shall pay $50, one-half to the informer and the other half to the state.

This is what is called a "qui tam" action, very common in eastern states, in which the informer is given one-half of the amount to be recovered; the object being to secure the enforcement of the statute.

The only case cited by the Nebraska court (Norval a member) in support of their decision is that of the St. Louis, etc., Railway Co. vs. the State (19 S. W. 572.) This case involved the question as to which should bring the action, the state or the informer; it was held that the action had been properly brought by the informer. That is in Missouri, but in Nebraska the court held that a private citizen could not sue and reversed and dismissed the decision of the jury.

There is an entire failure in the Nebraska court to distinguish between a mere penalty and a "qui tam" action, in which a common informer may sue (Nye vs. Lamphier, 2nd Gray 259, a Mass case.) Drew vs. Hillicain, Vermont, 641. Many others could be cited.

It is well known that many persons are killed or maimed in the state each year from being run over by the cars and locomotives at road and other street crossings. Most of these accidents would be prevented if the whistle was blown in time, or the bell rung, which is evidently the object of the statute.

This law has been enforced by the district courts for many years and no attempt to question it has been made until the railroads considered it safe to do so. The decision is an arbitrary exercise of power by a court in favor of the corporations, which relieves them from performing a statutary duty, and invites neglect on their part and consequently increases the danger to every person who has occasion to cross the railroad.

The necessity of giving warning at road and street crossings in time to enable those crossing to get safely over before the train reaches the place, is felt by everyone, and was required by the legislature in passing the law in question, and no attempt has ever been made in the legislature to modify or repeal it. It is in effect conceded that the company failed to give the signals the statute imperatively requires, that the statute is a valid exercise of power of the legislature, and that the informer is entitled to one-half of the amount to be recovered, and has an interest therein to that extent; but the court refuses to permit him to recover that interest and enforce the law.

Railroads May Burn Property.

In the case of the Omaha Fair and Exposition Co. against the Missouri Pacific Ry. Co. (60 N. W., 330) fire was set by an engine to the plaintiff's property and loss sustained, for which the action was brought.

In this case there is an evident attempt to lay a foundation to over-rule the case of the B. & M. Ry. Co. vs. Westover (4 Neb., 268) in which it was held that the failure of the plaintiff to plough fire brakes about his premises did not constitute contributory negligence so as to defeat his recovery. This is said to be correct as applied to the facts of the Westover case, but it is said in effect in the sixth point of the syllabus that he may in certain cases be required to guard against fires NEGLECTFULLY set by the railroad company, or he will be remediless in case of loss.

The case of the B. & M. vs. Westover has stood as the law of this state for twenty years, and the soundness of its propositions has never been questioned, and are admitted to be correct in the case cited, yet distinctions are sought to make exceptions in favor of the company to prevent persons from recovering for their loss.

There are other decisions similar to these which have been rendered within the last twenty two months where parties having valid causes of action have been denied relief, and turned out to muse upon their wrongs.

In no case where a party was defeated in the court below has he been granted any relief in the Supreme Court.

A reputable gentleman, who has made a thorough examination of the cases within the time stated, finds that 87 per cent of cases in which the B & M. R. R. Co. has an interest have been decided in its favor, and that those decided against it are generally small and insignificant, while cases involving large sums are almost without exception decided in its favor.

In New York City the Platt republicans and the state democrats have nominated a fusion ticket for city and county officers. It is an effort to beat Tamany Hall, Crocker and Hill.—Lincoln Independent.

A TYPICAL RAILROAD CASE.

Trains Can Refuse To Stop Long Enough For Passengers to Safely Alight.

If Maimed in Getting Off, a Jury Says They Can Recover Damages, But the Supreme Court Says No.

This case was tried in the district court of Lancaster county before Judge Addison S. Tibbets and resulted in a verdict of $5,000 in favor of the plaintiff, Minnie Landauer.

The case was carried up to the supreme court by the C. B. & Q. R. R. Co., where a majority of the court in 1893, consisting of Judges Post and Norval, reversed the decision of the lower cour, protecting the railroad company, saving them $5,000 and compelling the girl to pay the costs over the objection and dissenting opinion of Chief Justice Maxwell, which will appear later on.

The case was brought about as follows: July 5th, 1889, Minnie Landauer purchased a first class ticket over the B. & M., from Lincoln to Cushman Park. She had been informed that her brother near the park had been afflicted with sun stroke and she was on her way to see him. There is no depot at Cushman Park station; only a small platform about as high as the rails of the track for passengers to alight upon.

Upon arriving at the station the conductor called out the name of station, but kept on collecting tickets. The train stopped, according to the testimony of all the witnesses, but a very short time some of them estimating the time at 40 seconds.

As soon as the train stopped, the plaintiff, Minnie Landauer, a young woman 17 years old, arose from her seat and started to get off. The particulars will come out more fully in Chief Justice Maxwell's dissenting opinion.

In attempting to alight from the car she broke her ankle and severely injured her spinal column to such an extent that a jury in the case saw fit to find a verdict in her favor to the amount of $5,000.

The export medical testimony is too long to quote in full, or we would be perfectly willing to submit it to the voters of this state and have no doubt but they would decide in the same manner that the jury did in the case.

Chief Justice Maxwell said the testimony of the plaintiff below appears to be truthful and fairly construed amount to this: "That the train stopped at Cushman Park; that she had been informed that her brother had been afflicted by sun stroke; that she was very anxious to stop at the park; and that as soon as the train stopped, rose up from her seat, looked back and went out of the front end of the coach to leave the car; that she expected the train to stop for a sufficient length of time to enable the passengers to leave the train without undue haste, and as she started down the step of the car she saw the platform but was carried by before she alighted, although she was not aware of the fact until she fell and was very severely injured."

He says further: "It is the duty of the conductor of a railroad train to look after the passengers that wish to get on or off at the various stations along his line; he represents the company, is its authorized agent in all matters in connection with the receiving and discharging of passengers, as well as the subordinate servants of the corporation. The company recognizes this obligation and the conductor in his testimony, after stating that the stop was longer than usual, about three minutes in all, says: A. 'Yes sir, it was longer than usual.' Q. 'Why?' A. 'On account of the train being crowded and I not being able to get on and see the passengers get off myself, but I had my Brakeman do it and he did not know when they were all off exactly and he thought he had given ample time and did not see any more coming and he started the train.' Q. 'How many passengers got off there, do you know?' A. 'I think there were five.' Q. 'Besides this girl?' A. 'Four I think besides the girl.' The brakeman did not know, he says, when the passengers were all off, exactly, and started the train. This is evidence of neglect."

The chief justice cites eighteen cases and authorities in support of this.

He goes on to say, "Had the conductor in this case done his duty there is reasonable ground to believe no accident would have happened. It was his duty to see that she was permitted to leave the train safely. The train evidently stopped but a short time, not long enough for passengers to alight without danger. Where a conductor or a person in charge of the train gives a signal to start while a passenger is obviously in the act of getting off the train, the company will be liable if injury occurs."

Maxwell cites fourteen cases and authorities in support of this doctrine.

"Here is self-confessed negligence on his part. There was a young girl, in experience but little more than a child, and so far as appears, inexperienced in travel, who had paid her fare to, and desired to stop at the park, yet the man who had just taken up her ticket and whose duty it was to see her safely on the platform, confesses that although in the same car with her and but a short distance away, he did not even look around to see if she had left the car."

Here follow some remarks concerning length of time the train stopped. In this case there were some affidavits filed to show that the verdict was excessive, but such is not the case, as will appear to any one who will examine the testimony in the case. A broken ankle and permanent injury of the spinal column, with partial, almost total loss of feeling in the lower limbs was sufficient in the estimation of the jury to warrant the verdict.

In closing Maxwell says: "In the majority opinion the rules of negligence and gross negligence as heretofore established by this court are approved, while the decision itself in my opinion, practically over-rules both. In a case like that under consideration, the testimony should be submitted to the jury. If a court assumes to take testimony of this kind where the principal question is the creditability of witnesses away from the jury and pass upon its sufficiency, the provision of our constitution that "a court shall be open, and every person, for any injury upon him, his lands, goods, person or reputation, shall have a remedy by due course of law and justice administered without denial or delay" is a glittering generality, meaningless verbiage of no force or effect, but I think we have not yet reached that point. I believe this is a meritorious case, where the plaintiff below (Miss Landauer) without her fault, sustained severe and lasting injuries and that she is entitled to compensation for the same. Many other reasons could be given why this judgment should not be reversed, but because of the great length of this opinion they will be omitted. I fear the general rule established will be productive of great injustice, not only in this case, but generally. In my view the judgment is fully supported by the evidence and should be affirmed."

The reports of the supreme court of this state are full of cases similar to the above, where cases have been tried in the district court, and reasonable and just verdicts obtained before a jury, where the railroad companies have been able to carry them up, keep them in the court two or three years and finally have them reversed and send those deserving persons from its halls of justice, without reparation, and the press of this state, owned and controlled as it is largely by the same corporations, has never dared to raise its voice in condemnation of such awful proceedings.

It might be suggested here that so long as the supreme court of the state is in the hands of gigantic corporations, the people might elect every district judge in the state and yet not secure justice in any important case, for the final decision from which there is no appeal and where any decision of the district court involving damages may be reversed, lies only in the power of the supreme court of the state.

In this campaign we have as candidates two of the judges that participated in the foregoing decisions. Norval concurred in the decision of the majority court, which saved the railroad company and kept it from paying its honest debt of $5,000 to a helpless girl of 17 years.

Chief Justice Maxwell, the candidate of the people's party, had the courage to write a dissenting opinion and stand up for the rights of those innocent and helpless persons who, above all others, need the protecting care of the law and for so doing in this case and in several other cases of the same nature, he was turned down by those same political bosses and lost his position upon the supreme bench. Which shall be returned, and whose interests shall be protected?

The Gubernatorial Contest.

Boyd vs. Thayer. (31 Neb. page 709.) This case is well known over the state. In 1890 the legislature declared James E. Boyd duly elected governor of the state of Nebraska. The republicans attempted to keep him from the office by contesting his right to it upon the ground that he was not a citizen of the United States and by other disgraceful methods keep control of the office, despite the wishes of the voters of this state. The points decided in the case will appear more fully in Judge Maxwell's dissenting opinion, which was in part as follows: Judge Maxwell said, "the section of the of constitution above quoted (Sec. 16 article 5), after enumerating the cases named, declares that in case of any other disability of the governor, the lieutenant governor shall act as governor." In the majority opinion it is said in fact that these words do not mean what they say; that they do not mean any disability not previously designated. The reason why they fail to do so is not stated. From the reading of the section it is evident that the intention was to include all disabilities by reason of which the person elected should fail, or cease, to act as governor. That is the plain, natural import of the words and no court is justified, from any law or reason, to adopt a FORCED CONSTRUCTION. As well contend that the word "white" means "black" as that the word "disability" in the connection in which it is used in the section above quoted does not cover all disabilities. A FORCED and UNNATURAL construction of language, either in a constitution, statute, contract, or other instrument, is liable to be fraught with wrong and injustice, and leaves uncertain what view may be taken by the court of any instrument or docment, and hence tends to unsettle and render precarious the law upon the plainest proposition; and therefore that mode of construction is generally discarded by the courts. In addition to what has been said as to the right of the lieutenant governor to succeed the governor, it will be noticed that there is no provision in the case of vacancy for electing a governor at the next general election after the vacancy occurs. Hence if the position of the majority of the court is right a man who did not receive a single vote for the office may hold the office of governor of the state for two years, at least, and as much longer as possible; and thus the government of the people, by the people, be defeated and the first step taken to Mexicanize the government of the state. There are other reasons which might be given."

"In any view of the case however the relator (Thayer) ceased to be governor of this state on January 7th, 1891, and since that time had no right to bring the action or hold the office of governor."

MAXWELL'S COURAGE.

At the time of writing the above dissenting opinion, Judge Maxwell was holding an office at the hands of the republican party. A republican governor was attempting to hold over his time after a democrat had been declared elected. Judge Maxwell was the only member of the court who knew the law, and had the courage to stand out against his own political party and decide strictly upon the law and merits in the case.

The case was taken to the supreme court of the United States, which reversed the decision to Cobb and Norval and upheld the position taken by Judge Maxwell. What higher tribute can be paid to either a man's ability or his integrity than that. The reward for this act of bravery, and honesty in the republican party, was retirement to private life. He knew but one master, that was the law as he found it upon the statute books. He was not their kind of a man.

The Farmer and the Cow.

The following are a few of the railroad cases in which Chief Justice Maxwell filed dissenting opinions.

In the 12th Neb., page 77, B. & M. R. R. Co. vs. Wendt. This was an action tried before Judge Savage in Douglas county, to recover the value of a cow owned by Wendt, and killed by cars of the railroad company in Omaha. The jury returned a verdict in favor of Wendt for $33.50. The company took the case to the supreme court on error, where it was reversed and the railroad company escaped the payment of the amount which the jury found they should pay to Wendt. The evidence showed that the track was not fenced and that the railroad company had not complied with the law in other particulars. Chief Justice Maxwell filed a dissenting opinion in which he said, "in my opinion Wendt is entitled to a larger judgment than he recovered, but as he does not complain and as substantial justice has been done, the judgment should have been affirmed," but it was all to no avail, the majority of the court favored the Burlington railroad.

FOR KILLING A BOY.

The C. B. & Q., Ry. Co., vs. Grablin, 38, Neb., Page 95.

This case was tried in the district court of Hall county, action for killing a boy 9 years old. It was a suit for damages brought against the railroad by the boy's administrator. There was a verdict by the jury and judgment for the administrator. The railroad company carried the case up to the supreme court where it was reversed and the railroad company escaped payment. The facts are as follows: Grablin lived on a farm near the railroad track; no part of the line was fenced; boy was 9 years old; his father had sent him to look for some stock; he was run over by a freight train that was not properly equipped with air brakes, etc.; the train was an "extra," out of time, running at great speed; gave no signal, bell or whistle, as it approached the boy.

The reason given by the majority of the court for reversing the case was the admission of testimony to show "that if the engineer in charge of the locomotive had been observing a proper and careful lookout ahead, he could have seen the boy in time to have brought the train to a stop before it reached the point where the boy was." In other words the decision would mean that no matter if the engineer was asleep and for that reason could not have been keeping "careful lookout ahead" or if he was not in a position to look ahead and was wholly neglecting his plain duty in this particular, the railroad was not responsible for an accident caused thereby. The decision plainly violates a principle in law as old as time, namely, that the principal is responsible for neglectful acts of his agent.

In commenting upon the above decision Judge Maxwell, dissenting from the opinion of the majority, said: "In my view great injustice is done by the reversal upon the ground stated. The judgment of the district court against the railrosd should have been affirmed."

A Homestead Case.

In the 12th Neb., page 285, the case of Vance vs. the B. & M. Ry. Co., is reported. This case was tried in the district court of Seward county. Facts in the case are as follows: In 1865 one Bingamon homesteaded a quarter section of land in Seward county. He relinquished his grant in 1870. One Vance homesteaded the same tract in 1871. This entry was cancelled by the commissioner of the general land office May 13, 1873, because of conflict with the grant of lands to the B. & M. R. R. Co., by act of congress, 1862-1864. The location of the road was made June 15, 1865, and the odd numbered sections along the line were withdrawn from market on account of the grant February 3, 1866. In 1875 the company received a patent for the lands granted to it by the United States government. After the cancellation referred to above, Vance entered into a contract of purchase with the company in 1873. After this the commissioner of general land office in 1878 reverses the decision of 1873, cancelling Vance's homestead entry, when Vance made final proof and received a patent for said tract of land, dated April 9, 1879. This action was commenced October 9, 1879, Vance praying for a decree declaring patent to the railroad company to be null and void and that the title to said land to be settled in him and for other and further relief. On a trial the district court found in favor of the railroad company, declaring a patent to Vance to be null and void and adjudged same to be in the railroad company and that the railroad company have possession of the land. Vance carried the case to the supreme court, where the judgment of the district court was affirmed favoring the railroad and ousting Vance from possession of the land without making any provision for paying him for the improvements he had placed there during the time he held his patent from the government. Maxwell filed a dissenting opinion in this case, showing very clearly that by all construction of right, justice, honesty and fair dealing, that the plaintiff Vance was entitled to payment for the improvements which he had placed upon the land.

Another Homestead Case.

Reported in the 14th Neb., page 120, where one Hiram P. Rider was ousted by the B. & M. railroad company from a pre-emption he had taken and fully paid for. Maxwell filed a dissenting opinion where he says: "In the case at bar the entire tract was entered and paid for, (before it was built) and if the defendant (the railroad company) is not required to pay damages, the citizens and not the government must bear the loss To me this seems like rank injustice and I candot give my consent to such a construction of the law. From the necessity of the case the railroad company is permitted to choose the most available route for its line of road and the rights of individuals are so far subservient to the public welfare, but any realestate necessary for a right of way may be appropriated to its use, compensation being made therefore, but the courts by no strained construction of the language of the statute should deprive the owner of that which is justly his due."

Railroads vs. Farmers.

In the 14th Neb., page 463, is reported the case of the B. & M. railway company, vs. Beebe. This case was tried in the district court of Seward county. It was a suit to recover value of damage to timber by fire caused by the negligence of the railroad employes. The testimony showed that the damage amounted to about five or six hundred dollars. It was reserved by a majority of the court for error in allowing a witness to state "his opinion or estimate of the amount of damage to the owner of a tract of land or to the land itself caused by a fire running through it." Majority of the court held that this was reversible error, that is, the witness making the statement to the jury that in his opinion the damage amounted to $500.

Judge Maxwell filed a dissenting opinion. He says, the witnesses called to testify as to the amount of damages, were shown to be acquainted with the value of the land and could define as to the amount of damage sustained, from their own personal knowledge. Opinions of such witnesses are admissible not as being the testimony of experts, but as being founded on personal knowledge of the subject. Such opinions become to a certain extent facts and are the most satisfactory evidence that can be given as to the amount of damages. Maxwell cites many authorities on this point, but his reasoning was all to no avail. The majority of the court was in favor of the railroad company; the judgment of the jury was reversed and the man was sent from the court room without any compensation for his loss of timber, which was admitted by all parties as clearly due to the neglect of the employees of the railroad company.

Railroads Can Kill Men.

In the following case Swindell vs. the C. B. & Q. Ry. Co. (62 N W. 1103) the train was run backward at a high and unlawful rate of speed, about 25 miles an hour, from the fair grounds near Lincoln to that city and ran over and killed the husband of the plaintiff. No signals seem to have been given, nor was anything on the back of the train, then running for the front, to clear obstructions from the track; nor any excuse for the high rate of speed, but the court held that the neglect of the deceased was the proximate cause of his death, and hence that his widow could not recover.

The Record of the C. B. & Q.

In the supreme court since 1890, when Norval became a member, commencing with volume 30, Nebraska reports, to the present time. The C. B. & Q. R. R. has been a party to 26 suits and has come out victorious in 19, while the people have won but 7. Those that were decided against the company generally involved small amounts; while those set aside amount to a great many thousand.

Prohibitionists Should Vote For Maxwell.

No prohibitionists claims there is any chance to elect the candidate of that party. There is no cleaner or more temperate man in Nebraska than Samuel Maxwell. His election will be a victory for good government, and that every prohibitionist certainly desires. It is understood that the prohibition candidate for judge is himself favorable to Maxwell and would like to see him elected. Why cannot his followers rise to the same high plane and, throwing aside the question of party for one year, help to free the state from the corporation yoke!

That frisky young man, John Sherman, who is two years older than Judge Maxwell, is bobbing up in unexpected places all over the country. The Associated press reports him one day in New York, the next in Washington and the next in Ohio. Republican papers never mention that he slid down a cellar door with Noah.
