JUDGE SULLIVAN'S OPINION

HE STANDS OUT AGAINST THE BALANCE OF THE COURT.

Judge Sullivan Holds That When a Big Public Official Steals He Is a Thief and Should Be Punished Accordingly.

No. 9697—Eugene Moore vs. State. Opinion filed February 17, 1898. Sullivan, J., dissenting.

I do not concur in the conclusion of the majority and give here the reasons for my dissent.

The constitution of 1875 not only repealed that part of section 32 of the insurance law which authorized the auditor to appropriate to his own use the fees therein specified but repealed, as well, so much of the section as authorized him to receive such fees for any purpose. These fees were, by the provisions of the constitution, required to be paid into the treasury of the state in advance of the rendition of the service which the statue made it the auditor's duty to perform. The money then it must be conceded, was received without authority of law. Being so received, is the defendant guilty of embezzlement under section 124 of the Criminal Code, by reason of having converted it to his own use?

Resolved into its elements, the proposition is this: (1) Did this money belong to the state? and (2) does the defendant fall within the class of persons against whom the penalties of the section are denounced? It is settled by a long list of decisions in other states that taxes or other public revenues collected by an officer acting under color of an unconstitutional law or void ordinance, belong not to himself but to the municipal or political corporation whose commission he bears. Chandler vs. the State, 1 Lea (Tenn.), 296; Village of Olean vs. King, 166 N. Y., 355; Swan vs. the State, 48 Tex., 120; Morris vs. the State, 47 Tex., 583; Waters vs. the State, 1 Gill. (Md.), 302; Commonwealth vs. City of Philadelphia, 27 Pa., St. 497; Middleton vs. State, 120, Ind., 166; Mayor vs. Harrison, 30 N. J., 73.

Here the defendant, acting under the color of a statute, originally valid but repealed in part by implication on the adoption of the present constitution, collected fees due the state for official services rendered by him as auditor of public accounts. And now, after having rendered services to the insurance companies as the agent of the state and after having assumed to act for the state in collecting the fees due for such services, he cannot be heard to deny that the fees so collected and received belong to, and are the property of, the state. The application of the doctrine of estoppel to the facts in this case has made the money in question the money of the state; and it must be so regarded whether its title be drawn in question in a civil or in a criminal case. The law does not require us to hold today in a criminal action that it is not the state's money, and tomorrow in a civil action that it is. In the case of State vs. Spaulding, 24 Kans., 1, it was held that where a city officer, pursuant to a custom of long standing but without any other color of right, collected fees due to the city for services rendered by him, such fees belonged to the city, and that by their appropriation to his own use he was guilty of embezzlement.

But was the defendant one of the persons against whom section 124 of the Criminal Code is directed? Whatever may be the rule in other jurisdictions, the question is no longer an open one in this state; it has been effectually set at rest by the decision in the case of State vs. Liedkte, 12 Neb., 171. The language of the section, "any officer or other person charged with the collection, receipt, safe keeping, transfer,(or disbursement of the public money," etc., (Criminal Code, sec. 124.) is, unquestionably, descriptive of the persons who may be punished under its provisions and is, therefore, descriptive of the offense. It is, of course, true that the defendant was not charged by any valid law with the collection or receipt of the moneys here in question, but having collected and received them under color of his office, it became his duty to safely keep them and transfer them to the treasury of the state. And this was not, as intimated in the case of San Louis Obispo County vs. Farum, 41 Pac. Rep. (Cal.) 445, a duty due from him as a private citizen, but one arising out of, and resulting from, his official station. Upon this point the Liedkte case is direct authority; for, by this judgment of this court, a peremptory writ of mandamus was awarded against Liedkte to compel him to pay to the state treasurer fees collected by him as auditor under the provisions of section 32, aforesaid. The writ could not have issued against him as a mere private debtor of the state; it could have issued only to coerce the performance of an official duty. Thatcher vs. Adams County, 19 Neb., 485; Laflin vs. State, 49 Neb., 616.

I am not prepared to say that I should agree to the rule established by the Liedkte case, were the question now presented for the first time. But that decision has stood unchallenged for nearly twenty years; it may be contrary to the weight of authority but it has the support of sound reason, and, to say the least, it is not so serious an impediment in the way of justice as to call for a judicial repeal. The principle on which it rests has the sanction of very eminent authority. It is precisely the same principle which controlled the decision in the case of State vs. Spaulding, supra. In that case the conviction was not sustained because Spaulding was agent of the city to collect license moneys. In truth he was not, and could not have been such agent; an exclusive agency for that purpose was, by ordinance, vested in the city treasurer. But, having by an assumption of authority obtained the money which he embezzled, he was estopped from denying that such assumption was false. From the opinion written by Brewer, J., now of the supreme court of the United States, I quote as follows: "We do not affirm that the city was concluded by the defendant's acts, nor indeed that any one is estopped but himself. But we hold that when one assumes to act as agent for another, he may not, when challenged for those acts, deny his agency; that he is estopped not merely as against his assumed principal but also against the state; that one who is agent enough to receive money, is agent enough to be punished for embezzling it. An agency de facto, an actual even though not a legal employment, is sufficient. The language of the statute is, "If any officer, agent, clerk, or servant of any corporation, or any person employed in such capacity, * * * He (the defendant) voluntarily assumed full charge of this entire matter, including the receipt of money and the issue of the license. The money was paid to him because of his office and to induce his official action, and he may not now say that it was not received 'by virtue of his employment or office,' or that its receipt was not one of the prescribed legal duties of such office. * * * He may not enter into the employment and then deny its terms or responsibilities. He is estopped from saying that this money which he embezzled is not the money of the city."

It is not more true as a legal proposition that Spaulding was the agent of the city, or, in the language of the Kansas statute, "employed in such capacity" than it is that the defendant in this case was "charged with the collection, receipt, safe keeping, transfer or disbursement of public money." Nevertheless, he was convicted and the conviction sustained because the law did not permit him to assert the truth and rely on it as a defense. So it seems to me that the defendant, Moore, having obtained the money in question for the state by the exertion of his official authority should be permitted to deny that he held it in his official capacity. The remarks of Mr. Bishop in his work on Criminal Law are pertinent here. The author says: "In reason, whenever a man claims to be a servant while getting into his possession the property to be embezzled, he should be held to be such on his trial for the embezzlement. This proposition is not made without considering what may be said against it. And a natural objection to it is that when a statute creates an offense which by its words can be committed only by a 'servant,' an extension of its penalties to one who is not but only claims to be such, violates the sound rule of statutory interpretation whereby the words, taken against defendants, must be construed strictly. But why should not the rule of estoppel, known throughout the entire civil department of our jurisprudence, apply equally in the criminal? If it is applied here, then it settles the question; for by it when a man has received a thing or another under the claim of agency, he cannot turn around and tell the principal, asking for the thing, 'Sir, I was not your agent in taking it, but a deceiver and a scoundrel,' when, thereafter, the principal calls the man under these circumstances to account, he is estopped to deny the agency he professed—why also if he is then indicted for not accounting, should he not be equally estopped on his trial upon the indictment," (2 Bishop, Criminal Law, Ch. 16, Sec. 364.) The rule thus stated has been recognized and approved in State vs. Spaulding, supra; State vs. O'Brien, 94 Tenn., 79; and People vs. Royce, 37 Pac. Rep. (Cal.) 630. It has also received recent recognition from this court. In the case of Bartley vs. State, 73 N. W. Rep. (Neb.) 744, the contention of the defendant that the depository act is unconstitutional is answered in the following language: "It is urged that the court erred in assuming in the tenth, eleventh, and fifteenth paragraphs of the charge the validity of the depository law. An elaborate argument is made in the briefs against the validity of that piece of legislation on grounds other than those heretofore considered by this court. We must be excused from entering upon a discussion of the subject at this time, as the defendant is in no position now to assert that the public moneys of the state were not rightfully on deposit in the Omaha National bank. He recognized the validity of the statute by placing the moneys of the state in said bank, and it would indeed be a reproach upon the law to permit him to assail the depository law in a prosecution for the embezzlement of the public funds so deposited by him. It was the money of the state that went into the bank, and it was likewise the money of the state that paid the check, whether the bank was a lawful state depository or not."

From these citations it appears that the Liedkte case does not stand solitary and alone. The principle on which it was decided is not a pernicious one, to say the least, and it should, in my judgment, be adhered to. The defendant, by his plea of guilty, has confessed that he received the money embezzled as auditor of public accounts, and I do not think we should either directly or necessary implication overturn one of our own decisions in order to hold that his confession is false.

The State of Nebraska, ss.

I, D. A. Campbell, Clerk of the Supreme Court of Nebraska, do hereby certify that I have compared the foregoing copy of a dissenting opinion by Hon. J. J. Sullivan, one of the judges of said Court, filed in my office on the 17th day of February, 1898 with the original on file in my office and that the same is a correct transcript thereof, and of the whole of said original.

In testimony thereof, I hereunto set my hand and caused to be affixed the seal of said court at the city of Lincoln, this 12th day of March, A. D. 1898.

D. A. CAMPBELL,
Clerk.

BY THE WHOLESALE.

An Omaha Judge Declares Many Marriages Illegal

Omaha, Neb., March 21.—Some time ago an article apeared in the Evening World-Herald containing semi-judicial statements of some of the judges, containing the legality of marriages performed within six months after a divorce has been granted by a Nebraska court.

Now, through a decision made by Judge Fawcett, the stamp of illegality was placed on such marriages, and some 200 couples in Omaha, who have considered themselves as lawfully wedded, will learn that however honorable their intentions may be and have been, they are violating the statute law of Nebraska and are living in a state of illicit relations.

The case decided was that of Rohlfing, and was of such nature as to bring the law squarely before the court for the first time, in such a manner that a positive decision could be made.

Ernest Rohlfing was divorced from his wife April 11, 1891, and May 14, following, went to Council Bluffs and wedded his second wife.

They lived together for a number of years, when some one informed Mrs. Rohlfing that her marriage was illegal. Obtaining legal advice, she found reason to believe the statement was true, and separated at once from her husband.

To settle the question, so that they could lawfully live together, Rohlfing brought suit against his wife to have the marriage affirmed.

Yesterday, Judge Fawcett, after hearing the case and examining the law closely, announced that he is unable to affirm the marriage; that it was illegal when consummated; and he refused to grant the decree which would make the marriage legal.

The question as to whether or not a common law marriage was established by reason of the parties' cohabitation, was not passed upon, so that it yet remains an open question whether either can marry some other person, as though they were divorced, or whether, if their desires are to be separated, a suit would have to be commenced, to annul the common law marriage.

As the petition did not set up that the marriage was a common law marriage, the court could not declare it such, and other interesting questions are thereby raised.

It has been a common practice for couples, within a few days after being divorced in Nebraska, to go into some other state to get married, thinking they have complied with the law—but the decision of Judge Fawcett settles the illegality of all such marriages occurring within six months after the decree.

ANOTHER PROMISE BROKEN

REPUBLICANS DEFEAT THE FREE HOME BILL.

A Party Vote Showing That The Pledges Made in the St. Louis Platform Means Nothing--Congressman Greene Ably Defends.

Bureau Neb. Reform Press.
Washington, D. C.,

The free homes bill which was attached to the Indian appropriations bill as a rider, by Senator Allen, was defeated the other day by the republicans in the house. As the reader will recall, this bill passed the senate during the special session and was hung up in the house committee on public lands until the presert session. Then, by hard work Stark, Maxwell, Sutherland and Greene of the Nebraska delegation, assisted by other western friends of the bill, forced that committee to report the bill to the house and since that time it has been "on the speaker's table," and there Czar Reed and Chairman Lacey of Iowa intended it to lie until Gabriel blew his horn. But Senator Allen moved an amendment to the Indian appropriation bill by attaching this bill as a rider to that.

The republican leaders from Reed down were bound to defeat it, so by a vote of 99 to 120 the house voted to non concur in the Allen amendment. This is but another proof that the insertion of a plank in a republican platform means nothing. The St. Louis platform pointed with pride to the fact that the republican party had the honor of passing the first homestead law, and they declared the party pledged to free homes to actual settlers. That plank was only put in to catch votes, just the same as was the one pretending to favor bimetallism. The following is a portion of the speech in favor of the amendment, by Congressman Greene of the Sixth district:

Mr. Greene—Mr. Chairman, I am personally familiar with some of the lands affected by the bill under consideration. The question which we are to face today is whether or not homesteaders who have gone out and taken up these lands—purchased them from the government—shall retain them, or whether they shall be evicted and the lands go into the hands of others. That is the simple proposition in a nutshell. It has been repeatedly asked on this floor, "Did not this man buy the land and agree to pay for it?" Yes, they did. But they expected when they purchased it to pay for it. But they have found it utterly impossible to make that payment.

I will speak of the part of the land with which I am familiar. I know how the settlers there are situated. They live from 30 to 60 miles away from a railroad. Between their homes and the railroad is a strip of sand dunes from eight to ten miles wide. Two full days are required for them to haul a load of their grain from their homes to the railroad and return. The road being so extremely rough and in part so very bad, but a small load can be taken. You can imagine, then, how soon a man living on that land and drawing his grain that distance to the railway can make payment to the government.

The question is, gentlemen, Do you intend by your votes today, for the sake of the small pittance the government is to receive from the sale of these lands, to say to these men who have gone upon them and plowed up the wild prairie and made their farms and built their little houses, prepared their humble homes for their wives and children, that after having done this they shall be driven off and their lands turned over to those who may be able to pay the government the amounts due?

Mr. Samuel W. Smith—Why not extend the time and let these people pay for their lands?

Mr. Greene—An extension of time to these men means simply that they are to put more improvements on the lands and ultimately lose them, because they will not be able to pay for them under existing conditions.

A Member—If eviction follows.

Mr. Greene—Eviction will follow if the government demands payment at the hands of these settlers. You may extend the time, but eviction must ultimately come. An extension of time simply means accumulating upon the land the labor of these men and ultimately the turning of the lands over to speculators.

I want to appeal to every man present—republican, populist or democrat—for this should not be a party question—you did declare in your platforms in favor of this measure. You can not escape that proposition. You say, "Oh, we meant simply that we were in favor of free homes under the old homestead law." Sir, the old homestead law was not in question. That law had been enacted and was in full operation when you wrote your platforms in 1896. There was no question affecting the public lands or affecting homesteads before the people when you wrote your platforms except this measure. And you declared that you were in favor of it. You told your constituents that you were in favor of it. You democrats told your constituents in your platform that you were in favor of this measure, because it was the only measure affecting the public lands that was being agitated before the people at the time you wrote your platform.

How can you reconcile a vote against this measure with the promises made to your constituents in the campaign which resulted in your election? Sir, I want to say once more upon this floor that I believe that a declaration in a platform is a solemn pledge made to the people, and that he who violates it is a betrayer of the trust reposed in him. How can you republicans ask the people to again believe you sincere in your pledges in the face of open and flagrant violations of past promises?

Gentlemen have argued that these lands were bought by the government from the Indians and must be paid for; that if this bill passes, the government will lose large sums of money. I grant that to be true, but is that a reason why this bill should be defeated? Sir, it has been the policy of this country for more than a quarter of a century to give free homes to all our people, to the extent of our public domain, as an inducement to people the great plains of America. Had all these lands now comprising the great states of Kansas, Iowa, Nebraska, North and South Dakota and other states carved out of the public domain been sold, it would have brought hundreds of millions of dollars into the national treasury, but it was thought the wiser policy to buy these lands and donate them to our homeless people.

The policy has proved to be even better than its advocates hoped. Under it what was called the Great American Desert has become the granary of America. Under this beneficent homestead law the courageous men and women of the east and middle states went forth as the pioneers of civilization. They endured all the hardship and privation incident to frontier life, as well as the dangers which surrounded them on every side; and, let me say, no one not familiar with such a life can form an estimate of what these self-denials were. Far away from former friends and home they built first the sod shanty on the plain; they subdued the virgin soil; they built comfortable homes, good school houses, and splendid temples for Christian worship; their industry has checkered the land with railways; splendid cities have taken the places of Indian villages, and everywhere large towns testify both to the wisdom of the homestead law and the thrift and enterprise of our people. Sir, while we have lost millions of dollars in the first instance by giving these lands to our homeless people, as a nation we are thrice compensated in the great wealth added to us as a nation in the development of these great commonwealths.

In these states made by our pioneer homesteaders we can grow more than enough grain to feed the nation. In 1860 there were only 2,100 miles of railroad west of the Mississippi and only 26½ miles west of the Missouri river. In 1869 the railroad mileage west of the Mississippi had reached 62,612 miles, and in 1896 79,705. In 1879 the population west of the Mississippi was 6,495,167, and in 1890 15,170,215, and an examination of the last presidential vote will show a population west of the Mississippi river of about 26,000,000.

Western states have 121 universities and colleges, and about 62,000 schools, with a school population of near $6,000,000. Can any country on record show a better record, all conditions considered? And this, sir, was made possible by the homestead law. I beg our friends of New England and the eastern states to come out to our great Trans-Mississippi exposition at Omaha and witness there the mighty progress of a great people, and you will agree with me that giving away public land to homeless people has been one of the greatest blessings that ever came to us as a nation.

Shall we abandon this beneficent policy now? Sir, on the lands involved in this bill are living today thousands of families, representing many thousand of our people.

They went upon these lands in good faith, but drouth in some instances has overtaken them; hail has sometimes destroyed their fields of grain, and therefore they can not pay. Is it the policy of the republican party or its leaders upon this floor to say to these people, "You must leave the land which by your energy has been made productive and the home you have made habitable and turn it over to one more able to pay?" Will you drive these men, many of whom are veterans of the late war, homeless into the world again that others may reap the reward of their labors?

Sir, as was ably said by a gentleman on this floor, these people derive no benefit from the protective tariff; no appropriations made by this congress affect them. Let us by our votes make them feel and know that although they live far out in a sod shanty on the plain, still they are not forgotten by the American congress.

CONGRESS TO DECIDE.

If It Declares War the President Will Give His Approval.

Washington, D. C., March 21.—Secretary Long has announced to his colleagues in the cabinet that as the result of the inquiries he has made, he confidently expects the report of the court of inquiry on the Maine disaster to reach Washington today.

If that report arrives early in the day a special meeting of the cabinet will be called to consider it. Otherwise it will be read by the president for submission to the regular Tuesday session of the cabinet, when it will be thoroughly discussed and its disposition decided upon. A member of the cabinet is authority for the statement that it is the present intention of the president to at once transmit the report to congress, and unless something should occur to change this plan it will be sent to the senate and house Tuesday afternoon. The president will not send any lengthy messages with it commenting upon its contents, but will accompany it with merely a note of transmittal. If congress believes that the facts as ascertained by the court of inquiry constitute sufficient ground for such action, a resolution communicating a formal declaration of war against Spain will be at once drafted by the committee on foreign affairs in both houses. Such a resolution requires only a majority vote for its adoption and the president, it can be stated on authority, is ready to attach his signature to it if the American people, through congress, think there is justification for war.

Whether the findings of the court of inquiry, as finally defined, will be so conclusive as to warrant such action, the president and his cabinet profess not to know. It was admitted, however, by several of the cabinet officers that there was a strong suspicion entertained by all of them that the report would not only show that the Mains and her brave crew were blown up by an external explosion, but that it would indicate the complicity of Spanish officers in the affair.

"If such should prove to be the case," said one member of the cabinet, "there could, of course, be only one result of laying such report before congress. There could be no talk of arbitration. It would be war. But if the report shows that it was an external explosion, and it does not definitely implicate Spain in its cause, the question would arise as to the responsibility of that government and whether it had shown due diligence in protecting the ship of a friendly nation while within its harbor. The matter has been discussed in cabinet meetings in all its phases, but no line of policy has been decided upon in this contingency."

The cabinet, after hearing the report of the secretary of the navy and the secretary of war on work for the national defense that has been accomplished since last Tuesday's meeting, took up the Cuban question.

On the highest authority it can be denied that there was any talk about the advisability of the United States assisting Spain in the establishment of an autonomous form of government in Cuba. That, in the language of a cabinet officer, is "an impossible idea. It would mean intervention, and the only intervention possible for us would be armed intervention, which would mean war."

Wire Trust Formed.

Chicago, Ill., March 21.—John Lambert of Joliet, president of the Consolidated Steel and Wire company, was Friday afternoon elected president of the new nail and wire combination.

The new company will start in active busines son April 3, 1898. It will have a producing capacity of from 700,000 to 800,000 tons of wire and rods, which will go into the various products now made by them, including wire nails, barked wire, woven wire fencing, plain, galvanized, bright, "market" and other varieties of wire, together with sundry other products.

The production mentioned is about 75 per cent of the total production of the United States. The component companies have a foreign trade of about $3,000,000 per annum at the present time.

STIRS THE MUDDY PUDDLE

LINCOLN'S CORRUPT MAYOR STILL IN POWER.

Testimony Showed That Policemen and Firemen Paid the Mayor For Their Jobs--In Spite of the Evidence Republicans Acquit Him.

Lincoln, Neb., March 21.—The trial of the impeachment of the republican mayor of the republican capital city of Nebraska, before a city council composed with one exception of republican members, is ended and the mayor is acquitted.

The vote showed eight for impeachment and five against, one member who ing been absent since the trial began. The solitary democrat on the council cast his vote for impeachment, but there was a lack of two votes to make the ten necessary to convict.

From the beginning of the trial the members have lined up just about that way and the final vote showed that the adherents of the mayor were standing by him as they had in the commencement. This result leaves Mayor Graham in possession of the office of mayor in spite of what his adherents have all along denominated an attempt of another faction of the republican party to get possession of the city government and the control of the republican party in Lancaster county.

IN FACE OF TESTIMONY.

The testimony of a dozen or so of witnesses for the prosecution was to the effect that policemen, firemen and other employes of the city had paid money to the mayor or to friends of his for him for the purpose of getting his influence to secure their appointment or retention in office. That he and the other members of the excise board had permitted the gambling houses to run under police protection and permitted saloons to keep open on Sunday and at other times contrary to law, and had permitted certain men to carry on without molestation and without payment of license fees, occupations that the law required should pay license fees to the city treasury, and that all of these things were done with the corrupt intent to profit therefrom, and that he did profit therefrom in money paid by those protected in unlawful business. The testimony of the defense was a denial of all the charges and a denial of the truth of the testimony of the prosecution's witnesses.

Graham, himself, and his chief of police, Parker, went on the stand and gave their testimony. The argument of the attorneys for Graham was that the council had no authority to impeach, and that the testimony of the prosecution was not sufficient to convict.

In a few minutes after the close of the arguments the votes had been taken on the separate charges, and Graham acquitted on every one.

MAKES MATTERS WORSE.

The acquittal of Graham is making the fight between the Hambletonians, or silk stocking crowd, as their enemies call them, or "reformers," as they call themselves, on one hand, and the "common herd," or Grahamites, on the other, more and more bitter. Both republican factions go into the primaries tomorrow with candidates, and no one believes that the battle will be given up by the side which is defeated there.

Never in the history of the city has the bitter feeling existed between the two factions of the republican party as has been engendered by this fight, which had its inception two years ago.

The republicans of the city practically control the party in the county, and prospective candidates for congress and state offices are taking sides with one or the other faction, as to him seems the best policy and most likely to insure being with the majority when the time comes to select candidates and delegates to the state and district conventions.

The anti-Graham republicans are declaring that they will push the indictments against him to conviction, and he and his attorneys and followers are pulling strings with which their hands are familiar to checkmate any of these efforts of their enemies.

To the citizen who looks on in a hope for better government for the city and county after the republican factions have each shown that the other is utterly unfit to be trusted, it is a most beautiful fight.

BARTLEY GETS A REHEARING

Supreme Court Sustains the Application of His Attorneys.

Lincoln, Neb., March 21.—The supreme court Thursday sustained the application of the attorneys of ex-State Treasurer J. S. Bartley for a rehearing in the case in which he was convicted of embezzlement of state money and sentenced to the state penitentiary. The order of the court will put the case on the calendar in the regular order to take its course. It is supposed the method of procedure will be the filing of new briefs by the attorneys for the state and for the defense, and oral argument to the court of the points involved. No opinion is filed by the court in passing on applications for rehearing, the usual practice being to take the paers filed by the attorney making the application, and after considering these the judges note on the back of the application "overruled" or "sustained," as the case may be. It is a matter among the members of the court in the consultation rooms. In the present case the simple notation, as in all others of the kind, on the papers, is all that there is to the record.

The supreme court also handed down a number of opinions and announced orders in others. The application for a rehearing of B. D. Mills, the Lincoln banker, who was convicted of having borrowed money wrongfully taken from the county treasury of Harlan county by the county treasurer, Whitney, was overruled. Mills was sentenced to five years in the penitentiary and the supreme court affirmed the judgment of the lower court. The application for a rehearing was his list chance for having the courts of the state interfere with his sentence.

The application of the bondsmen on the official bond of Barrett Scott, as county treasurer of Holt county, for a rehearing of the case in which they were held liable, was also overruled. Two other criminal cases, in which the prisoners asked the court to reconsider its judgment against them, had the same order entered. These were the cases of Carroll and Brown from York county, both convicted of burglary.

The court adjourned to meet on the first Tuesday in April.

Rt. Hon. Thomas Ball, lord chancellor of Ireland from 1875 to 1880, died at Dublin.

Quotation of Spanish 4s on the Madrid bourse was 76.55, against 75.30, the closing price of the day before.

VESUVIUS, DYNAMITER.

All About One of Uncle Sam's Unique Fighters.

In the preparations thus far made by by the Navy department in anticipation of war, nothing has been said regarding the peculiar value of the cruiser Vesuvius and her guns, and it does not appear that anything has been done toward putting these guns in a state of readiness.

Whatever may have been the opinions of naval officers regarding the use of the Vesuvius and her guns, and notwithstanding that they have objected to the use of the pneumatic guns in sea fights, owing to their high angle fire, there has never been any difference of opinion as to the great value of these weapons in bombarding and in countermining.

In the bombardment of Alexandria by the English fleet years ago it was demonstrated that the effect of high powered guns against forts and fortifications of all kinds was far less destructive than had been anticipated. Foreign naval officers who examined the forts after the bombardment were astonished, and it was said that the forts could have been put in a defensive condition in a very short time, and that the English fleet would have suffered severely had the forts and guns been properly manned by expert gunners.

Captain Goodrich of the United States navy made a careful examination of the Alexandria defenses after the bombardment, and declared that mortar fire would have been far more destructive in reducing the forts and in driving out the enemy.

High powered projectiles traveling in a flat trajectory may pass completely over and far beyond a fort before striking. Their mine effect is comparatively small, and the damage is not widespread. But large charges of high explosives landed inside a fort would do terrible execution. The guns of the Vesuvius can fire three different shells. The hundred pound charge of gun-cotton, equivalent to about four hundred pounds of powder, can be thrown two and one-half miles; the two hundred pound charge, equivalent to eight hundred pounds of powder, can be thrown a mile and a half, and the five hundred pound charge, equal in power to two thousand pounds of powder, can be thrown about a mile.

It has been repeatedly demonstrated that the gun is remarkably accurate and effective if the range is known. In a bombardment the range can easily be found, and in that case these shells could be landed inside a fort with perfect ease. Four out of five of them have, in practice, been landed within a rectangle of fifty feet. The effect of such shells exploding inside a fort can be easily imagined.

In countermining the gun has equally important uses. The shells may be thrown into a harbor and along a ship canal, and being fitted with a delayed action fuze, which allows the shell to sink some distance before exploding, the shock will tend to destroy the enemy's mines and all the electrical connections used to fire them.

Naval officers have admitted that a channel could be opened for a fleet in this manner at a point defended by mined which could not be removed or put out of action in any other manner.

The guns of the Vesuvius use guncotton.

All to Save One Cent.

Many persons go to great trouble, that often borders on the humorous, to save a cent. This phase of human nature is strongly emphasized at the South Ferry entrance every afternoon at 5 o'clock, when, under provision of law, the passenger toll is reduced from two cents to one cent, presumably for the benefit of wage earners, but actually for the benefit of all who enter the gates between five and eight o'clock.

The visible sign of this reduction is the turning of a card in the ticket office window, which changes it from "Fare, 2 cents" to "Fare, 1 cent." The turn of this card is watched with great interest every night by hundreds of eyes that belong to persons who want to save the one cent, which, though an insignificant amount, aggregates when saved twice each working day, to $6.25 a year—enough for a cheap suit of clothing.

It is not alone to those whom the saving of such an amount means much, however, who take advantage of the low rates, but all sorts and conditions of persons put themselves out to get the advantage of the 50 per cent reduction, often not only at the cost of time and convenience, but at an actual expense amounting to many times the money saved on their ferry ticket, and this is where the humor of the situation presents itself.

Each day, in the late afternoon rush at the ferry, are many persons who stop at the ferry entrance and wait for the mystic hour of five.

Among these daily waiters are men in broadcloth and silk hats, women in satins and seal skins, and many others who possess all the outward signs of prosperity, and yet they stand—often with bundles in their arms—in the street—dodging teams and foot passengers—waiting from five to twenty-five minutes to save a cent.

The nearest saloon receives receives some substantial benefit from this desire to save, for daily passengers, who are waiting for the card to turn, refresh themselves at its bar, and chat within its comfortable precincts. The daily saving of about $1.50 in ferry tickets gives the saloon four times that amount for stimulants and comforts furnished.

I have watched these gathering crowds carefully, and it is quite apparent that less than half of their numbers need look so carefully after a cent. Yet they stand in the street while boat after boat leaves on the two cent fare. They come with a rush, but when they see the one cent side of the card has not been turned, they retreat and impatiently wait. They stand like restless turkeys, first on one foot and then on the other, shifting bundles from right to left and from left to right, doing the hardest work for a cent they ever did in their lives. Then, when the card is turned and each one has won a copper, away they go with a rush, crowding the lobby, blockading the ticket offices, overwhelming the "choppers," filling the waiting room, jamming the slip entrances and jostling and crowding on to the boats. Such is human nature.

A village pastor in Germany made complaint of 129 fathers in his neighborhood for permitting their children under 10 years of age to dance at a festival, and the parents were fined 1 mark each. Then it was discovered that the children of the complaining pastor had danced also, and he had to walk up and pay his fine, too.

Ardent Lover—For ye, my bonnie lassie, I wad lay me doun and dee.

Practical Maid—Oh, you make me weary with your imitation Scotch dialect. What I want is a man who will get up and hustle for me.—Boston

All reports from Canada show the dominion to be more prosperous than for many years.