpus. It has raised questions not heretofore often met in such cases, but which, since the rapid strides of Omaha towards metropolitan proportions, is likely frequently to arise. For this reason the case is important outside of itself, and I shall therefore be particularly cautious in giving a judgment upon it, as I see and understand the law, outside of what has been said and printed and come to my ears, for it will establish a precedent so far as this court is concerned, for cases where effort is made to take an accused person from Nebraska to another state.

Under the two lines of authorities cited, two questions arise. First, is the warrant (recognition) of the governor sufficient on its face? and second, shall the whole pleadings be considered in determining the release or remanding of the accused.

Under the two lines of authority cited, it appears on the one hand that the warrant itself is prima facie sufficient, and carries the presumption that sufficient facts were presented to justify its issue by the governor; on the other hand, it is held that the warrant must relate the jurisdictional facts which were presented to the governor, or there must be attached to the warrant a certified copy of those facts as presented. Among many cases cited in favor of this latter view one from Texas is particularly strong and favors the accused in this case; while one from Massachusetts is equally clear and strong the other way. But all the cases agree in this, that if the warrant itself recites that proper steps were taken to secure its issuance, it is sufficient authority to hold the accused. The case at bar is tried upon the papers before the court, and upon those only, taking into consideration no other testimony except as to the identity of the accused, which has been clearly established.

All authorities show that the court may investigate to ascertain the facts on which a warrant is issued; that is to say, a warrant is not conclusive until contradictory evidence has been rebutted. Here the accused has filed a number of specific denials of allegations contained in the warrant. This court holds with the Mass. case that the warrant is prima facie evidence that the requirements of law have been complied with, but the specific denial of the recitals of the warrant complicates the case and raises a totally different question. The United States statute on this subject requires that in making the return, for example, on a writ of habeas corpus, an affidavit charging the accused with a crime, made in the state where committed, shall be presented to the governor. In this case the governor certifies that proper steps have been taken. The accused denies this, and the question therefore is, on whom is the burden of proof; on the officer or the accused?

It is the opinion of this court that if the taking away of the accused by the officer is not resisted by the accused, there is no necessity for the officer to have copies of these steps related by the warrant to have been taken to procure it, but if the taking is resisted, then it is necessary in order to authorize the taking of the accused to another state.

It was agreed by the demurrer of yesterday to try this case on the papers before the court; there are no papers here showing what testimony or papers, if any, were filed with the governor of Nebraska. It is therefore the duty of the officer, by a

PREPONDERANCE OF TESTIMONY, to prove his right to remove the accused out of Nebraska. As this has not been done in this case, there is no way left to the court except to decide in favor of the accused, and accordingly the judgment of the court is that he be released.

THE SECOND ARREST. Before Police Judge Stenberg the accused was brought on the warrant issued on a complaint reciting his commission in Iowa of larceny from the person (a felony there) and his being a fugitive from justice. These facts appeared on the hearing in this court.

JUDGE STENBERG HELD that inasmuch as the charge upon which the accused is sought to be remanded in this court is the identical one on which he has had a hearing and secured a release in the county court of this county, this court has no right to try or decide upon the case, because the statute of Nebraska explicitly declares that when a party has been once tried and released upon habeas corpus, he should not again be tried, committed or held upon the same charge. And that as the county court, court of superior jurisdiction, had fully examined the case and released the accused, this court has only to dismiss the proceedings and order the accused to be released.

The seizure of the party by Sheriff Dan Farrell, who camps when he gets on a trial has been already made public and now riding down the curtain on "The Pickpocket."

A Forty Dollar Pinchbeck. A slightly lady in a Farnam street store tells a good story on two Chicago commercial men well known in Omaha. It is better from the fact that one of them, Mr. A., for example, is a very moral man, and the other, Mr. B., just thinks he is up to all the tricks known among men. A., who is a man of considerable means, wore a splendid looking watch, which can be bought anywhere for \$30 or \$40 per dozen. B. saw it while on a train and offered \$40 for it,

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THROW OUT THE OPIUM.

Mayor Boyd Proposes to Have Some of the Violated Ordinances Enforced.

The opium joints, if there are any in the fair and beautiful city of Omaha (and little doubt exists that such is the case) must go. It is probable also that the saloons will soon be compelled to close their doors at midnight and on Sunday. At least Mayor Boyd intimated as much yesterday, when in conversation with a reporter for the BEE. Reference was made to his communication, read before the city council Tuesday night, recommending that the marshal be called on to enforce the ordinance relating to opium joints, and the mayor said that he had been informed of the existence of several such places; also that he would like to see the ordinance enforced. As to the matter of closing the saloons at midnight, it is only those having lunch counters or restaurants connected with them that keep open, and the other are making complaint on the grounds of unfair treatment for them to close and the few be allowed to keep open. However, the mayor will not, he says, attempt to insist on a strict enforcement of these ordinances until after the marshal matter is settled.

Ten dollars reward for return to Millard hotel, Omaha, of land book and other articles in black satchel. E. C. Bluffs called April 28th.

DROPPED DEAD.

The Sad Fate That Befell Mr. E. Tuelser.

A few additional particulars concerning the sudden death of Mr. E. Tuelser, at Sidney, Tuesday evening, were received here yesterday. It seems that he went from his stock ranch to town that day for the expressed purpose of calling on Senator Leland Stanford, who was passing through on route to his home at San Francisco. He and the senator, it appears, were intimate friends twenty years ago, and now that the latter has become one of America's noted men, of course Mr. Tuelser naturally felt anxious, when the opportunity offered itself, if only for a minute or two, to meet him once more. But such a pleasure was not to be enjoyed. The fates' hand ruled differently. When almost ready to grasp each other's friendly hands the Senator of Time swept between them and on the platform of Mr. Stanford's car, his old time companion sank down stiff and dead. At the time of his death yesterday stated, Mr. Tuelser, was one of the most prominent and best known cattle men in the state of Nebraska.

PERSONAL.

S. R. Calloway went east yesterday. J. Morrison, of Lincoln, is at the Paxton. John D. Craton left for Chicago yesterday. G. M. Holmes, of Beatrice, was in the city yesterday. Mr. H. Pardoe, of Lincoln, is among yesterday's arrivals at the Paxton. J. H. Pardoe, W. H. McCord and F. Washburn, a delegation of Ulysses gentlemen, are at the Paxton. Mr. and Mrs. Jordan, of St. Louis, with their daughter, Mrs. J. J. Dickey, of this city, have gone to California for a three week's visit. H. A. Babcock, Lincoln; Geo. A. Percival, Ord; S. H. Somborg, Wahoo; R. Wheeler, Oacola; J. G. Fountain and wife, Miss Ida Story, city; W. H. Maston, Schuyler; J. Rudolph, Schuyler; L. Capron, Omaha; Wm. Falton, Nebraska City, are at the Millard. At the Metropolitan: V. O. English, Plattsmouth; W. M. Nesbit, Tekamah; A. G. Hastings, Lincoln; Sam F. Nelson, Wakefield; Andrew Egger, Hastings; L. Howell, Louisville; James P. Hayer and wife, Brentwood; C. Chas. Lincoln; Louis Doney and wife, Wichita; Geo. Z. Masson and wife, Plainville, Mich. Thos. Stolcker, Platt; D. F. Van Liew Aurora; J. W. Welna, Wadena; J. L. Ritter, North Bend; Majo. Cooley, Council Bluffs; W. J. Wagner, Denison, George Hegley, Dubuque; P. O. Anderson, Des Moines; G. Dorsey, Chicago; F. H. Davis, Galesburg, Ill.; Geo. Cornell, Frankfort Mich.; are at the Cassfield.

RAILROAD NOTES.

Change of Hours—General Managers of Rail Loro. A change of hours is announced to take place May 1 in the headquarters of the Union Pacific, which will effect the employes of the general auditor's office, as well as those of the freight auditor, auditor of agents' accounts, and auditor of passenger accounts. Under this new regime, the clerks of these departments will commence work at half past eight in the morning and quit at five o'clock in the evening, besides working until three o'clock on Saturday. This makes the week of work rather longer than that of the other departments. Considerable dissatisfaction at the change is expressed, as the boys had hoped to have the Saturday half holiday throughout the summer, as will the clerks in the other departments.

THE BARRIOS PARTY.

A communication was received yesterday by the passenger department of the Union Pacific, stating that the Barrios party had left San Francisco Monday and would arrive in Omaha Thursday on the Denver No. 2. The party consists of Mrs. Barrios, wife of the dead general, Gen. Barrio, and a large escort. The body of the dead soldier will not be brought east.