

# The Alliance Herald

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NO. 17

## KRAUSE ESTATE TO PAY \$75,000 TO PETER J. LONG

### SUPREME COURT AFFIRMS VERDICT OF TRIAL JURY

#### Syllabus Filed Last Wednesday Recites History of Well-Known Potash Damage Suit

According to a decision of the supreme court, the estate of John H. Krause will pay to Peter J. Long the sum of \$75,000, the amount of damages awarded by a jury in district court in Douglas county, where the case was tried. John H. Krause was killed in an accident several months ago. The opinion, which was written by Justice Rose, recites the version of the facts that was accepted by the jury, and upon which the verdict of the trial court was affirmed. The opinion, in part, follows:

"1. Where a purchaser, having secret knowledge of valuable mineral deposits in the waters of a private lake on land purchased from a vendor who considered the waters of no value, is sued by the latter for fraud resulting in the sale of the land, the materiality of the deception charged does not depend on its effect on the purchase price, but upon its influence on the mind of the vendor in entering into the contract of sale.

"2. A stranger, having secret knowledge of valuable mineral deposits in the waters of a private lake on land, may purchase the land without disclosing his superior knowledge, but a slight imposition on his part may terminate his privilege of silence, and, if he speaks falsely on matters relating to his secret knowledge and to the purpose of his purchase and thus deceives the owner into making a sale, he may be held liable for resulting damages.

"This is an action to recover damages in the sum of \$992,000 on account of the fraud of defendants in inducing plaintiffs to sell and transfer to them a 640-acre ranch in Sheridan county, for \$8,000. The difference between the damages and the sale price is based on the value of potash in the water of a private lake covering about 240 acres of the land. Plaintiffs allege that, without knowledge of the potash in the water, they regarded the lake as a detriment, and were induced by the fraud of defendants, who knew the facts, to sell and transfer to them the ranch, including the lake, without any consideration for the potash. Defendants denied the fraud charged and pleaded good faith in the negotiations and purchase. Upon a trial of the issues the jury rendered a verdict in favor of the plaintiffs for \$75,000. From a judgment thereon, defendants have appealed.

"The controlling question on appeal is the sufficiency of the evidence to sustain the verdict. Defendants contend that there is no evidence of actionable fraud; that plaintiffs fixed their own price, which was paid; that there was no concealment; that there was no misstatement of any material fact; that defendants did not know the contents of the water; that it had no commercial value; that plaintiffs and defendants had the same means of acquiring knowledge; and that clear and satisfactory evidence of the fraud charged is wanting. The evidence and the argument from the standpoint of defendants have not escaped attention, nor have precedents and divergent views of the laws been overlooked. The position of defendants would be unassailable, if the testimony in their behalf could be accepted on appeal without question; but the sufficiency of the evidence to sustain the verdict must be determined by the proofs tending to make a case in favor of plaintiffs, since the jury found the issues of fact in their favor. The circumstances surrounding the negotiations are material to the inquiry. Plaintiffs were husband and wife, and with two small children lived on the ranch in controversy. They were without practical knowledge of chemistry; they lived in a sparsely settled country and were engaged chiefly in stock-raising. Their nearest neighbor was more than two miles away. They were 12 miles from a railroad and 40 miles from the county seat. They had no telephone and no rural mail service. The snow was a foot deep and the weather was cold. Travel by automobile was suspended. Peter J. Long, plaintiff, had been on a saddle-horse looking after his stock. Chilled by the cold, he came home in the evening and found defendant, John H. Krause, there. The two men had before met, but were practically unacquainted, though their ranches were only 5 miles apart. There is believable testimony from which the following facts and conclusions may be inferred:

"Peter J. Long, plaintiff, managed three sections of contiguous land, but two of the sections were owned by his father, who resided in California. A small portion of the lake was on a section owned by the latter. Krause said he heard the land was for sale, and was told that plaintiffs had never so stated to any one. Krause said he wanted the land for grazing and other stock-raising purposes and asked Long to put a price on the three sections. After some reflection Long said he would take \$17,000. Krause

## THE WEATHER

Forecast for Alliance and vicinity: Fair tonight and probably colder east portion tonight.

insisted that was too much, owing to the amount of water, 240 acres of lake, and offered \$13,000. This was refused. An offer of \$15,000 followed and was likewise rejected. Krause finally said he would pay \$17,000. Long, in the event of a sale, wanted a lease permitting him to retain possession for a year to dispose of his live stock. This was agreeable to both. Long started to ask about a potash plant at Hoffland, about 14 miles away, and Krause intimated that the promoters were not doing very much there 'except having a little smoke.' Long accepted a check for \$300.00 and agreed to transfer to defendants, the title to the three sections for \$17,000 with the understanding that the latter would lease the lands to plaintiffs for a year for \$700.00. These negotiations occurred late in December, 1915, and the deeds and the lease were delivered February 3, 1916. The lease contains the provision that the defendants 'reserve the full rights to all the lakes on said lands for any purpose for which they may desire to use them, during the life of this lease, together with full rights to sub-let their rights to said lakes.' Plaintiffs had no knowledge of this reservation when the lease and the deeds were delivered. Of the purchase price, plaintiffs received \$5,000 for their section and Long's father received \$9,000 for his two sections. Defendants knew that the lake contained valuable deposits of potash and plaintiffs did not. Plaintiffs believed statements of John H. Krause and relied on them. Otherwise the sale for \$17,000 would not have been made. Within a short time defendants sold the lands in the three sections for \$15,000 but retained the lake, which is now connected by a pipe line with a potash plant in Antioch, where there is a railroad station. Defendants have an interest in the plant men-

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## SUGGESTED LEGISLATION MEETS WITH APPROVAL

County Attorney Lee Basye has written the attorney general of Nebraska and the county attorney's association, recommending that the present legislature pass a bill permitting the county attorney in any county to issue a subpoena for any witness or person whom he believes has knowledge of any matter that he may be investigating, requiring such person to appear at his office and give testimony under oath.

New York state has such a law, and it has been found to be of great assistance to the prosecuting attorneys in handling state cases. At present, the county attorney is handicapped in investigating crimes because he lacks this authority. Mr. Basye, has, during the past month, had plenty of investigating to do, and has come to a realization that it is extremely difficult for a prosecuting attorney to get at the truth unless he has sufficient power to compel witnesses to appear and give testimony.

"When the county attorney's attention is brought to any alleged violation of the law, he is supposed to investigate the matter, but he has to depend upon the sheriff, constable or police officers to make the investigation," Mr. Basye says. "If the witness does not care to give out any information, he does not need to do so, and it is with much difficulty that the county attorney is able to secure evidence before the trial. If the witness could be subpoenaed to appear at the county attorney's office and give testimony under oath, then he will be required to testify whether he desires to do so or not.

"Each succeeding session of the legislature has added new duties to the office of the county attorney, but has failed to give him the necessary working tools to perform some of these duties. I believe that the legislature should also pass a law providing that the county attorney might be employed with a certain fund to be used in employing detectives."

Mr. Basye has received letters from the attorney general and others pledging their support and the support of the county attorney's association for such legislation.

## HOME BREW DRINKING ALMOST CAUSED DEATH

William Kauffman, nineteen years of age, returned from the hospital to his rooms over a local pool hall this morning, following a three-day stay in St. Joseph's hospital, where he was taken Friday afternoon. Physicians said that his illness was due to indulgence in home brew. He went to his rooms at noon Friday, and was taken with convulsions a short time afterward. For a time it was thought he would not recover, but prompt remedial measures brought him out of it.

Kauffman, it is said, admitted at the hospital that he had been drinking and said that he had purchased the home brew from a local bootlegger, whose name he refused to give.

Elizabeth Ann Walker, the small daughter of George Walker, has been quite ill the past week, but is reported on the road to recovery.

## TOM BEAL DIES OF INJURIES IN AUTO ACCIDENT

### PASSED AWAY AT HOME IN ALLIANCE SUNDAY NIGHT

#### Death Caused by Blood Clot on Brain—Was Occupant of Car Driven by Oscar O'Bannon

The second death to occur as a result of last Wednesday night's automobile collision, when a heavy Stearns-Knight, driven by Oscar O'Bannon, crashed into the Chevrolet driven by Ray Aspen, came at 10 o'clock Sunday night, when Thomas J. Beal, well known Alliance man, died after four days of suffering at his home, 910 Toluca. Beal was seated in the rear seat during the ill-fated drive, and when the heavy car turned over twice, suffered serious injuries about the head and eyes. Oscar O'Bannon was almost instantly killed.

Beal had been conscious since the accident, and physicians believed he had a chance for recovery. At first it was thought that he might lose his sight, but later these fears were allayed, and until Sunday afternoon it was thought that he would recover. A blood clot on the brain is given as the cause of death. His nose was broken and his skull was thought to have been fractured.

Thomas J. Beal is survived by his wife, two daughters, Mary, aged seven, and Betty, aged five, and a six-month-old son, Warren. Two brothers, Ralph and Hugh, reside in Alliance. The latter was in partnership with Tom in conducting a truck farm south of Alliance. The deceased came to Alliance in 1906 from Red Cloud, Neb.

Funeral services will be held from the Catholic church in Alliance at 10 a. m. Wednesday, with Father Manning in charge.

## ALLIANCE MEN HONORED AT STATE FIREMEN'S CONVENTION

The Alliance delegates to the state volunteer firemen's convention, which met at York last week, occupied a prominent part in the deliberations, several of them receiving places on important committees. Following were the officers elected at last Thursday's session:

President, C. R. Frasier, Gothenburg; first vice-president, John Martin, Fremont; second vice-president, O. W. Rhoads, Scottsbluff; secretary, H. A. Webber, Kearney; treasurer, F. B. Tobin, Sidney; chairman, Rev. Walter C. Rundin, Mitchell.

Board of control: Jacob Goehring, Seward, chairman; Clarence Dawley, Auburn; A. W. Sprague, Crawford; Bert J. Galley, Columbus; Earl Neelley, Gering.

Auditing committee: Col. Ernest Hahn, Fremont; E. S. Carson, Kearney; P. E. Romig, Alliance. Committee on constitution and rules: Bert J. Galley, Columbus; H. A. Graft, Seward; H. L. Boyes, Hebron. Legislative committee: J. C. Cleland, Fremont; L. W. Hague, Minden; J. W. Guthrie, Alliance. Committee on officers' reports: J. R. Baskins, North Platte; C. H. Masters, Auburn; H. E. Ayers, Mitchell. Press and publicity committee: Lloyd C. Thomas, Alliance; Harry Hauser, Alliance; R. D. Holmes, Gothenburg. Memorial committee: M. J. Sanders, Norfolk; W. C. Rundin, Mitchell; Lee B. Carey, York. Attorney, L. W. Hague, Minden.

Earl Mallory left Friday on a business trip to Omaha.

## STOCKMEN HOLD A MEETING WITH STATE OFFICERS

### DISCUSS NECESSARY STEPS FOR CONTROL OF SCABIES

#### General Inspection of All Herds in Western Nebraska to Be Made by March 15

Ten members of the executive committee of the Nebraska live stock growers' association and several state and federal bureau officials met at the Alliance hotel Monday afternoon. There were present at the conference Dr. W. T. Spencer of Lincoln, state veterinarian; Leo Stuhr, secretary of the state department of agriculture; Dr. Hayes of the federal bureau of animal husbandry, and officials of the state bureau of animal husbandry.

The conference was held for the purpose of taking the necessary steps for the control of scabies, or itch, which seems to be quite prevalent in the herds of western Nebraska. Owing to the large numbers of cattle that were shipped here last winter on account of shortage of feed in adjoining states the itch or mange got a new start and this step was taken by the federal and state authorities to get the situation under control.

It was decided that a general inspection of all herds of western Nebraska be made between now and March 15, and if conditions are sufficient to warrant it, a general quarantine will be placed on the counties of western Nebraska.

The work of inspection is to be commenced at once, and it is expected that it will be completed by March 15. The bureau will then be able to decide what the next step will be. If the disease is not bad enough to render necessary the general quarantine, the herds affected will be put under quarantine and compelled to be dipped under government supervision.

The executive committee of the Nebraska stock growers' association held a meeting following the conference, at which a resolution was adopted advocating a change in the brand inspection law. The matter will be looked after by Senator Good of this district. Steps were taken to hold a conference between a committee appointed by the association and a like committee appointed by the South Omaha exchange and the secretary of agriculture, looking to a reduction in commission charges of South Omaha. A larger percentage of the executive committee would have been present at this meeting had it not been for the storm, which prevented many from getting here.

## DEAN DIXON NEW HEAD OF AMERICAN LEGION

Dean J. J. Dixon was selected by the members of Alliance post No. 7, American Legion, as past commander at a meeting held at the city hall last Friday evening. E. R. Harris was elected to the vacancy on the executive committee caused by the resignation of D. C. Bradbury, who resigned to accept the position of post adjutant. This gives Alliance post a full corps of officers again, and plans are being made for a number of legion activities, first of which is a dinner for members and other ex-soldiers at the Alliance hotel Fern Garden at 6:30 p. m., Thursday, January 27.

Bardell Marks, who has been sick for the past week, is again able to be out.

## ARTHUR COUNTY SHERIFF CAPTURES WIFE DESERTER

Sheriff Charles Berryman of Arthur, Neb., spent several hours in Alliance Monday, and while here availed himself of the hospitality of Sheriff Jim Miller. Sheriff Berryman had in tow one Thomas Markensen, an undersized man thirty years of age, whom he was taking back to Arthur county to answer to a charge of wife and child desertion, although the complaint might have been considerably stronger.

According to the story told by Berryman, his prisoner, on July 5 last, left Arthur county, taking with him Estella Short, nineteen years of age, the sister of his wife. Two months ago the girl returned home, and has since given birth to a baby daughter. She refused to tell the whereabouts of her sister's husband, but the family, by watching the mail she received, discovered the address.

Sheriff Berryman said his prisoner, who had been working near Living Spring, Mont., under the name of Thomas Nelson, came quietly and did not insist on requisition papers. The sheriff took from him a number of letters from the girl, who was quite infatuated. These letters bore the information that the prisoner's wife was not particularly concerned with having him arrested, as she had filed suit for divorce and was already engaged to be married again.

C. H. Hughes and family of Hemingford, were in Alliance Sunday.

County Judge Tash appeared at his office this morning after a four-day siege with "international complications." He was suffering from a combination of Spanish influenza, French grippe, German measles and Patagonian phthisis. His strong constitution enabled him to withstand the onslaught, although he has been confined to his bed. Several cases in county court were postponed during his illness, and it will probably be two or three days before he feels sufficiently full of pep to tackle them.

## MUCH INTEREST MANIFEST IN ALLIANCE C. OF C. PARTY

It's none too early to begin to plan things so that you'll have next Friday evening open. On that evening, at the Lowry & Henry roof garden, comes the first of the "open house" meetings given by the Alliance chapter of commerce, and the public is invited. A special invitation has been extended to farmers, ranchers and stock raisers, and it is hoped that the roads will be in shape for travel by next Friday evening.

The Friday evening party will be different than anything heretofore attempted by the chamber of commerce. There won't be a single speech during the evening. Instead there'll be some real entertainment, consisting of music by the girls' glee club, under the direction of Mrs. J. S. Rhein; a mandolin orchestra, and dancing to music by Harding's orchestra.

Two other features of the evening will be a half hour or so of community singing led by J. P. Mann, and a luncheon of coffee and doughnuts. The doughnuts will be cooked about ten minutes before they are needed and brought over to the roof garden just in time to be eaten hot.

For all this entertainment there will be no charge. Everything will be as free as the air you breathe or the water you drink. Those who do not dance will find card tables handy. It will be some occasion, and if it goes as well as the directors expect, it will be made a regular feature.

## AMERICAN LEGION BANQUET AT FERN GARDEN THURSDAY

Members of Alliance post No. 7, American Legion, will banquet at the Fern Garden, the new banquet and dance hall of the Alliance hotel, next Thursday evening. Cards have been mailed to the members and it is expected that a large majority of them will be present.

This will be a regular business meeting, the first since the newly elected commander, Dean J. J. Dixon, accepted the office. Mr. Dixon hopes to live up to the members of Alliance post, and plans to hold regularly monthly business meetings and banquets combined. Attendance will be limited to members of the legion and ex-soldiers, and all members of the post have been urged to bring along a buddy.

Alliance post has been unfortunate in the election of officers who removed from the city shortly after they assumed office, with the result that the post has not had a fair opportunity to accomplish much. The play committee has received copies of several A. E. F. sketches and plays, and a home talent theatrical production will come up for discussion among other things. The new commander has a number of plans for injecting pep into the meeting, and one of J. M. Miller's feeds ought to be an inducement for them to turn out.

The Alliance public schools as well as the St. Agnes academy had no school Monday afternoon on account of the storm.

Dutch Maunier broke his arm last Thursday while wrestling at the club.

## SAYS DETECTIVES MORE EFFECTIVE THAN GRAND JURY

### BUT LATTER ABOUT THE ONLY THING LEFT

#### County Attorney Basye Discusses Law Enforcement at Chamber of Commerce Dinner

At the chamber of commerce luncheon at the club rooms Monday noon, the fifty or more members present discussed several matters of importance to the city and county. The topic of chief importance was the petition asking District Judge Westover to call a grand jury, and County Attorney Basye, who was present, was asked to tell of the procedure and give his idea of the probable results.

Mr. Basye gave it as his opinion that that while a grand jury in Box Butte county was probably the best course, under present conditions to effect a clean-up, he doubted very much whether it were the most economical or effective way of improving the moral tone of a community. He favored the hiring of two or three detectives, and told of former occasions when this method had been found to give very satisfactory results.

A detective, he said, could go out and actually get evidence that could be introduced into court. A grand jury session can call in men and force them to testify, but in court a man cannot be compelled to furnish evidence to convict himself. He said the county commissioners had, in times past, failed to look with favor on spending money to hire detectives.

Mr. Basye thought it too late to hire a corps of detectives, for the present cleanup campaign, especially since the matter had been openly discussed. "If you get detectives," he said, "not more than two men in the county ought to know about it. They should work independently of the other law enforcement officers, and never be seen with them. The minute they are spotted, their value is lost."

## City Manager Question

J. S. Rhein, who presided in the absence of President Glen Miller brought up the question of the city manager plan. Two or three people present declared that there was no question but that the election was legal. It was pointed out also that there were some opponents of the plan who had received legal opinion to the effect that the election would be thrown out, and that there was a prospect that the matter would be taken to the courts. At present, there are two methods which can be followed to get a legal decision. If the mayor and city clerk call the primary election, it will take place unless the objectors ask for an injunction, which will give the courts an opportunity to pass upon the legality. If, on the other hand, the mayor and clerk fail to call the primary election, mandamus proceedings can be started to compel them to do so. Unless either of these things happen, the election will be called and the matter of legality allowed to pass unquestioned. This, it was declared, might lead to considerable difficulties in the future. The courts will not decide moot questions, and do not look with favor on friendly suits, so there is nothing to be done save wait and see how things turn out. County Attorney Basye advised the friends of the plan to have their mandamus papers ready in the event it is decided not to call the primary election.

Dr. W. T. Spencer, state veterinarian; Leo Stuhr, state secretary of agriculture; Dr. Hays of the federal bureau of animal husbandry and other state officials, present for the meeting with the livestock men, were present, and the former was called upon for remarks.

## INSANE HOBO IS HELD AT THE COUNTY JAIL

Louie Maas, sixty-six years of age, is being held at the county jail and it is probable that he will be given a hearing before the insanity commission. He drifted into Alliance with the snowstorm, and was found in the railroad yards by a kind-hearted switchman, who gave him his breakfast. Sheriff Miller later found him at a local pool hall and took him in charge for investigation. At the jail he showed signs of insanity, although of a harmless variety.

Maas says that at one time he owned a homestead near Mead, S. D., but that his neighbors stole all his belongings and forced him to leave the country. Since that time he has been "walkin' the ties" under a sentence imposed by a woman whom he calls "Anna." "She laid the curse on me when I was a baby, before I could walk or talk," he said. "I'm getting to be an old man now, and I'm mighty tired of walking the ties, but she says I've got to go on with it." He has, he says, served two hitches in the army, being stationed at Washington barracks, where he was an artilleryman.

W. H. Butler, of Sheridan, Wyo., was being visiting his mother, Mrs. Lizzie Butler of this city.

## GOOD BUSINESS



I've noticed now Seattle claims it's got poor Reno beat; in all the husband shuffling games, it's much more swift and fleet. They grant divorces seven a day, while Reno grants but three, they say; they free fond flappers, flip and gay, and it's done nice and neat. Now, after every wedded battle, the wife takes a train, and journeys out to old Seattle to cut the bonds in twain. The severing of any match is done with neatness and dispatch, and hubby's free as any batch to start in raising Cain. It's getting now to be the style to travel way out west and settle there till time to file the papers on the pest. Wives shake their happy, winsome smile for just the shortest little while to show the judge they're lacking guile, so he will do his best to make the alimony big; to make poor hubby dance a jig; to make him scratch and scrape and dig and beat upon his breast.

Seattle isn't proud at all, the papers all declare; divorce figures quite appal; reformers simply stare. Why should they want to cut 'em down when it brings customers to town like Mrs. Briggs—Briggs—Bronson—Brown to buy their goods and ware? Besides, divorces aren't as bad as many people say. The ones divorced are never sad; they marry right away, and so where two were wed before, divorcing serves to wed two more, so why should they raise such a roar and get so awful mad?

