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SUPREME COURT DECIDES CASE TEASDALE COMPANY VS. KECKLER

Affirms Judgment of District Court in Favor of Keckler, a Manley Grain Dealer—An Interesting Case

In the Journal of April 23, 1909, extended notice was given to an important case arising from this county, then decided in the supreme court which apparently laid down new principles governing the relation of grain dealers and commission houses. This case was that of the J. H. Teasdale Commission Co., vs. C. S. Keckler which was decided at that time in favor of the commission company. The case had previously been tried in the county court here and decided in favor of the commission company. It was then appealed and in the district court Keckler got a verdict.

The facts in the case seem to be that Keckler, a resident of Manley, sold the commission company 10,000 bushels of corn, the sale being made through a broker who resided in Omaha, all the transaction being over the telephone. The day after the deal between the broker and Keckler, the broker wrote the latter that he would receive a written confirmation of the terms of the deal from the commission company. This confirmation came to Keckler in the due course of events from the commission company which is located in St. Louis and in this confirmation the terms of the sale were set forth. The company had an instruction on its letterhead to "Report Immediately Any Errors in this Confirmation." Keckler did not report any and shipped one car, refusing to ship any more. The company sued him for damages for failing to fulfill his contract and he set up the defense that his contract was conditioned on his getting cars to ship the grain in and this he could not do. He also set up the statute of frauds as a defense to the recovery.

The case was an exceptional one in its facts and in the questions of law raised and the counsel in the case were unable to find cases bearing upon the points in issue.

In the hearing in the supreme court before the court held that the agreement had been taken out of the statute of frauds by the shipment of the one car of corn by the defendant and it also held that if the letter of confirmation of the company did not properly state the terms of sale, it

was the duty of the defendant to observe the terms of the letter and report any error therein relating to the terms of the agreement, and applied the rule that he who is silent when it is his duty to speak shall not be heard when he should be silent. Under this ruling the commission company was given the decision and the case reversed.

Following this Matthew Gering, counsel for Keckler, filed a motion for a rehearing in the case in the supreme court and this was argued, the court eventually granting it. At the rehearing the defendant filed an additional brief in the case while the commission company through its counsel Byron Clark, rested its case upon the showing which it had made before.

At the last setting of the supreme court, the former ruling in the case by that body is reversed and the decision vacated. The judgment of the district court which favored Keckler is affirmed, leaving that gentleman victor in the windup. His counsel is feeling quite good over the decision which confirms his views of the matter. The syllabus of the case which is printed below does not, however, touch upon the real questions at issue in the case but affirms the decision of the district court upon the well known rule in this state that the court will not set aside the verdict of a jury where there is evidence to sustain it. The court also examined the instructions of the trial judge and found no prejudicial error to exist. The syllabus is as follows:

J. H. Teasdale Commission Company vs. Keckler. Appeal, Cass. Opinion on rehearing former decision vacated and judgment district court affirmed. Reese, C. J.

1. Where the testimony of witnesses adduced in the trial of a cause to a jury is conflicting, the verdict will not ordinarily be set aside, as the jurors are the sole judges of the weight of the evidence.

2. The instructions given by the court to the trial jury, examined, but not set out in the opinion, held to have been a fair submission of the issues and question of law, and no prejudicial error is found.

In Prosperous Condition.

The members of the Catholic Sokol society yesterday held their annual meeting for the election of officers, at which there was a large and enthusiastic attendance. The meeting was held in their new hall on west Elm street. The past year has been a most flattering one for this organization, there having been a most gratifying increase in membership, both active and auxiliary, and it having witnessed the completion of the fine, new hall of the organization. The financial affairs of the organization are reported as being in excellent shape and there is every prospect that the coming year will be one even better in its final results. The election of officers resulted as follows:

President—Matt Jirousek.
Vice President—Frank Slavicek.
Secretary—Jos. Racheck.
Treasurer—Emil Lorenz.
As't. Secretary—Frank Komkrst.
Membership Committee—Jos. Libershal, Frank C. Libershal and Anton H. Koubek.

There was also a dancing committee chosen which is headed by Frank Slavicek and which included five of the most active members of the organization.

Married in Council Bluffs.

Last Saturday at Council Bluffs, Ia., a marriage license was issued to William G. Tinker, aged 28, and Anna May Nixon, aged 21. They were married there later. The groom recently came to this city to accept a position with the M. P. road as an operator, taking the place of W. H. McDaniel who has returned to Murray. Both Mr. and Mrs. Tinker are quite well known throughout this section of the county, he having worked at various stations on the M. P. as operator for several years past. They will make their home in this city for an indefinite time.

INTERESTING LINCOLN LETTER

Some Points Which Indicate That the G. O. P. Around the Capital are Still "Salary Grabbers."

(Special to the Evening Journal.)

Lincoln, Neb., Jan. 11, 1910—The last legislature enacted a law creating a new board of secretaries of the state board of health, and immediately the Republican newspapers took up the cry that it was all a scheme to give the governor a chance to appoint some more partisan officials. "Wait until the supreme court gets at it," shrieked the g. o. p. organs. "The court will knock it higher than a kite." Then the old secretaries contested the law, and before any evidence was heard or proceedings really under way, the same g. o. p. organs shrieked: "One more Democratic law declared void." The Republican secretaries who had drawn pay for years while playing politics refused to let go. But now comes the supreme court and declares that the law is valid, and the new secretaries are at work. After getting all kinds of erroneous statements printed in the press, Secretary Sward of the old board crept out by dismissing his part of the cause. The court waited a while and all the rest of the old board asked for dismissal. But the g. o. p. organs are not saying near as much about the validity of the law as they did before the supreme court upheld it.

The federal court declared the bank guaranty law invalid. The law was questioned by Republicans. The secretary of the old banking board, a Republican, continues to hold office. The bank guaranty law declared invalid provided for an increase of \$1,000 a year in salary of the banking board's secretary. While the law which increased the salary is declared invalid, that Republican secretary demands and receives the increased salary. The state banking board is Republican and the treasurer and auditor are both Republicans. Talk about salary grabbers.

A casual reading of the Republican organs in Nebraska would tend to convince the reader that the brewers and distillers hate the Republican party with a deadly hatred because that party is the enemy of their business. What are the facts? For thirty years the Republican party in Nebraska has been dominated by the brewery interests at Omaha, and the Omaha Bee has been the organ and mouth piece of the brewers. The so-called Slocum law was enacted in 1881. In the twenty-eight years since then just two amendments were made to that law prior to the legislative session of 1909. One was enacted by a populist legislature in 1891, and prohibited the sale of intoxicants to Indians. The other was enacted in 1889 by a Republican legislature and provided for a method of searching premises for intoxicating liquors unlawfully in possession. The Democratic legislature of 1909—the first Democratic legislature in the history of the state—enacted more competent, reasonable and salutary legislation on the liquor question than the Republican legislatures of twenty-eight years enacted. Among the bills passed were: To prohibit the sale of liquor to idiots, habitual drunkards, Indians and inebriates; the bill prohibiting the drinking of liquor on trains; the bill amending the Omaha charter so as to provide that any policeman who becomes a habitual drunkard shall be deprived of his pension, and the 8 o'clock closing law. The 8 o'clock closing law in the most salutary and efficient regulation of the liquor traffic enacted in three decades. Nebraska is the first state in the Union to enact a state-wide daylight saloon law, and that law was enacted by a Democratic legislature. After being the willing tool of the brewers and distillers for thirty years, the g. o. p. now tries to pose as the enemy of the liquor interests, and after profiting by liquor support all these years says it is going to "curb the rum demon." It is to laugh! The Democratic party is quite willing to have its record on the matter of regulation laws compared with the Republican party's record. Just study the returns of the election of

supreme judges and note the fact that the three Republican supreme judges and note the fact that the three Republican supreme judges would have been hopelessly defeated but for the liquor vote of the city of Omaha and Douglass county.

The abuse of the pardoning power has always been recognized in Nebraska. The governor is vested with the sole power of pardon. During his four year's service as governor John H. Mickey issued eighty-four pardons, an average of twenty-one a year. Governor Sheldon's average was twelve a year. Governor Shallenberger has pardoned but seven, and refused more applications than was ever before refused in a single year by any former governor. The following in reference to Governor Shallenberger's policy on the matter of pardon is quoted from the Lincoln State Journal, a hidebound Republican organ: "Governor Shallenberger has established a uniform rule in relation to pardons and commutations of sentence and exercises executive clemency only in cases where there is a concerted request not only upon the part of the applicant and those interested in his behalf, but by the presiding judge and prosecuting attorney as well. In addition to this there must be a showing of some new condition arising since the conviction and sentence that warrants favorable action."

"The governor feels it is an outrage upon society to thwart the will of the people, and the mode provided for dealing with those who purposely violate the law, by stepping in and temporarily setting aside the verdicts of juries who have heard the evidence and the judgment of the court in pronouncing sentence unless there is some reasonable and extraordinary ground for so doing."

In Police Court.

Our old friend John McFarland last Saturday night concluded to once more tackle John Barleycorn and see who really could win this fall. This is the one millionth and eighteenth round which the two Johns have had and invariably Barleycorn wins, sometimes with greater ease than others but always proving the victor. After combating Barleycorn for some time McFarland concluded to wander at large upon the public ways of the city and fell anent the bulls who promptly sloughed him. They hurried him into durance vile where he reposed until this morning when he was haled before Judge Archer. As the latter has a remarkable memory for facts, he cited John to his having been before him not long since when a fine of five simoleons and costs was suspended upon his promise to desist from raiding Barleycorn. More in sorrow than in anger, Judge Archer then fined McFarland \$5 and costs and consigned him to the tender mercies of the city goal there to repose until said fine and costs are paid or to work on the streets at the behest of our tender city marshal.

Those Who Enjoyed the Event.

The list of those present at the surprise party given Thursday night to the M. W. A. band which was noticed at length in the Journal last Saturday evening and which was one of the nicest affairs of the kind given here in some time, is given below, it not having been available for publication before this time. Those attending included: Misses Harriet Parker, Josephine Burdick, Helen Foster, Clara Gilson, Nellie McGuire, Rosa Potter, Tina Bird, Mary Gradavil, Frances Kanka, Lena Maurer, Harriett Forbs, Mary Svehla, Lillie Burlanek, Mary Sharp, Hermie Kalasek, Victoria Janda, Anna Rys, Lillie Wohlford, and Mrs. Addie Van Anders. Messrs. Glen Low, Earl Barclay, Roy Holly, James Rebal, Chas. Hula, O. E. Gilson, Stuart Janda, Cyril Halma, Ed. Kanka, Tim Kahota, George Gobleman, Ed. Kalasek, Jim Burlanek, Tom Gradavil, Henry Brinkman, Tony Bajcek, and Julius Kalasek.

Mrs. Rawls Ill.

Word has been received in this city that Mrs. C. A. Rawls is quite ill at Grand, Col., the high altitude not agreeing with her. It is to be hoped that the report will be followed by one giving her condition as much better and that the news of her speedy recovery will soon be received. Mrs. Rawls has a great many friends in this city and vicinity who will be very sorry to hear the news of her illness.

HUNTERS INVADE SPECK'S ISLAND

Party From This City Make Attempt to Kill Wild Animal.

Yesterday witnessed a strange and wild spectacle, a reminder of the early days of Nebraska when men forged into the wilds of the lands along the river or the adjacent islands in search of wild beasts and things. A party from this city consisting of Herren Claus Speck, Heinrich Miller and Leroy Bates loaded arms, ammunition and other things purchased, before light p. m. of the preceding day, into a fine, upholstered sleigh belonging to J. E. McDaniel and departed for Herr Speck's island domain lying in the middle of the Missouri river. The party was joined at Walter Gochenour's place by Messrs Walter, Sam and John Gochenour, John Lowther, Mike Lutz and some eight or ten other brave men and a combined descent was made upon the deep forest which infects Speck's empire. The object of this raid was to slay and kill one bovine of the female species coming two years old in the spring. Said bovine was sold to Lowther by Speck sometime ago after Walter Gochenour had vainly tried to unload same on him. At the time Speck removed his large herd of near-Holsteins from the island, this animal exhibited perverse tendencies and, like an insurgent, refused to be led across the ice, taking to the jungle. After a long search it could not be found and was left to make its way through the jungle and spend its nights in the large palatial buildings which Mr. Speck had erected for his stock. Mr. Lowther determined he wanted the animal dead or alive hence this trip. The Plattsmouth end of the party returned last evening having had an exciting and thrilling day with no pelt at their belts. They sighted the wild animal and a combined fusillade was made with large and small arms but no hurts were visible and, aside from a bad scare, the animal was not disturbed. It is related that the party afterwards took turns about in shooting at the beast. Speck used both barrels of a shotgun, vintage of 1857 and saturated the landscape with buskshot but failed to land the animal. Then Miller opened fire with a heavy piece of mountain artillery but he aimed too low and only tore up the snow and ice some eight feet from the muzzle of the cannon. His explanation was that the rangefinder was not working. Bates was armed with a heavy rifle carrying a deadly missile of .22 calibre. This seriously wounded a large hoot owl asleep in a tall cotton wood tree one and one-quarter miles away but did not phase the cow. After these three had shot and failed the rest decided it was no use and the entire party withdrew, leaving the bovine still roaming at large and terrorizing hunters and domestic animals. The party had a fine large dinner at Mr. Gochenour's, however, and appreciated this feature of the trip to the utmost. Mr. Lowther did not slaughter his beef as anticipated, it will be noticed. The animals weighs according to members of the party all the way from 1,200 pounds to 2,759 pounds.

Despite poor success the party reports a fine time especially as the guests of Mr. Gochenour.

Miss Mary Wurga Married.

R. G. Jones and Miss Mary Wurga were married Tuesday in Lincoln. The ceremony was preformed by County Judge Cosgrave at the court house in the presence of but a few friends.

Mr. Jones, commonly known by the pseudium of "Pasty," is the younger son of Mr. and Mrs. R. J. Jones and has been a resident of Havelock the greater part of his life. For several years he has been engaged in the harness business and for nearly a year has been in the employ of Hughtart & Rhodes.

Miss Wurga is the daughter of Mr. and Mrs. Mike Wurga, Sr., and has long been a resident of this city.

The happy young people have a host of friends who wish them a long, useful and prosperous life of wedded bliss.

Mr. and Mrs. Jones have taken rooms in Walton block for the present, but will soon establish a more commodious home in this city.—Havelock Times.

Stamp photos 2 dozen 25 cents. OLSON PHOTOGRAPH CO.

A Grand Success.
The dance given last Saturday evening by the "Jolly Six Indians" dancing club was one of the best given in this city for a long time past. Despite several strong counter attractions, there was a fine attendance and a mighty nice time had. There was some very excellent music, an orchestra from Omaha furnishing the same, which was highly appreciated. It was a late hour before the final dance was had and the happy party broke up. Considering that this is the first dance given by this newly organized club and the troubles incident to getting a new club underway, the dance was most excellent and shows that the 'Indians' will be able to give some splendid entertainments during the winter.

A CHARMING HOME WEDDING

Mr. Lester L. Patton of this City and Miss Carrie Nelson of Omaha United Sunday.

A charming home wedding took place yesterday afternoon at the home of G. M. Patton in South Park where Lester L. Patton of this city and Miss Carrie Nelson of Omaha were united in the bonds of holy wedlock by Rev. W. L. Austin. The wedding was attended only by the immediate relatives of the contracting parties and a few special friends of the immediate neighborhood. Mr. Gernie Thomas acted as groomsmen while Miss Mary Sharp was bridesmaid. Immediately after the ceremony which took place at one o'clock, the wedding party sat down to a sumptuous dinner provided by the parents of the groom for the occasion, which all greatly enjoyed.

The groom is quite well known in this city, where he was born and where he has grown to manhood. He is a young man of the best of habits, of sterling and upright character and recognized ability and his pleasant personality has made for him a great circle of admiring friends. Of late he has been working in Omaha where he met the choice of his heart. He is the son of G. M. Patton and wife, two of the city's best known and most respected citizens.

The bride is a charming and accomplished young woman of Omaha and is a lady of many attainments and accomplishments. She is a most pleasing lady and has ways which have charmed and delighted all with whom she has come in contact. The possession of such excellent qualities have resulted in making for her as wide a circle of friends as her husband. The many mutual friends of these two fine young people unite in their best wishes for a long and happy wedded life.

The newly wed couple are still in this city with Mr. and Mrs. G. M. Patton for a brief visit after which they expect to depart for Omaha where they will make their future home. They received from their many friends a large number of very exquisite and handsome presents which they deeply appreciated, and which formed a very charming display.

Somewhat Surprised.

Farmers and others this morning got a disagreeable surprise when they started out to travel through the country. They found the roads badly drifted with snow, the result of the high wind which prevailed during the morning hours. Incoming farmers report that the drifts in some places are so high that it is almost impossible to get through them and in a great many places farmers have been compelled to cut fences so that they might go through fields on account of the great depth of the snow. Today has been warm and balmy and considerable of the snow has melted but there is still enough to last for several days and then some. The high wind of the early morning was a freak weather condition seldom seen or heard in these parts and was thought to be the forerunner of a big storm on the way.

Miss Jennett Brantner, who has been confined to her home, north of town and under quarantine for scarlet fever for the past two weeks, came to town this morning with her mother, under whose care she has been. The little lady is faring very well at present.

FUNERAL OF MRS. CAROLINE FINNEY

The Last Sad Rites Attended by a Large Number of Sympathetic Friends.

The funeral of the late Mrs. Caroline Finney was held yesterday afternoon, there being many of the old friends of this pioneer woman assembled to pay a last sad tribute of respect to her memory. The remains were borne from the home on Lincoln avenue to the church at 2 o'clock, followed by several carriages containing those who desired to take a last look at their beloved friend. The services at the church were conducted by Rev. W. L. Austin who preached an eloquent and touching sermon upon the many virtues and excellent qualities of the deceased, and who drew many lessons of worth from the long and useful life which the aged woman had lived. The high christian character of the deceased and the fortitude and resignation with which she had borne the weight of advancing years also furnished a fitting topic for many illustrations of the minister. There was also several selections of hymns which the deceased had so loved in her lifetime. The floral tributes to the deceased were many of the last tokens of respect of her numerous friends were very handsome and appropriate.

Interment was had at Oak Hill whither the cortege wended its way at the conclusion of the services at the church. The cortege was composed of a great many carriages with the old friends of the deceased.

The "New Crown," the Clear Havana cigar, 10c. Ptak & Bajcek,