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CASE CONTINUED UNTIL MARCH FIRST

Smallpox Quarantine Makes the Action Necessary

From Tuesday's Daily.

Further action in the trial of Fred Ossenkop for the murder of Charles Byrnes at Eagle, was postponed until March first next by the ruling of Judge Travis in district court this morning, when he ruled that he would not grant the defendant a continuance in the case but would postpone the case until the quarantine at the homes of Ed and William Ossenkop near Walton could be raised.

A great many of the witnesses for the defense and several for the state came in last evening and this morning in anticipation of the court holding the case to trial today, most of them having received notice from their several attorneys that their presence was highly desirable at that time. The attendance upon the hearing this morning was very light, the high wind, extreme cold and snow all combined to keep spectators at their homes.

It was 9:15 when Judge Travis ascended the bench and stated to the counsel that he would hear anything that they had to present upon the motion to continue the case. Mr. Gering who represents the defendant and who presented the motion for a continuance, stated that he filed the motion for a continuance and the affidavits in support thereof and that was all he had to present in the matter. Mr. Gering's affidavit set forth in detail the facts which he expected to prove by the witnesses Ed. and Fred Ossenkop, the latter a cousin of the defendant. The affidavits were not read in court.

County Attorney Ramsey stated that the physician (Dr. Hay) who had been selected by the court and counsel to investigate the case, had reported that a very light case of smallpox existed at the homes of Ed. and William Ossenkop, the latter the father of the witness Fred Ossenkop mentioned above, and that in his judgment the quarantine against those witnesses could not be raised within ten days or two weeks. Mr. Ramsey was willing to consent to a postponement of the trial for such a time as might be necessary until the quarantine could be lifted or until March first next, but he would resist and continuance of the case at this time. The county attorney was willing to have the jury released from custody and sent to their homes or he was willing to leave them in the custody of the sheriff just as the court thought best. He certainly would not consent to a continuance but he would to a postponement until such a time as the quarantine might be lifted.

Mr. Gering spoke of the idea of a postponement as extraordinary and singular. He strongly resisted any postponement of the case. He wanted the case either tried or continued. He referred to the postponements as an unique and singular proceeding, and he very much opposed it. He spoke of keeping the jury together for so long a period and did not see the necessity for such action. In reply to a question from Judge Travis as to whether the defendant would consent to the discharge of the jury in the case of a continuance, Mr. Gering stated that he did not consider such action necessary as he did not understand the present case as constituting a case of former jeopardy within the meaning of the law. Judge Travis stated that he was very much of the opinion that it would constitute a case of former jeopardy and under the circumstances he could not consider granting a continuance in the case without the defendant waiving his rights and permitting the jury to be discharged. He would postpone the case as the defendant was entitled to have his witnesses on the stand and examined before the jury.

Mr. Gering made strong effort to prevent a postponement of the case and finally stated that, on behalf of his client, he would waive the plea of former jeopardy and take a continuance if the court would grant one on those conditions.

County Attorney Ramsey fought any continuance even if the plea of former jeopardy was waived. He had gone far enough in consenting

to a postponement and he opposed further action.

After hearing the counsel, Judge Travis entered an order overruling the motion for a continuance and giving the defendant his exception, and then entered an order postponing the trial of the case to March 1st, next, at 9 o'clock a. m.

Mr. Gering asked that the record show his motion for a continuance was overruled and his exception. He also asked that the defendant be shown as objecting to the jury being allowed to separate. He stated he was there to protect his client's rights and this action was necessary.

The court stated the matter of confining the jury or permitting it to separate was the next thing for consideration.

Mr. Gering spoke of the entire proceedings as singular and unusual. He referred to the case as working a hardship on the jury and then proceeded to sneer at the "youthful county attorney" saddling heavy expenses on the county. He stated that the retention of the jury meant an expense of \$60 per day or a total of about \$1,000 for this feature alone if the jury were to be confined until March 1st. He stated that he was willing to waive former jeopardy and was sure his client would not take advantage of such a plea.

Judge Travis held the record must show such a waiver.

Mr. Gering returned to the attack and spoke of the need of the defendant for the four witnesses wanted. He wanted them on the stand. He referred to his affidavits filed in support of the motion for a continuance and the existence of small pox as shown by the report of the state's own doctor. He then attacked the county attorney again and accused him of saddling a heavy expense upon the taxpayers of the county all of which chargeable to his caprice.

County Attorney Ramsey then took the floor and took exception to Mr. Gering's remarks. He was willing to allow the jury to separate. He then started in on Mr. Gering and stated that he fully understood the latter's purpose and could show it but did not care to.

Judge Travis interrupted to say that the court was not interested in these matters but the question was what to do with the jury. To go on with the case meant error unless the witnesses wanted were present, and the court would be subject to censure if he proceeded in that manner. The cost and expenses incident to delays and continuances were secondary considerations. It might be prejudicial to the defendant to even postpone the case. He referred to County Attorney Ramsey and admonished him not to allow matters such as had just cropped up to annoy him. The problem was what to do with the jury? He asked Mr. Ramsey as to his suggestions about the jury.

County Attorney Ramsey then stated that he had every confidence in the jury and that he thought that under proper precautions and admonitions they could be allowed to separate.

The jury was then brought in and Judge Travis proceeded to explain the situation to them calling their attention to the enforced absence of witnesses material for the defense, and that the case must be delayed and calling their attention to the gravity of the case. Unthinking people might attempt to discuss the case with them. All such were to be stopped and not listened to. Neither was the jury to come to any conclusion upon the evidence adduced. The jury had been kept together until now but under the circumstances it was thought best to allow them to separate. The jury was to report for duty on March 1 at 9 o'clock p. m. He referred to the proceedings had as very unusual and as never having happened before in the experience of either the court or counsel. With the admonition as to their duty, the jury was then released from custody of the sheriff.

This ends the taking of testimony until March 1 but as to the filing of other papers in the case, such may be filed.

BURGULAR PAYS VISIT

Enters Home of J. C. Petersen and
Secure Small Sums of Money

Plattsmouth last evening received another visitation from burglars this time Mr. and Mrs. J. C. Petersen being the victims. As is well known Mr. and Mrs. Petersen occupy the top floor of the two story building on Main street between Third and Fourth streets, the lower room of which is occupied by M. L. Johnson the butcher. Last evening Mr. and Mrs. Petersen attended the Episcopal song service as is their wont locking the front door to their rooms but failing to lock the door of the dining room which leads out onto a porch running the width of the building at the second floor. This has never been considered necessary by them as the porch has no stairway leading to it and is a long distance from the ground.

There is a brick wall some ten or twelve feet high along the lot line between the property of Herman Spies, the cigar manufacturer and Mr. Petersen's property. When Mr. and Mrs. Petersen returned from church, Mrs. Petersen went to her purse intending to get a program of an entertainment she had been attending at Lincoln out to show Mr. Petersen when she made the discovery that the purse was gone. It contained \$9.65 in money. This aroused their curiosity and they commenced to look around discovering that a sum of money amounting to \$11.60 belonging to a lodge of which Mr. Petersen is treasurer had also disappeared along with a personal check amounting to \$6.35. It was then evident to them that someone had paid them a visit during their absence and gotten away with what they evidently know was there. The property was in a drawer. In another place the sum of \$45 remained untouched while Mr. Petersen's gold watch and some valuables of Mrs. Petersen in a jewel case lying in plain sight was passed by, by the visitors.

Entrance to the place had evidently been obtained by climbing to the porch and entering through the dining room door. It is the theory of Mr. Petersen that two parties were concerned in the robbery and that one stood upon the brick wall mentioned above and boosted the other to the porch floor. He does not believe the work was that of professionals as there were few people who could know where the money was and who would have passed by everything which they could not readily dispose of. The burglary happened between the hours of 7:30 and 9 p. m. or during the time the people were at church.

The matter was reported to the authorities who are making every possible effort to locate the criminals.

The lodge money which was lost will have to be replaced by Mr. Petersen who therefore stands to lose the amount himself.

Given Twenty Days' Grace.

Charles Carraher, mention of whose riotous conduct in seeking to put Gruber's pool hall at Union out of business, was made in Saturday's paper was brought to the city last evening by Sheriff Quinton who went to Nebraska City for that purpose yesterday morning. Carraher had gotten wind of the impending warrant and had moved to Nebraska City on Saturday so that Deputy Manspeaker had his trip to Union in vain on that day. Sheriff Quinton notified the Nebraska City authorities of his warrant and the sheriff at that point took Carraher into custody, holding him until sheriff Quinton could get down there after him. Carraher decided after learning the condition of things to plead guilty to the charge of drunkenness and disorderly conduct and let Justice Archer administer a dose of his Celebrated Brand of Justice.

Carraher this morning plead guilty of the crime of being drunk before Justice Archer and received the statutory fine of \$10 and costs which was suspended for the period of twenty days on the recommendation of the county attorney. There is no penalty under the statute for disorderly conduct and the only crime which he has charged with which would stand was that of drunkenness for which the statute prescribes a uniform penalty of \$10. Carraher was released from the custody of the sheriff and allowed to go with the understanding that he liquidate as above in twenty days.

Gets Deserved Promotion.

Thomas L. Murphy came down spend Sunday with his folks, returning Saturday with his folks, returning to his duties this morning. Mr. Murphy has made a brilliant and pronounced success during his connection with the Porter-Ryerson-Hoobler Company in that city and on the 15th he will take a deserved promotion in the shape of a position as a salesman on the road for this sterling concern. His many friends in the city are glad to note his rapid advancement and predict many more in the future as he is a young man of exceptional ability.

FILES THE AFFIDAVITS

Of Several Doctors by Defense in the
Ossenkop Case

From Monday's Daily.

Sunday was very much a day of rest for the Ossenkop trial. Court not being in session nothing additional could be filed but Attorney Matthew Gering for the defense, had the affidavits of Dr. Wilson, state health officer and of Dr. Dye showing conclusively that small pox existed at the home of Ed. and Fred Ossenkop and that the families were under quarantine. These were filed this morning on support of his motion for a continuance. Nothing was heard during the day from Dr. Hay, selected by the court to investigate the case.

The jury which has been quartered at the Perkins hotel, was taken out Sunday morning by Deputy Sheriff Manspeaker and Bailiffs Ruffner and Lloyd and allowed to listen to a sermon by Rev. A. A. Randall of the Methodist church. Rev. Randall preached upon "Temptation" and delivered a very interesting and beneficial address.

In the evening the jury accompanied by the officers was taken to the Presbyterian church and listened to an address by Superintendent Davidson upon "Some Problems of the Public School," an extended notice and review of this able address is given elsewhere in this paper.

The members of the jury take their confinement with good grace and there is practically no grumbling or kicking among them over their enforced idleness. They dined yesterday at the restaurant of A. P. Barnes. The handling of the jury by Sheriff Quinton, his deputy and bailiffs has been of such a character that no criticism of it has been made by anyone.

The Ossenkop case will probably proceed to trial again tomorrow. While no definite announcement to this effect is made by Judge Travis there are reasons which indicate this the probable outcome of the motion for a continuance. The motion of Mr. Gering for the defendant for a continuance will probably be overruled and the taking of testimony for that side will commence. Mr. Gering in anticipation of this course by the court has notified his witnesses by wire and phone to be present in this city by tomorrow morning at the latest, and the several officers have been busy preparing for the work of the case.

It is current report that the small pox in question at Ossenkop's home has turned out to be a very light case of varioloid and it is not considered dangerous at all.

The question of the court's action will likely be ground for an appeal to the supreme court in the event of the conviction of the defendant.

The result of Dr. Hay's visit to the Ossenkop home has not been given out nor will it be until tomorrow, but it is very probable that Judge Travis' action if he does so act, in again taking up the trial of the case is the result of this eminent authority's visit.

The result of the foreshadowing of the court's decision has been visible in the renewed activity of all parties connected with the case. County Attorney Ramsey is still preparing his side of the case while Attorney Gering is immersed head over heels in preparing the defense. The sheriff's office is very busy and the court and his reporter are also hurrying through their share of the task.

Doubtless many of the witnesses will arrive here tonight from the west end coming over the M. P.

Wm. Volk, returned this morning from his visit at Pekin and Peoria, Ill. He called there in connection with some matters relating to his father's estate, the elder Mr. Volk having very recently died.

DECIDES TWO IMPORTANT CASES

Barnes vs. State and Cass vs. Sarpy County Reversed

From Monday's Daily.

The supreme court at its sitting last Saturday at Lincoln, handed down several opinions of much interest and value to the citizens of Cass County. In the case of A. P. Barnes vs. the State which was an appeal from this county, the court held that the act governing the practice of veterinary surgeons passed by the legislature in 1905 is constitutional and that the judgment of the district court releasing Mr. Barnes from jail for violating that statute by assuming the title of veterinary surgeon, was erroneous. This is the case where Mr. Barnes failed to submit to the prescribed examination for the right to practice as a veterinarian and was arrested for using the title of veterinary surgeon as forbidden by the law. He was given a jail sentence on conviction and afterwards was released by habeas corpus proceedings on the ground that the act was unconstitutional. The syllabus of the court is as follows:

Barnes vs. State. Appeal, Cass. Reversed. Calkins, C.; Root, J. not sitting.

Chapter 97 of the laws of 1905, providing for the examination and licensing of persons engaged in the practice of veterinary medicine, and forbidding persons not so licensed from assuming the title of any degree conferred by veterinary colleges, does not contravene any constitutional provision.

The other case is that of Cass County vs. Sarpy County. This case grows out of the Louisville bridge and the facts in brief are that the bridge was built by the taxpayers of

Louisville precinct and connected the two counties. The county was responsible for the repairs and as the structure joined the two counties, the commissioners of this county sought to make the Sarpy County authorities pay half the cost of the repairs. This they refused to do and the Cass County commissioners had the repairs made themselves and half the cost charged to Sarpy County. The commissioners for the latter county rejected the bill for the work and this county went into district court to collect the same. The Sarpy commissioners objected to taking the testimony in the case on the ground that the district court had no jurisdiction their contention being that recovery could only be had in an original action in court and that the claim should not have been submitted to the commissioners, as that ousted the district court of jurisdiction. The district court sustained this contention and Cass County appealed. The supreme court reversed the case and sustains the contention of this county. Sarpy County will therefore have to fight the bill in the district court to which the case was remanded for trial. There is now every prospect that the cost of the repairs will be divided between the two counties and that this county will not have to pay it all. The syllabus follows:

Cass County vs. Sarpy County. Appeal, Sarpy. Reversed and remanded. Good, C. Root, J. not sitting.

The words "recovery by suit" as used in the proviso of section 6147, Annotated Statutes, 1907, included a suit instituted by an appeal for the disallowance of a claim by a county board.

HEARS MOTION

Case of Houston vs. Mayor and City
Council of Nebraska City

From Monday's Daily.

In the district court this morning, Judge Travis heard a motion on the part of the plaintiff in the case of Houston vs. the Mayor and City Council of Nebraska City. This case is an injunction matter growing out of the recent controversy over the water situation in that city. The mayor and council had gotten together with the water company whose franchise expired last June, and had entered into a new contract with the company and were to grant it a franchise without the formality of submitting it to a vote of the people. Houston who was a member of the city council had bitterly opposed any contract or franchise of the kind sought to be granted and Saturday night through his council Gen. John C. Watson, he had secured a temporary restraining order from Judge Travis restraining the city officials from entering into the contract or voting the franchise.

The matter came up this morning on a request by Gen. Watson to be allowed to file an amended petition. This the court granted and Judge Paul Jessen representing the defendants, sought to have the restraining order set aside. The court took a recess until later this morning to allow Judge Jessen to examine the amended petition. Gen. Watson represented to the court that he was in unfit physical condition today to argue the motion to set aside the order and asked that the defendants be permitted to argue their contention in favor of the motion today while he would submit the other side of the matter by brief to be filed Friday. W. H. Pitzer was present at the hearing representing the water company, as a "disinterested" spectator.

Later in the morning Judge Jessen presented the defendant's side of the case and Gen. Watson was granted until Friday morning to file a brief for Houston. The restraining order was continued in force until that time or the further order of the court.

Remember February 13 to attend the big Eagle ball at Sokol hall.

Thrall, Sr., Off Light.

From Monday's Daily.

This afternoon Sheriff Quinton filed a complaint against Fred Thrall, sr., charging him with assault. This complaint grew out of the elder Thrall taking part in the trouble between his son and the sheriff last Wednesday when the elder man became excited and endeavored to prevent the sheriff arresting his son. The defendant was brought over from the jail by Sheriff Quinton and a hearing had before Justice Archer. Thrall was also represented by Attorney Moran of Nebraska City upon whose advice he plead guilty to the charge explaining that he did not know the sheriff and though when he came in he was the man who had beaten up his son during the afternoon. The sheriff made a plea for the old man on account of his age and evidently excited condition at the time of the occurrence. After hearing all the stories Justice Archer in consideration of the old man's age which is 58 and his physical condition, decided to fine him but \$5 and costs, a penalty which the sheriff thought sufficient, in view of the man's evident contrition. Arrangements were made to take care of his fine and settle the costs through his attorney Mr. Moran. No complaint will be filed against the younger Thrall until the county attorney has had an opportunity to go to Union and personally look into the facts in the case.

Slew the Dog.

From Monday's Daily.

Marshal Fitzgerald shortly after noon today created a lot of excitement on Main street by cannonizing a dog belonging to Mrs. O. P. Monroe. The dog, it is claimed has bitten several people, one or two of them quite severely. They complained to the marshal who took his trusty gun and sought out the animal. It required three shots to put his dogship out of business but the marshal finally succeeded in dispatching him. The numerous shots attracted a large crowd to the corner of Fourth and Main streets where the slaughter took place, most people imagining a battle was in progress. Mrs. Monroe was in a buggy at the corner and proceeded to express her opinion of the marshal in terms which were decidedly vigorous and which reflected upon his courage in slaying her beast. She finally drove away leaving a large gaping crowd gazing upon the remains of her pet.