HISTORICAL—A CELEBRATED CRIMINAL CASE.

Editor Conservative:

I am wondering whether you will deem the "Hargus Case," which excited at the time a great deal of interest of sufficient importance to occupy a place in your forthcoming history. In all the criminal cases tried in this country, there cannot be found one under like conditions, and hence, it seems to me, it should be resuscitated from the buried past and given a place among the events that mark the early settlement of Nebraska. I am more than half inclined to write up my recollections of this remarkable case for The Conservative—but at the outset I find myself embarrassed for the want of dates which are important in all historical sketches.

His Lawyer.

I have not a printed or written scrap to refresh my memory, and as the sole attorney for Hargus before the district and supreme courts, I am not even able to give the dates when these courts were held. Therefore, all that I write must be from recollections after the lapse of forty-three years. I do not distinctly remember all the causes which prompted Hargus to kill Lacy, but believe it grew out of an interference by Lacy with the claim of Hargus to a piece of land adjoining Nebraska City on the west; this interference was known by the early settlers as "claim jumping." I think the testimony was that Hargus, with a double barreled shotgun, found Lacy on the "jumped" eighty, building a fence and about to join it to his fence, whereupon Hargus said to him: "I told you not to join your fence to mine," and at once discharged one barrel, wounding Lacy, who then started on a run towards his house, when Hargus discharged with fatal effect, the other barrel. This occurred before I came to Nebraska City in April, 1856. The grand jury indicted Simpson Hargus for manslaughter, and the trial was then pending, in 1857, with Allen Bradford, formerly district judge in Iowa, and Hiram P. Bennett as his attorneys. For some reason which seemed entirely satisfactory to these gentlemen, they retired from the case and I was employed as sole counsel. William McLellan was prosecuting attorney for the county and was ably assisted in the trial by Oliver P. Mason, whose great legal ability and forensic talent after Nebraska became a state, elevated him to the district bench, and later he became chief justice of the supreme court of the state. The trial of Hargus under the indictment, was before Honorable Samuel Black and the court was held in "Hawk's Hall" at the coner of Sixth and Main streets, Nebraska City, in the year 1858. By reason of the universal respect for Lacy in his life-time by all who knew him, and the then hitherto unblemished character of Hargus, a man of considerable wealth, engaged at the time in building a large brick hotel in the city, afterwards and still known as the "Morton House," when the case was called for trial, the court room was filled to its utmost capacity with people wrought up to a high state of excitement. At the time of Lacy's death the people became so frenzied at an open air meeting on the streets of the city as they listened to the eloquent harangue of Mr. Mason, as he portrayed the many sterling virtues of the deceased, and depicted with earnest words, the wanton murder by Hargus, that they were only restrained by cooler heads from executing, then and there, summary punishment. Among the anti-lynchers was the editor of The Conservative, after whom, in gratitude, Hargus named his hotel.

The Hearing.

But Hargus was spared for the trial which had called so many together, and it is but fair to say that he had a few friends who were willing to accord him a fair hearing before the court. In all cases for felony each party is allowed a certain number of peremptory challenges when empanelling a jury. When the attorney for the defendant exercised this right in telling a juror called to step aside, Mr. Mason arose and in his usual emphatic tone of voice said: "Does the attorney for the defendant *pre*-emptorily challenge the juror?" The attorney in a like emphatic tone of voice replied: "He does not *pre*-emptorily challenge the juror, but he does *per*-emptorily challenge him." This divergence brought down the house and seemed to relieve the strain of suppressed excitement against Hargus. After the jury was empanelled the trial occupied but a short time. The fact of the killing was not denied. Dr. Kay, the physician and surgeon who was called to attend Lacy and by whom the death was established, described with minute accuracy the muscles that were penetrated by the buckshot. He was asked by the defense but a single question: "Doctor, state how many muscles there are in the human body." After much apparent chagrin, he answered that he did not know, and left the stand evidently mortified. The only testimony introduced by the defendant's counsel was his hitherto good character. The jury, under the instructions of the court, were not long in agreeing upon a verdict of guilty as charged in the indictment. Counsel for the defendant at once moved for a new trial and in arrest of judgment. The grounds on which this motion was based were:

First. The alleged crime was committed and the indictment found before the repeal of the criminal code, and the repealing act does not contain a saving clause as to pending prosecutions.

Second. Such repeal without a saving clause, operates as an unconditional pardon of the defendant.

Third. The court has no power by reason of such appeal to render judgment on the verdict of the jury.

If these are not the exact words, as I write entirely from memory, they contain the substance on which I based my motion. With the meager authorities at my command, I endeavored to convince the court that the repealing act divested it of all authority to punish, and as the legislature in the law which was repealed, had defined the crime of manslaughter and affixed the penalty, and as this was in full force when the act was committed, that this law alone was violated and the penalty therein provided was alone incurred, and its repeal without a saving clause operated as a legislative pardon. If it is asked, "Why was the legislature guilty of doing an act so revolutionary in its consequences?" the answer is, "Is this a question on which people differed in opinion?" Judge Bradford was a member of the legislature at the time, and as he had been of counsel for Hargus, it was said by some that he accomplished this result for the very purpose of shielding Hargus from punishment. But this is simply absurd, and clothes Bradford with a greater influence than he had, as no man actuated by such motives, could induce a majority of both houses of the legislature to do that which would rob the people of the protection afforded by just and proper laws. It is true that Bradford voted for the repealing bill, but he, with many others from the district south of the Platte river, was an ardent advocate for the removal of the capital from Omaha, and the measure having been defeated, they "donned the war paint," and while they were not strong enough to pass the bill to remove the capital, did succeed in forcing the repealing act through, in order to compel the governor to call the legislature together in extra session to restore the criminal code, thereby giving the friends of the removal project time to bring a public pressure to bear upon the opponents of the measure to induce them to support the removal bill.

But the causes and influences which led to the repeal did not concern the court, nor were they alluded to in the argument. *Nisi prius* judges do not like to have their jurisdiction called