

# THE NEWS-HERALD.

WICE A WEEK

SEE PLATTSMOUTH SUCCEED

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HERALD, Established April 16, 1864

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PLATTSMOUTH, NEBRASKA, MONDAY, MARCH 21, 1910

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## CLARENCE VS. STATE

Opinion of Supreme Court in Murder Case Has been Under Consideration.

OPINION DELIVERED BY JUSTICE REESE

Report as Given by State Journal in that Paper This Morning Interesting Reading.

The following is the syllabus just issued by the supreme court wherein the reasons are stated for its reversion in the well known Cass County murder case.

Clarence vs. State, Error, Cass. Reversed and remanded. Reese C. J.

1. Upon a trial of accused under a charge of murder, certain witnesses testified that they were in a corn crib shoveling corn into a sheller and that at the time of the tragedy they were standing upon corn in a crib not yet removed, and, looking through an opening between the boards constituting the wall of the crib witnessed the affair which resulted in the death of the deceased, their testimony being favorable to the defendant and his theory of self defense. At the time of the shooting of the deceased there was a team and wagon and the corn sheller near the crib which were thereafter removed and the boards, between which the witnesses testified they saw the transaction, were knocked, or taken off. Over four months thereafter the state procured persons to go to the place in question who, over the objection of the accused, testified that they had caused a team and wagon to be placed where they were informed the team and wagon had stood and they procured boards to be placed where the boards were said to have formerly been, and that by standing on the floor of the granary they could not see the spot where it was said the tragedy occurred. The admission of the testimony, without proof that the conditions as existing at the time of the affray had been restored, held erroneous.

2. "When, in a trial for murder, the defendant procures evidence tending to justify the killing on the ground of self-defense, an instruction which limits the right of self-defense to one in the lawful pursuit of his business is erroneous." Hans vs. State 72 Nevb. 288 100 N. W. 419.

3. In an instruction given to the jury upon a trial of one charged with the crime of murder the law of murder in the first and second degrees and manslaughter was fully explained. Upon the request of the state, the court, later, instructed the jury that "a malicious killing, although done upon a sudden quarrel, and in the heat of passion, is, at least, murder in the second degree." Held, that in view

of the instructions already given and of the use of words "at least," the instruction was prejudicial error.

4. The jury are the sole judges of what is shown in the testimony of the witnesses. An instruction which informs the jury that certain facts are shown by a witness, naming him, and quoting his testimony, is erroneous as usurping the function of the jury. It is for them to say whether the testimony of the witness establishes the fact detailed.

5. It is error to submit the question of the materiality of evidence to the jury before whom the case is being tried.

In Justice Court.  
(From Saturday's Daily)

The old case of the Frank Morgan estate vs. Fred Murphy, for the securing of \$69 owed the plaintiff for clothes purchased at the Morgan store, was brought up yesterday in the justice's court, and the matter now rests in the hands of the judge who will make his decision Monday morning. The case was first filed in the court November 8, 1909 since which time Mr. Morgan died, the case being carried along by his wife. The matter is so ancient that it would have been outlawed from the courts long ago had the defendant not been out of the country for some time. Murphy is a clerk in the United States War Department and for some time was stationed in Cuba where the summons of this court could not reach him.

The case was tried last December and a judgement secured against Murphy but the man did not possess enough personal property to pay for the amount of the claim.

According to the laws of Nebraska in a case of this kind, the property of the man's wife stands liable, if the man's property is not of sufficient value, and she is now being sued by the plaintiff's for the amount.

LINE THROUGH CASS COUNTY THE PLACE

About Ready to Ask for Bids on Improvements to be Made Which Will be Extensive

The Missouri Pacific is about ready to ask bidders to make figures on some work of considerable magnitude in the neighborhood of Nebraska City and Union. It is understood that one cutoff is to be built that will involve the moving of a large amount of dirt and that a number of smaller grading contracts are a part of the general scheme for line improvement in that vicinity. The company is planning to rebuild all of its Nebraska system, and this line straightening and grade elimination is a part of the rebuilding scheme. After this is completed, the new rails are in place and the bridges strengthened it is understood the Omaha and Lincoln lines are to be ballasted. Ballasting it is understood will follow next year.—State Journal.

## BELOVED OLD PIONEER PASSES TO HIS REWARD

Conrad Schlater, One of Cass County's Oldest Citizens Passes Away at His Home.

VERY PROMINENT FIGURE IN DEVELOPMENT OF THE COUNTY

Seventy-Eight Years of Age at Time of Death Most of Which Were Spent in Cass County.



MR. AND MRS. CONRAD SCHLATER.

(From Friday's Daily)

Conrad Schlater, the beloved old Cass county settler, answered the summons of the grim reaper and passed away at an early hour this morning at his Plattsmouth home. Mr. Schlater has been of ill health for several years and since last November had been confined to his house and part of the time to his bed. Feeling much better with the approach of the bright sunny days of the last two weeks, he ventured forth a number of times to visit among his old friends in town. Contracting a severe cold which settled in the form of grippe, he was forced to his bed, growing steadily worse until his death occurred today about 7 a. m.

The pleasant old gentleman always

bore a prominent place in the highly respected circles of the city and his death will cause much grief to his many friends of Cass county and the state.

Mr. Schlater was born in Germany December 25, 1832, going through a German school at Waurestein and coming to this country when 17 years of age, locating in Indiana. In 1856 he was married to an Indiana girl, Mary J. Donelan and was the father of five children, three of whom are still living, residents of the state of Nebraska. He came west in the year 1859 and about that time made his first visit to the village of Plattsmouth. His experiences in those early days were as thrilling as they were interesting, and many of his stories have been published in the papers of the state and in the News-Herald of years ago. He travelled the trail from this vicinity to Pike's Peak as freighter a number of times, later following the trade of painter.

Giving up this line of work in 1870, he located on a farm a few miles south east of Louisville. He worked this place for about fourteen years, when he built a nice residence in Plattsmouth and moved into the city where he has lived ever since.

In the later part of his life, he became very talented in music, and it will be remembered by some of the old residents that he played the first organ that was ever placed in the town, many years ago in the Methodist church.

He is survived by his wife and three married children, two daughters and one son. They are Mrs. Joseph Tighe, of Havelock, Mrs. E. Fitzgerald of this city and County Treasurer Frank E. Schlater.

The funeral services will be held Monday at St. John's Catholic church, being conducted by the local priest, Rev. Shine.

Mrs. Root, wife of the supreme court judge of Lincoln, is in town for a few days visit with Mrs. J. N. Wise.

Todays Legal Doings.

(From Saturday's Daily)

A petition for divorce was filed today at the office of the district clerk by Mrs. Nellie Brittain on the grounds of cruelty, desertion and drunkenness on the part of her husband Walter Brittain. Brittain is an employee of the Burlington Railway in this city, and the father of two young children. The case will be brought up at the next session of district court in about six weeks.

A suit to quiet title on a number of farm tracts south of the city was filed at the district court this morning by Charles E. Schwab. The land in question comprises about 300 acres of the Rock Bluff precinct.

A hearing for the appointment of administrator in the estate of Mary J. Guthman will be held in the county court late this afternoon.

A petition for probate in the estate of Robert Storey, dispensing with the regular administration, wherein the creditors of the estate are barred, was presented for filing in the county court today. A petition of similar nature in the estate of William J. Storey was also presented.

Social at Johnson's.

The Christian Endeavor society of the Christian church held an enjoyable social at the home of Miss Ruth Johnson last evening. It was one of the many St. Patrick's entertainments of the week, being originally scheduled for Thursday night, but on account of other parties, it was postponed for a day. The time was pleasantly whiled away with Irish games and musical numbers by Misses Ruth and Mildred Johnson. About forty of the members were present, and, towards the close of the affair, light refreshments were served tinted with the Irish and not the Paris article of green.

Pretty Window Display.

One of the prettiest window displays in the city is to be seen at the department store of Dovey on Main street. It is an Easter decoration prepared by F. S. Ramsey with the assistance of Miss Herman, representing a woman beautifully gowned in the royal purple with a background of a cross, scattered with Easter lilies. The window presents a very dainty appearance with its proverbial trimmings of white and purple mingled here and there with the large artificial lilies.

## WILL TAKE NO PART

President Taft Has Nothing to Do With the Scrap Now Going On.

RIGHT LEGISLATION ALL HE WILL ASK

Very Much Interested in Proceedings of Yesterday, But Not in the Fight.

BUFFALO, March 19—President arrived here last evening and was very much interested in the news from Washington as shown by the papers, but when asked about the matter he said that while he was very much interested in the doing of the house it had nothing to do with him. He was mainly interested in seeing good laws passed and pledges redeemed.

Christian Endeavor Social.

A pie and coffee social was held Thursday night by the Christian Endeavor Society of the Christian church at the residence of O. C. Hudson. A small admission fee was charged and all those who didn't appear green enough were fined for the negligence. This fine, was not like the police court fines, for it was only remitted after the person had sung some Irish song, or told an Irish joke. The old Blarney stone was one of the prominent features of the evening and the guests expressed their affection for the old rock by going through the ceremony of kissing it.

Numerous games were indulged in and the following interesting programme was given:  
Selection.....American Orchestra  
Instrumental duet.....  
.....Misses Mildred and Amy Cook.  
Vocal solo.....Mr. J. W. Livingston.  
Reading.....Miss Josephine Hall.  
Selection.....American Orchestra

## Our Boys' Department

Is more than full this spring of new things for the Boys.

For the small boy from 2 to 7 we are showing the Russian Blouse, Sailor Suits and Norfolk's.

For the boy from 7 to 17 we show the double breasted 2 and 3 button sack coat, with center or side vents. Pants are all made bloomer style. All buttons are riveted, all seams taped; made to stand the wear and tear.

We'd like to show you.

Very Good Ones

\$3 to \$4.50

Xtragoood, all-wool, pants, lined \$5 to \$8.50

XTRAGOOD

The Home of Hart Schaffner & Marx clothes

Manhattan Shirts

Stetson Hats

# Falter & Thierolf

Value Giving Clothiers.



## Do You Want an Individual SUIT FOR EASTER?

One that is all your own--an exclusive pattern--no one else in town to have one like it.

You can get it here in our Quality Line.

Just call for one of our special single suits. Prices run \$20 to \$35 but they are beautiful in design and workmanship. We've a strong line of blue serges, so popular this year, with all those little "differences" in model and style that you appreciate.

C. E. WESCOTT'S SONS  
THE HOME OF SATISFACTION

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