SUPREME COURT OF NEBRASKA

A Batch of Recent Decisions, Interesting to Lawyers and Clients.

Douglas County Must Pay Her Insane Tax—Laying Down the Law from Which There is No Appeal.

State ex rel attorney general vs Douglas county. Judgment for plaintiff (Maxwell J., dissenting.) Opinion by Reese, J.

1—The provisions of chapter 40 of the compiled statutes requiring the several counties in the state to pay the expense of the support and maintenance of insane persons having a legal settlement in the counties from which they are sent, are not in violation of the constitution, but are valid and binding upon the counties to which they apply.

2—A county is not chargeable with the support and maintenance of insane persons sent to the hospital therefrom, unless the legal settlement is found to be in such county.

3—The levy of a tax under the provisions of section 47 of chapter 40 of the compiled statutes for the support of the insane having legal settlement in such county is a county tax to be levied by the proper county officers, and if levied upon all the taxable property of the county alike, is not void for want of uniformity.

Cabon vs Gruenig. Error from Pierce county. Affirmed. Opinion by Reese, J.

Any person having a judgment rendered by a county court without reference to the amount of such judgment, or whether rendered by the county court during a regular term, or by the county judge when exercising the ordinary powers and jurisdiction of a justice of the peace, may cause a transcript thereof to be filed in the office of the clerk of the district court in any county in this state and cause an execution to issue thereon.

Albert Romberg vs M. I. Hughes. Error from Cuming county. Reversed and judgment in this court nisi. Opinion by Maxwell, J.

1—Where the evidence on behalf of the plaintiff and defendant in an action is nearly equally balanced the verdict will not be set aside as being against the weight of evidence.

2—To make a communication from a party to an attorney privileged, the relation of attorney and client must exist between them.

3—In replevin damages for the detention of the property are recoverable only in case of a return. If the property is not returned the measure of damages is the value of the property as proved, together with lawful interest thereon from the date of the unlawful taking. Hainer vs. Lee, 12 Neb., 452.

4—The damages for the detention of the property where there is no deterioration should not exceed a reasonable proportion of the value of the same.

Whitall vs Cressman. Error from Cuming county. Decree modified and affirmed as modified. Opinion by Maxwell, J.

1—Where money was paid into the district court in satisfaction of a decree and for distribution, and an appeal taken to the supreme court, where the order of distribution was changed, held, there being no order of the district court requiring the money to be put out at interest, that a party entitled to part of the fund, and who had obtained the same, was not chargeable with interest thereon; but money to which he was not entitled he was chargeable with interest at 7 per cent.

2—A party complaining of the taxation of costs in the district court, must file a motion in that court to retax the same. The ruling on the motion to retax is subject to review.

Equitable Assurance Co. vs Samuel M. Brobst. Error from Adams county. Affirmed. Opinion by Maxwell, J.

1—Where the general agent of a life insurance company employs an agent to solicit risks, the company will be bound by the contract of employment, unless the person employed had notice of private restrictions upon the authority of such agent.

2—Where the employment is admitted, but it is claimed that it was entered into by the general agent in his own name and for his own benefit, where the evidence is conflicting, the question must be submitted to the jury, and its finding will not be set aside if sustained by sufficient evidence.

Hand vs Phillips. Appeal from Platte county. Decree modified and affirmed as modified. Opinion by Maxwell, J.

Under a statute which authorizes the allowance of an attorney's fee in certain cases proportioned to the amount of recovery, the debtor cannot, by paying a considerable portion of the debt immediately preceding the rendition of the judgment, defeat the recovery by the attorney of fees upon the entire sum for which, but for the payment, judgment would have been rendered.

Van Buskirk vs Chandler. Error from Adams county. Reversed. Opinion by Maxwell, J.

A defendant relying upon payment as a defense, must, where it is denied, prove the same.

State ex rel Lytle vs County Commissioners of Douglas county. Mandamus. Writ denied. Opinion by Maxwell, J.

On an application for a mandamus against the county commissioners of Douglas county to compel them to call an election in the city of Omaha for twelve justices of the peace therein, there being six precincts, and alleging that an act reducing the number of justices in said city to three was unconstitutional and void; held, that the court would not in that proceeding determine whether or not the act was in contravention of the constitution.

Mills vs the State. Error from Douglas county. Reversed. Opinion by Maxwell, J.

1—A libelous charge made by A against B, contained in a letter written and mailed in this state to C, residing in another state, is sufficient to render A liable in this state for the offence.

2—To render a husband liable for a letter containing libelous charges written by his wife, it must appear either that he aided in or authorized the writing of the libelous matter.

3—Where on an indictment for libel for matter contained in a letter signed in the husband's name, he was found guilty, and the testimony tended to show that the letter was written by the wife and that the husband did not aid in composing or authorize the use of the libelous words the, judgment was reversed.

Benzon vs B. & M. R. R. Co. Error from Douglas county. Affirmed. Opinion by Maxwell, J.

Where in an action to recover damages for injury to property, and the cause of the injury is a matter of conjecture, a verdict in favor of the plaintiff will not be set aside at his instance because the verdict is not as large as it probably would have been had the cause of the injury been fully proved.

State ex rel Kinzer vs. Cain. Mandamus. Writ awarded. Opinion by Cobb, Ch. J.

At all tax sales, public or private, the county commissioners of the proper county may purchase for the use and benefit of their respective counties any real estate therein which has been offered at public sale for delinquent taxes and remains unsold for want of other bidders.

State ex rel Kinzer vs. Cain. Mandamus. Writ denied. Opinion by Cobb, Ch. J.

It is not the duty of a county treasurer, nor has he the power under the statutes of this state now in force, to seize or sell personal property for real estate taxes.

Post vs. Garrow. Error from York county. Affirmed. Opinion by Cobb, Ch. J.

1—When the day of performance of contracts other than instruments upon which days of grace are allowed, falls on Sunday, that day is not counted, and compliance with the stipulations of the contract on the next day (Monday) is deemed in law a performance. Salter vs. Burt, XX Wend., 205.

2—When in an action on a written contract a copy of the contract is attached and referred to in the petition, a statement of the terms of the contract in the body of the petition will not be stricken out on motion as redundant nor as irrelevant matter.

3—For the purpose of effecting a forfeiture on money advanced on a contract which has not yet been performed, the party claiming such forfeiture must show a readiness and willingness on his part to keep and perform the contract in every particular.

4—Instructions considered and approved.

5—In the case of a contract for the sale and delivery of cattle at so much per pound or hundredweight when upon the day appointed for the execution of the contract the seller refuses to weigh and deliver the cattle, and declares the contract at an end, in an action by the buyer for damages for the non-delivery of the cattle, held, not incumbent on the part of the plaintiff to prove a tender of the purchase money.

Morrisey vs. Schindler. Error from Cass county. Affirmed. Opinion by Cobb, Ch. J.

1—The action was brought against the appellants and the Burlington & Missouri River Railroad company in Nebraska as defendants. Pending the trial, plaintiff asked and obtained leave of the court to dismiss his case as to the railroad company with costs. Held, no error, and that the trial was properly allowed to proceed as against the remaining defendants, plaintiffs in error, without reempaneling or reswearing the jury, although the answer of defendants contained a paragraph in the nature of a plea in abatement for the misjoinder of the railroad company as a party defendant.

2—The contract set out in the proceedings was properly admitted in evidence against the remaining defendants after the dismissal of the cause as against the railroad company, although the said railroad company was not a party to said contract.

3—The defendants, Morrissey Brothers, being described in the petition as "John C. Morrissey and Michael Morrissey, doing business under the name and style of Morrissey Brothers," they were sued as a firm to all intents and purposes.

4—Under the peculiar facts and circumstances of the case at bar, held, that the evidence which tended to prove plaintiff's claim for extra compensation for performing the work set out in the petition tended also to disprove and controvert defendant's counterclaim for damages alleged to have been sustained by him by reason of said work not having been performed, in accordance with the terms of the original contract.

5—It is competent to prove by parol a change or modification in the terms of a written contract made by the parties to such contract at a time subsequent to the execution thereof. And the consideration of the contract may be a sufficient consideration for such change or modification.

6—Action brought by defendant in error against "John C. Morrisey and Michael Morrisey, doing business under the name and style of Morrisey Brothers and the Burlington & Missouri railroad company in Nebraska" for labor and mechanical skill in the erection of certain elevator buildings under a certain written contract, and for certain extras and expenses claimed under an alleged modification of the terms of said contract, the verdict is as follows:

Anton Schindler vs Morrissey Bros., et al. } In the district court, Nebraska. Verdict for plaintiff.

We, the jury duly empaneled and sworn in the above entitled cause and to try the issues joined therein, do find for the plaintiff, and assess his damages at the sum of $350. (Signed by the foreman.)

Sustained both as to form and substance.

Rose vs Peck. Error from Lancaster county. Affirmed. Opinion by Cobb, Ch. J.

In a case pending in the district court an offer made by defendant to allow judgment to be taken by the plaintiff in a certain amount therein stated and costs, which offer was in writing and filed in the office of the clerk of said court but was not served upon the plaintiff or his attorney, nor was it made in open court, the plaintiff being present or having notice thereof; held, unavailing to throw the costs made after the filing of such offer upon the plaintiff.

State for use, Cuming county vs Moran. Error from Cuming county. Reversed. Opinion by Cobb, Ch. J.

In an action on a recognizance taken by a justice in a proceeding before him under the provisions of chapter 37 of the compiled statutes, held, that such recognizance was binding upon the security thereunto, although the same was not recorded by the justice in his docket, and was signed by the parties thereto

Uppfalt vs Nelson. Error from Cuming county. Affirmed. Opinion by Cobb, Ch. J.

Where in an action for real property the answer of the defendant put in issue the title of the plaintiff, but alleged no equitable defense, a finding and judgment for the plaintiff upheld; notwithstanding there was evidence which under proper allegations would have tended to establish an equitable defense.

Sedgwick vs Dixon. Appeal from York county. Affirmed. Opinion by Cobb, Ch. J.

1—Where a promissory note secured by mortgage based in part upon an usurious consideration is transferred before maturity to a bona fide purchaser for value without notice and in the usual course of business, he takes it free from the defense of usury. Wortendyke vs Mehan, 9 Neb., 221.

2—An attorney's fee under the act of February 18, 1872, when allowable, should "be fixed" and allowed by the trial court upon a recovery of judgment by a plaintiff, and when once fixed within the statutory limits, the amount thereof will not be changed by the supreme court.

Cox vs Ellsworth. Appeal from Hamilton county. Affirmed. Opinion by Cobb, Ch. J.

1—The death of an absent person may be presumed in less than seven years from the date of the last intelligence from him, from facts and circumstances other than those showing his exposure to danger which probably resulted in his death. Tisdale vs Conn. Mut. Life Ins. Co., 26 Ia., 170

2—Evidence of character, habits, domestic relations and the like, making the abandonment of home and family improbable, and showing a want of all those motives which can be supposed to influence men to such acts, may be sufficient to raise the presumption of death, or from which the death of one absent and unheard from may be inferred, without regard to the duration of such absence. Ibid.

Adams vs Thompson. Error from Cass county. Affirmed. Opinion by Cobb, Ch. J.

Suit brought on an undertaking or bond entered into for the purpose of appealing from the judgment of a justice of the peace. Held, that the defendant was estopped to deny that an appeal had been taken in the case in contradiction of his undertaking or bond, executed in conformity to the statute for the purpose of perfecting an appeal, although the same was filed with the justice of the peace after the expiration of the time limited for that purpose, and the said appeal was dismissed in the district court for the said undertaking or bond having been filed out of time. See Gudtner vs Kilpatrick, 14 Neb., 347.

State ex rel Mattoon vs R. V. R. R. Co. Mandamus. Writ allowed. Opinion by Maxwell, J.

Under the provisions of the constitution and statutes relating to railroads, where a railroad is built trough a town of 1,500 or more inhabitants, and it is necessary to have a station at that place, the corporation may be compelled to erect the same with the necessary sidetracks, notwithstanding it has a station at the junction of that and another line one and a half miles distant.

State ex rel Reid vs Scott. Mandamus denied. Opinion by Maxwell, J.

1—The board of educational lands and funds will not be compelled by mandamus to award a contract of lease to a particular bidder unless the sum bid is in excess of that fixed by statute, and is at least the full rental value of the land and there is an abuse of discretion on the part of the board in refusing to execute the lease.

2—Where a party at a public letting of educational lands was the highest bidder, but afterwards refused to accept the lease and pay the amount due thereon and perform the contract on his part, the board will not be compelled to accept a lower bid afterwards made by him for the same tract of land.

Lepin vs Paine. Error from Adams county. Remanded. Opinion by Maxwell, J.

One S. brought an action to foreclose a mechanic's lien against L. & L., the owner of the fee, P. & Co., material men, being made parties. P. & Co. answered, setting up the amount due to them and claiming a lien. The court found in favor of S. and against P. & Co., and rendered a decree accordingly. P. & Co. appealed, and on the hearing their claim was held to be valid, and the cause was remanded to the court below to enter judgment in conformity to the opinion. Held: 1—That as the interests of the parties were inseperably connected, the appeal brought up the entire case and the court must enter a new decree. 2—That the court should adjust the equities between S. and L. & L., and if necessary take additional evidence for that purpose.

F., E. & M. V. R. R. Co. vs Brown county. Injunction denied. Opinion by Maxwell, J.

1—Brown county was created in March, 1883, being attached to Holt county under the general statute for election, judicial and revenue purposes. In June, 1883, the county commissioners of Holt county levied state, county and school taxes upon the property in Brown county. In July, 1883, an election was held for county offices, and officers elected who qualified and entered upon the duties of their offices. In April, 1884, the F., E. & M. V. railway company paid to the treasurer of Holt county the taxes levied by the county commissioners of that county on the railroad in Brown county. Held, that the taxes should have been paid to the treasurer of Brown county.

2—Upon the organization of a new county and the election and qualification of its officers, the ligament which bound it to the county to which it was attached for election, judicial and revenue purposes is severed, and all business must thereafter be transacted with the new county.

Dewey vs Paine. Error from Adams county. Affirmed. Opinion by Reese, J.

A leased certain real estate to B for a term of two years, B agreeing to pay therefor the sum of $960 in installments of $40 on the first day of each month during the term, which extended from January 1, 1880, to January 1, 1882. The lease was in writing. On the 12th day of October, 1880, the lessee for value and with the consent of the lessor transferred his lease by parol to C, who took possession thereunder and held until the 9th of March, 1881, paying rent to A according to the terms of the lease, when he vacated and refused to pay rent for the remainder of the year and term. Held, C was liable for the rent whether he occupied the premises or not.

Jacoby vs Mitchell. Error from Lancaster county. Affirmed. Opinion by Reese, J.

1—Affidavits used as evidence upon the hearing of a motion in the district court will not be considered in the supreme court unless preserved as a part of the record by a bill of exceptions, and when such papers are improperly attached to the record they will, upon motion, be stricken from the files. Graves vs. Scoville, 17 Neb., 593.

2—When an appeal is taken to the district court from the judgment of the justice of the peace, and the plaintiff fails to prosecute his appeal by filing his petition within the time required by law, and no excuse is shown which would justify the delay, it is not error for the district court on motion and notice to the plaintiff to non-suit the plaintiff and render judgment as provided by sections 1010 and 1011 of the civil code.

3—When a motion is argued and submitted to a court for a decision it is the duty of the court to decide the same upon the record as it existed at that time, unless the submission is set aside or it is brought to the knowledge of the court that a party desires to be heard upon a different condition of the record. Any papers filed after the submission without leave of the court or the knowledge of the judge, will not be considered in reviewing such decision.

Crow vs Bowen. Error from Adams county. Reversed and cause dismisssed. Opinion by Reese, J.

County courts have no jurisdiction to hear and determine actions brought against officers for the penalty imposed by section 34, chapter 28, compiled statutes, for taking illegal fees.

Clay vs Tyson. Error from York county. Affirmed. Opinion by Reese, J.

1—A petition which alleges that A was indebted to the plaintiff and that B recovered from A a large amount of personal property, and in consideration thereof agreed to pay the debt to plaintiff, and that B promised the plaintiff, who was about commencing suit, that he would pay the debt and that if plaintiff would forbear suing until he could sell the property he would pay him, and that in consideration of such promise plaintiff did forbear until after the property was sold, but that B then refused payment, states a cause of action and one which is not within the statute of frauds.

2—When an attorney is employed for a particular purpose, and before such employment he informs his client that he has been employed against him, in a case not connected with the employment and with full knowledge of such fact the employment is made for the purpose required, the relation of attorney and client does not exist so far as the purpose of the first employment is concerned, and statements made to the attorney with reference to any fact in dispute in the controversy in which the first employment is made is not a privileged communication.

3—A judgment will not be reversed for errors committed on the trial of a cause which are not prejudicial to the party complaining.

Morrill vs Tegerden. Error from Merrick county. Affirmed. Opinion by Reese, J.

1—Action for damages for alleged malpractice. Petition examined and held to state a cause of action.

2—If hypothetical questions are resorted to in the examination of expert witnesses they must be so framed as to fairly reflect facts, either admitted or proved by other witnesses. O'Hara vs. Wells, 14 Neb., 403. When this is done it will be sufficient.

3—The jurors are the triers of fact in a cause tried to them, and their decision upon conflicting testimony cannot be set aside unless clearly wrong. Under this rule it is held that the evidence is sufficient to sustain the verdict.

Johnson vs. Mo. Pac. R. R. Co. Error from Douglas county. Reversed. Opinion by Reese, J.

1—When amended pleadings are filed in the district court and properly certified to the supreme court as a part of the transcript, it will be presumed that such pleadings were filed regularly and with the knowledge or permission of the district court and they will be treated as properly in the record.

2—If the evidence introduced tends in any degree to sustain all the allegations of the petition the cause should be submitted to the trial jury, and it is error to instruct them to return a verdict for defendant.

3—Though it is true in many cases that where the facts are undisputed the effect of them is for the judgment of the court and not for the decision of the jury, this is true in that class of cases where the existence of such facts come in question rather than where deductions or inferences are to be made from them. And whether the facts be disputed or undisputed, if different minds may honestly draw different conclusions from them, the case should be left to the jury. A. & N. R. R. Co. vs Bailey, 11 Neb., 332.

4—In an action for damages alleged to have been sustained by the next of kin to a deceased whose death is alleged to have been caused by the negilence of the defendant, the question as to the amount of damages sustained by reason of such death is for the jury to determine under such testimony, as to the measure of damages, as may be submitted to them.

5—Where a railroad company finds it necessary to run its trains on the first day of the week, commonly called Sunday, and also finds it necessary for its employes to labor on that day, in keeping its track in proper order and repair for the use of such trains, and while so engaged an employe is injured or killed by the negligence of such railroad company, the fact that the accident occurred on that day will not exonerate the company from liability.

6—In an action for damages caused by a personal injury resulting from the alleged negligence of the defendant, and some testimony is adduced tending to prove such negligence, the question as to whether the defendant was or was not guilty of negligence must be decided by the jury, and therefore all evidence bearing upon that subject should be submitted to them.

Leighton vs Stewart. Error from Lancaster county. Affirmed. Opinion by Reese, J.

1—The property of a married woman, which is her several and separate property, is not liable to levy and sale for the satisfaction of the debts of her husband. Therefore the purchaser of her property at such sale would acquire no title by such purchase, and would not be entitled to the possession of the property as against the owner or one holding a title and claiming under her.

2—A chattel mortgage may be void as against the bona fide creditors of, or purchasers from, the mortgagor, for defective description of the property mortgaged, and yet good as between the immediate parties to the mortgage; especially where the property included in the mortgage is identified by them.

3—As between the mortgagor and mortgagee of personal chattels, a specific and particular description of the several articles mortgaged from which to identify them from other like articles of the mortgagor in the same collection is not necessary.

8—A previous ruling by the appellate court upon a point distinctly made may be only authority in other cases to be followed or affirmed, or to be modified or overruled according to its intrinsic merits; but in the case in which it is made it is more than authority, it is a final adjudication from the consequences of which the court cannot depart nor the parties relieve themselves. Hiatt vs Brooks ante.

Moorehead vs Adams. Error from Webster county. Reversed. Opinion by Maxwell, J.

1—Where an order of the district court extended the time forty days from the adjournment of the court in which to "present" a bill of exceptions, held, to mean the time within which to prepare the bill and present the same to the adverse party or his attorney.

2—The statute relating to bills of exceptions being remedial in its nature will be liberally construed.

3—Papers in a bill of exceptions marked by the initials of the judge, written by himself, will not be stricken out of the bill as not being identified.

4—A creditor, under the assignment law of 1877, is not precluded from suing the debtor and recovering judgment upon his claim; but the assigned property will not be liable for the satisfaction of the judgment, unless he can have the assignment set aside as being fraudulent as to creditors.

5—Where a firm is insolvent the partner cannot by a sale to one partner of their interest three days before an assignment for the benefit of creditors is made, divest the property of its partnership character so as to defraud partnership creditors.

6—An instruction that "you will assess to the plaintiff such damages as from all the evidence in this case you shall find he has sustained by reason of the illegal taking and detention of the personal property" is vague and liable to mislead the jury. Wasson vs Palmer, 13 Neb., 376.

Union Pacific R. R. vs Ogilvy. Error from Lincoln county. Reversed. Opinion by Maxwell, J.

1—Where an action was brought in the county court to recover $990 and on appeal to the district court the petition was amended to claim $1,380 and judgment rendered for that sum. Held, that the petition could not be amended to claim more than $1,000 and accrued interest, being the limit of the civil jurisdiction of the county court.

2—Instructions must be applicable to the testimony and must be restricted to the actual questions at issue.

4—Instructions upon a material point which is not based upon evidence tends to obscure the real issue, and is erroneous.

State ex rel Donovan vs Palmer. Mandamus. Writ allowed. Opinion by Maxwell, J.

1—On petition of a parent to the county superintendent, stating that it is impracticable, on account of streams of water, for his children to attend school in the school district in which he is situated, the superintendent has authority, and it is his duty, if he finds the statement true, to attach to an adjoining district so much territory as may be necessary to give such children school privileges.

2—An order of the county superintendent as to the formation or division or change of school districts, where he has jurisdiction, cannot be attacked in a collateral proceeding.

Abbott vs Abbott. Error from Lancaster county. Reversed as to Julia Abbott, and affirmed as to Brown and Ryan Bros. Opinion by Maxwell, J.

1—The representation of a fact in the future, and not a mere promise, which has been acted upon, and turns out to be false, will entitle the injured party to the same remedies as fraudulent misrepresentations of an existing fact.

2—An attorney is not entitled to a lien upon a cause of action for tort, which in case of the death of the parties would not survive.

Nessler vs Neher. Error from Saline county. Reversed. Opinion by Maxwell, J.

A judgment in the district court is not a lien upon an equitable interest in real estate of the debtor.

Lynch vs Lynch. Appeal from Douglas county. Affirmed. Opinion by Maxwell, J.

1—A tenant in common is not entitled to a right of homestead on the common property as against a judgment in partition in favor of a cotenant for the value of his interest.

2—Where an action in partition is properly brought on a legal title and the defendant sets up an equitable defense, the court has authority to determine the validity of such defense and adjudicate upon the rights of the parties.

3—Where a certain lot of the value of $2,500 was devised by will to six persons, two of whom conveyed their interests to the defendant, in an action or partition, held, 1—That where one of the shares was attached to the shares of the defendant without objection, a judgment making the value of such share a lien on the defendant's portion was not erroneous. 2d—That a balance due from the defendant for rents and profits appropriated by him might be enforced against his interest in the property.

4—Where the premises are incapable of a fair division the court has power to award a pecuniary compensation to one of the parties for equality of partition.

Homan vs. Steele, Johnson & Co. Error from Douglas county. Affirmed. Opinion by Maxwell, J.

1—Where several promise to contribute to a common object desired by all, the promise of each is a good consideration for the promise of others, and can be enforced by suit, when the corporation or person to whom the subscription runs has incurred obligations on the faith of such subscriptions, and has complied with the conditions upon which they were made.

2—Where a time is fixed in which certain work is to be done, it is not in general, so far of the substance of the contract, that if the work is done, but not until some days later, no compensation can be recovered. In such case an action for the price will be sustained, leaving the defendant to show any injury he may have sustained by the delay.

3—Where an action is brought upon a contract instead of a quantum meruit, and all the proof introduced without objection showing the right of the plaintiff to recover, the supreme court will, if necessary, permit an amendment of the petition to conform to the proof or remand the cause to the district court for such amendment.

Stettnische vs. Lamb. Appeal from Gage county. Reversed and judgment in this court for the plaintiff. Opinion by Maxwell, J.

1—Adverse possession of real estate, if continued without interruption for the length of time prescribed by the statute for the enforcement of the right of entry, is evidence of a fee.

2—Where the purchaser of a lot, upon receiving a deed therefor, erects a building thereon and enters into possession and afterwards sells and conveys the premises, a number of transfers being thereafter made, and the building at times being vacant, but no interruption by an adverse claim to the title of the occupant, held, that the possession was continuous, and after the expiration of ten years the occupant possessed the fee.

3—Possession may be attacked, if one comes in under the other and the possessory estates are connected and continuous.

4—A party will not be permitted to purchase property and hold it for his own benefit, when he has a duty to perform in relation thereto, which is inconsistent with his character as a purchaser on his own account. Columbus Co. vs Hurford, 1 Neb., 146.

Dr. Sage's Catarrh Remedy cures when every other so-called remedy fails.

A Sermon Stealer Bounced.

Brooklyn Eagle: The Rev. Dr. Talmage must have read with surprise that a single sermon of his has been the ruin of a brother minister. The Rev. W. H. H. Snyder has for twenty-two years been the pastor of the Salem Reformed Presbyterian church at Harrisburg, Pa. From a very small beginning he has made his church one of the most flourishing in that city. Wealthy and prominent citizens were attracted by his preaching, a splendid church edifice was built for him, and both pastor and people were in a most flourishing condition. Some time ago the Rev. Mr. Snyder felt too sick to prepare a sermon of his own, and he preached a very eloquent sermon by the Rev. Dr. Talmage, supposing that no one would know the difference between his own style and that of the eminent Brooklyn preaches. "Be sure your sin will find you out," however, is true of sermon stealing as well as other kinds of larceny. The congregation were delighted with the sermon, and thought Mr. Snyder even more eloquent when feeling unwell than when in his most robust condition. It is probable that if he could have gone on preaching Dr. Talmage's sermons his salary would have been doubled and a new head put on the church steeple. But a curious and carnal person in the shape of a young lawyer happened to be in the audience, and mentally made some habeas corpus reflections on the body of the sermon. The more he thought of it the more he became satisfied that he had heard it before. On reaching home he happened to take up a volume of Dr. Talmage's sermons, and there sure enough was the identical sermon which had produced such an awakening effect upon the Reformed Presbyterian church at Harrisburg. There was no possibility that the appropriation had been accidental, and that the Rev. Mr. Snyder's ideas about a certain text had chanced to be identical with those of the Rev. Dr. Talmage. Not a word had been altered; the cloth was whole and wholly the cloth of the pastor of the Brooklyn Tabernacle.

Instead of thanking Mr. Snyder for giving them the very best sermon he could find, the congregation have resolved to cast him down headlong from his pulpit of elevation. After twenty-two years of effectual preaching they insist that he step down and out. Henceforth the Rev. Mr. Sngder will wander about the clerical wilderness as an exile, wearing upon his dejected brow the terrible warning to other ministers not to steal other men's sermons, and when they do so to be careful to select a less well known preacher than Dr. Talmage.

COUNCIL BLUFFS.

ADDITIONAL CITY NEWS.

Reached His Majority.

Frank B. Rodefer reached his twenty-first year on Saturday. One of the pleasant features of the birthday was the presentation to him by his father, Mr. J. W. Rodefer, of an elegant gold watch—one of E. Howard & Co's best hunting cases. Frank starts out in business with the Security, Abstract & Loan company, in which he holds stock, his position in the company being that of assistant secretary. He is a young man who has grown up in this city, and by his manly qualities and thorough business qualifications, has won the esteem and respect of all. He starts into manhood now with bright prospects, and if the wishes of many friends are of avail, his future will be happy and prosperous.

It has long been known that shippers are unwilling to carry large quantities of zinc dust in their vessels, owing to the danger of its getting moist and becoming heated to a dangerous extent. Mr. Greville Williams, F. R. S., has recently made some researches which throw light on this matter. He finds that wetted zinc dust, after drying, gives off nearly double the hydrogen that unwetted dust gives. Hydrogen is absorbed from a moist atmosphere at moderate temperature by zinc dust. It has, in fact, the power of occluding hydrogen after the manner of spongy platinum.