A BEGGAR ON HORSEBACK.

The Nice Young Man Who Borrowed a Horse, But Forgot to Return it.

A COOL DEMAND FOR $30,000.

The Great Libel Suit of J. Milton Hoffman Against E. Rosewater.

BARNES ON THE WITNESS STAND.

The Owner of the Borrowed Horse Reluctantly Refreshes Milton's Muddled Memory.

About two weeks ago J. Milton Hoffman, private secretary of Governor Dawes, commenced a libel suit against E. Rosewater, editor of the Omaha BEE, in the Lancaster county district court. The subpœna served upon Mr. Rosewater at Lincoln gave him until the 15th of February to file an answer, and it was thought that the suit would drag along for months and perhaps for years, like the most of such cases. To the surprise of the plaintiff and his attorneys the defendant has already taken steps to force the issue. Notice was served by his attorneys, Mason & Whedon, upon the plaintiff that the depositions would be taken, and accordingly on last Thursday the first witness for the defense was examined in the office of Mr. Abbott, a notary for Lancaster county. The witness, Mr. Barnes, who was the owner of the borrowed horse, was very reluctant to respond. Great pressure had been brought upon him by Hoffman's backers to revise his recollections, and an attachment had to be served to bring him before the notary. The following is a transcript of the testimony, the only omission being the stereotyped objections of the plaintiff's attorneys to nearly every question put by Mr. Whedon. The plaintiff, Hoffman, was present in person, and Mr. Sawyer and Judge Webster of Lincoln, conducted the case for him.

EXAMINATION OF MR. BARNES.

Examination of T. F. Barnes, by G. O. Whedon, attorney for defendant:

Q. State your name, occupation and place of residence. A. T. F. Barnes; reside three miles east of the city of Lincoln; occupation, attorney at present.

Q. Are you acquainted with the plaintiff in this case, John Milton Hoffman? A. I am.

Q. How long have you been acquainted with him? A. I should think since about 1877 or 1878, along about that time.

Q. Have you ever had any business transactions with the plaintiff? A. I have.

Q. At what time did those transactions commence to the best of your recollection? A. I can't give the exact date; I think it is the winter of 1878.

Q. State what the business relations existing between you and the plaintiff were? A. It was concerning the purchase of some additional eighties, additional homesteads.

Q. At the time you entered into these relations with the plaintiff, were you engaged in purchasing what are known as soldiers' additional eighty rights? A. I was.

Q. For what purpose did you employ the plaintiff, if you employed him at all? A. To purchase those rights.

Q. At what places was he to purchase those rights? A. Anywhere he could find them.

Q. Have you a copy of the original agreement that you had with Hoffman in relation to that business? A. I had one but I destroyed it with a lot of other papers something like a year ago.

Q. Have you neither the original now, nor a copy? A. No, sir.

Q. By the terms of that agreement were you to furnish the plaintiff with a horse?

Sawyer objects; incompetent, irrelevant and immaterial; the written contract will speak for itself; it doesn't follow because that is destroyed, that that destroys all of the contracts in existence.

Q. (Sawyer,) did you deliver to Hoffman a duplicate of the contract, or did he have one?

Whedon objects to his cross-examining the witness at this time.

Q. Did he have one of the contracts that you and he entered into? A. I think they were both in Mr. Hoffman's hand writing, each of them.

Q. (Sawyer) Did he have one? A. He had one and I had one.

Q. Please answer my question. Were you to furnish him with a horse? A. I would not be positive; the contract will tell.

Q. Did you as a matter of fact furnish Hoffman a horse for the purpose of his use while he was in your employ in this business? A. I did furnish him a horse.

Q. Describe the horse. A. Bay mare, weighing about a thousand pounds, about six years old.

Q. What was her value, as near as you can tell at that time? A. I should have refused $150 for her.

Q. Do you think she was worth it? A. I do; she was quit a valuable animal.

Q. Was she worth that in the market? A. I could not say that that was her market value, but I should have refused it.

Q. About what time of the year did Mr. Hoffman take the horse, to the best of your recollection? A. I think it was in the winter sometime; January or February; in the middle of winter.

Q. Did he ever return this horse to you? A. He had never returned it to me.

Q. Have you seen the horse since the day that he took it to use? A. I never have.

Q. Have you seen Mr. Hoffman since the day that he took the horse? A. I have.

Q. How soon after he took the horse was it before you saw him to the best of your recollection? A. The coming summer or spring after he took it.

Q. Did you ever have any conversation with the plaintiff, Mr. Hoffman, in regard to the horse? A. I had.

Q. You may state whether or not you asked him at any time what had become of the horse? A. I did.

Q. State what he said in reply, if anything? A. He refused to give me any information whatever concerning it.

Q. You may state from your best recollection how many times you asked him where the horse was or what had become of it? A. I asked him several times during a conversation we had.

Q. What reply, if any, did he make? A. He said that mattered not after we had settled it up between us; he gave me a note and told me it would make no difference whether he let me know or not, yet he did not let me know.

Q. What did he do, if anything, in regard to paying for the horse? A. He gave me a promissory note

Q. Have you got that note now? A. I have not; I delivered it to him.

Q. Do you recollect the amount of that note? A. I do not; it was something like $112.

Q. What was that note given for? A. It was given in settlement for the horse, money and other articles he had with him.

Q. How much of it was for the horse, if you remember? A. That was just the sum total; it was for the saddle, bridle, blanket and horse; the sum of $85 in money—nearly $50.

Q. How much money did you furnish the plaintiff when he left Lincoln with the horse? A. I handed him $85 in cash.

Q. You may state whether or not at the time he gave his note for the horse you gave to him any paper in writing of any kind. A. I gave him a paper.

Q. Have you a copy of that paper? A. I have not.

Q. Have you the paper itself? A. I have not.

Q. State the contents of that paper. A. I believe it was in his own handwriting; it was an agreement that I should not prosecute him criminally.

Q. For what? A. I could not say what it all contained; it was an agreement not to prosecute him criminally.

Q. Did you have any conversation with Mr. Hoffman at the time that that paper was delivered in regard to giving him the paper? A. He would not sign the note until I had signed that agreement with him.

Q. Did he at that time say to you that he would not sign the note until you would agree that you would not prosecute him for stealing the horse, or words to that effect? A. He would not sign the note until I signed the agreement; the word "stealing" wasn't used for "not returning."

Q. Will you give, to the best of your recollection, the wording of that paper? A. I could not give you the wording of it any more than that it was an agreement on my part that I should not prosecute him criminally for not returning my property.

Q. Did Hoffman at that time say to you that he had consulted a lawyer about it? A. He did.

Q. I will ask you to state fully all the conversation that you had with Mr. Hoffman in regard to the horse, as to his not returning it; what, if anything, you said about not prosecuting him for taking the horse, or not returning it, and what he said in reply, if anything; state all of that conversation to your best recollection. A. I have already given most of it.

Q. You did not state about the attorney, what he said and what you said. A. When he had talked about having that agreement signed, I made the remark, "It is not necessary, for I have no idea of prosecuting you criminally: were I to do anything of that kind my idea would be a civil action, and these facts would come out; I could not keep them back nor could you." He said that he had consulted an attorney; that I could not do anything anyhow. I told him if it wasn't settled up that I would try it and see. After he had paid half of the note I met him out there in front of English's grocery, just about opposite here, about half way between Tenth and Eleventh streets, on the north side of O street in this city, and I spoke to him about paying the balance of the note, as he had been rather tardy. He said he would be damned if he would pay the note. I asked him why. He said in reply that he was a damned fool to give it. I said I will see what can be done; I will sue this. I started off. He told me to stop, and we talked the matter over further. I told him that he had better settle it up. I had already lost on it, and he claimed that he had lost on it also. I think he fixed a certain time for payment of the balance, which I believe he made.

Q. In whose handwriting was that paper that you signed at the time that he gave you the note, and in which you agreed not to prosecute him criminally? A. I could not state; I am under the impression that he had the article already prepared in his pocket, and that he produced it and gave it to me. It may have been redrawn in my handwriting, but I have forgotten now; my attention has not been called to it; he produced the paper already drawn, but in whose handwriting it was I do not know.

Q. I will ask you to state if you remember whether or not he required as a condition of the getting of that note, that you should sign that paper? A. He did as a positive condition.

Q. I will ask you to state anything that you may know in regard to the plaintiff ever having been arrested for stealing your horse. A. I never charged him with stealing a horse.

Q. State what, if anything, you know about his having been arrested. State any facts you may know in regard to that. A. The first knowledge I had of anything being wrong about it was from Mr. O. C. Evans, of Firth, Neb. A few days after Mr. Hoffman went away he stopped me on the corner of O and Tenth streets, in this city, and asked me if I had lost a horse. I told him that I hadn't lost a horse. I answered him rather abruptly, and passed by him, but thinking I had spoken too abruptly, went back and said: "What of it, anyhow?" He described the horse, the rig, and Mr. Hoffman, and I saw in a moment that it was my horse and Mr. Hoffman. He said he had offered to sell it for $40 at Firth.

Q. That is in what county? A. Lancaster. It had aroused his suspicions that everything wasn't right.

Q. What did you afterwards learn in regard to disposing of the horse, or as to his being arrested for disposing of the horse? Anything of that kind state fully. A. That is not all of the conversation that I had with Evans. C. F. Hedges was here from Arkansas, Missouri, and he asked me if I had seen Hoffman. I told him that I had not, and also that he had a horse of mine that I would like to get, and I gave him an order for the horse and told him to get it. Some days afterwards I received a telegram from the marshal of Springfield, Missouri, stating that Hoffman was under arrest, and asking me what to do. I telegraphed back to let him go, and wrote Mr. Hoffman to come home. I knew nothing further of the matter until Mr. Hedges came here and told me what had been done.

Q. About how long after Mr. Hoffman took the horse was it before you saw Mr. Hoffman again in Lincoln? A. It was in the coming spring, or early summer.

Q. About how many months would you say? A. I think it was some four or five months.

Q. Did Mr. Hoffman at that time say to you that he had done anything wrong? State what he said at that time when you were talking about the horse. A. Yes, sir; he told me he knew he had done wrong; that he hadn't ought to have done as he did.

Q. Were you talking about the horse at that time? A. Yes, sir.

Q. You may state about how long it was after Mr. Hoffman returned before he gave you the note in settlement for the horse and property? A. I think it was soon after he came here, within a very short time.

Q. Did you state these facts to Mr. Edward Rosewater, the defendant in this case, or the substance of them at any time, do you recollect? A. We had a short conversation concerning them.

Q. In regard to these same facts? A. Some of them.

Q. Do you recollect now that conversation; what it was fully? A. Most of it. I gave it to Mr. Rosewater at that time confidentially, not as a public matter at all.

Q. Did you ever discount this note, or dispose of this note, that Mr. Hoffman gave you? A. I think I once had it in the First National bank of this city as collateral or left it there for collection, one or the other, I don't recollect which.

Q. I will ask you if you recollect whether or not you ever sold it to them or discounted it there? A. That I will not say.

Q. Do you recollect whether or not you had any conversation with any of the officers of the bank with regard to the note? A. I had a conversation with Mr. Clark concerning this affair about the time my horse was gone. He informed me that Mr. Hoffman was one of the nicest young men of the town, and that it could not be possible.

Q. What had you said to him that led him to make that remark? A. I went to Mr. Clark as I knew that he was well acquainted with Mr. Hoffman, to see what kind of a man Mr. Hoffman was. He told me that it could not be possible, that he was one of the nicest young men of the town. I told him that it certainly was so, for I believed that O. C. Evans had told the truth, and I told him still further that I could not find out where my horse was; he had written for money and each time I had answered him asking for the horse, and I never got any reply; he didn't tell me where the horse was, and I did not forward him the money; if he had informed me I would have sent the money.

Q. What reply, if any, did Mr. Clark make to that? A. He told me that it wasn't possible at all; that he knew him to be a very nice young man and there was some mistake about it.

Q. Did you ever have any conversation with Mr. Clark after Mr. Clark knew that he never did return the horse? A. I would rather not draw Mr. Clark into this business, as I would have to suffer by it. [On the reading over of this part of the deposition the witness struck out these words: "As I would have to suffer by it," to which Mr. Sawyer objected.] He is very friendly with me, and I hate to draw him into it. I think Mr. Clark wanted to do what was right; he was friendly to both of us.

Q. You may state whether or not you ever gave Mr. Hoffman any authority to sell your horse. A. No, sir; no authority in the least. The last conversation we had when he left my office, which at that time was opposite the Commercial hotel, I told him to be sure and bring the horse back to me, and he said, "I will, Mr. Barnes."

Q. I will ask you to state whether or not Mr. Hoffman at any time applied to you by letter or telegraph for permission to sell or dispose of your horse, or property? A. No, sir; he could not have got it unless it had been a matter of necessity.

Q. You may state what claim, if any, he made after he returned of the right to sell the horse? A. He never made any claim to me that he had any right, only that it became cold and he didn't want to travel in that way.

Q. What reply did he make when you asked him what had become of the horse. A. He refused to give me any information.

Q. Do you know now where the horse is? A. I do not.

Q. Have you ever seen the horse, or got any trace of it since Mr. Hoffman took it? A. I never have, only what Mr. Evans told me, and I tried hard, and told Mr. Evans to find it; Mr. Evans thought it was sold between there (Firth) and the state line.

Q. Have you ever seen the paper that you gave to Mr. Hoffman at the time he gave you the note, since giving it to him? A. No, sir.

CROSS-EXAMINED BY MR. WEBSTER.

Q. State when this arrangement under which you delivered the horse to Mr. Hoffman was made. As nearly as you can, state the year and the time of the year. A. I could not give you the year until I have looked at some papers. The contract will show.

Q. Have you got the contract? A. I have not; it was in the winter time, January or February, quite cold.

Q. What year was it, do you know? A. I would not give the time without looking at the papers.

Q. Could you state within four or five years? A. I would not try to give it to you without referring to the papers.

Q. Have you any papers by which you could fix the time? A. I have at my house.

Q. Before you sign your deposition I want you to fix that time, at least the year, and attach such papers as you may have which enables you to fix the time, or a copy thereof, to your deposition. A. I will give you the date.

Q. Before signing the deposition, fix the time, please? A. Yes, I will.

Q. Together with a copy of such memorandum as enables you to fix the time? A. I could not state that I would part with that.

Q. The memorandum, or a copy of it which enables you to fix the time? A. Yes sir.

Q. This arrangement with Mr. Hoffman was upon a written memorandum or contract? A. I believe it was, Judge.

Q. You have no copy of it? A. No, I have not: I had one.

Q. Can you state its general purport? A. It was that he was to buy additional homesteads for me.

Q. Additional homestead claims or rights? A. Yes.

Q. Where was he to operate? A. Anywhere between these places, from here to Arkansas, in Arkansas especially.

Q. It contemplated his going as far as Arkansas? A. Yes, and there were a good many claims in this county.

Q. Where was he to make his headquarters for you to communicate with him? A. I don't remember.

Q. Do you remember whether or not there was to be such place? A. I could not state as to that. I do not see how he could have had one, as he was changing around all the time; there may have been some set place to send his mail to, but I could not be positive about that.

Q. Did that written memorandum embrace the whole of the understanding between you, or was there anything oral besides that? A. I don't know whether it contained it all or not.

C. You would not say that it did. A. No; as far as the purchasing of the claims is concerned I think it did, but whether the property was mentioned in that I could not say; Mr. Hoffman drew it up himself.

Q. Was he working upon a salary, or engaged with an interest in the business? A. I could not state how that was; the contract will show.

Q. You don't remember whether his employment was upon a fixed salary or upon an interest in the results of the business? A. I could not state how that was, we had so many different arrangements; sometimes I would deal with one man in one way and with another in another way.

Q. Do you remember whether or not in dealing with him you either in writing or orally guaranteed any particular amount per year to him in the business? A. I could not state.

Q. Whether it was mentioned in the writing or not, you were to furnish him a horse as a means of conveyance? A. That was my agreement, to furnish a horse, saddle and bridle.

Q. And you were to furnish him money for expenses? A. Yes, sir.

Q. And you never sent him any money after he left home! A. No, sir; I did not feel safe in sending any more after that story came from Evans; I had no encouragement to send more money.

Q. You furnished him $35 when he left home? A. Yes, sir; and that would have carried him a long way if he had used it judiciously.

Q. Did you request him to see or call upon any parties in Kansas? A. I could not give the names; there was one near Neosha Falls, Kan.

Q. Was there anything said that in case he could make a good trade for additional eighties, or anything of that sort, that he could trade the horse? A. No, sir; not at all to my knowledge or recollection.

Q. Either before he left home or afterwards in writing? A. To my recollection I never wrote it?

Q. Would you swear that you did not? A. I would to the best of my recollection.

Q. That is your only answer, that you don't remember it? A. That is all gone and it hasn't been on my memory.

Q. Didn't you say so orally before he went away? A. I most undoubtedly did not; my last charge to him was to bring my horse back.

Q. Wasn't it a question for sometime between you and he whether he should go on horseback or take some other means of conveyance? A. No, sir; you could not buy homestead claims and travel on a railroad train.

Q. Was there not some question as to whether he was to go to this field of labor where he was to search for the claims by some other means of conveyance, or to go on horseback to this field of operation? A. We might have talked that over, but the conclusion was as stated in the contract; that sets up what we agreed on.

Q. Then it might have been talked at first that he perhaps might better go to his field of operation by rail? A. Possibly it might.

Q. How long after Mr. Hoffman left was it before you heard from him by letter? A. I don't remember.

Q. Can you state about how long? A. I could not.

Q. Can you remember where he was when you got the first letter from him; where the first letter was written from? A. I could not.

Q. Have you got any such letters with you? A. I have not: I destroyed a great many letters about a year ago.

Q. Did you ever receive a letter from him? A. I received a letter from him from some point south asking for money, and I wrote back, I believe, what I had heard from Mr. Evans, and asked about the horse.

Q. Was that from Manhattan? A. I could not say.

Q. Did you write back to him at Manhattan? A. I could not say.

Q. Did you keep a letter press copy of it? A. I haven't got one.

Q. You have no means of fixing as to what points you wrote to, or from what points you were to hear from him? A. No, sir.

Q. This letter that you wrote to him, was it returned to you? A. Not that I remember of.

Q. You don't remember whether it was returned to you or not? A. I have no recollection of the letter being returned to me.

Q. You have had letters returned? A. Yes, sir.

Q. Did you get answer from him in response to that letter? A. I could not say; Mr. Hoffman wrote several letters from the south, asking me to send money, and also when he got into Arkansas.

Q. You don't remember whether or not he returned the first letter that you wrote to him? A. No; I tried to get information about my property, but could not, consequently I sent no money.

Q. Do you remember whether or not you wrote a letter to Emporia? A. I could not state the names of the places.

Q. How long after he left was it that you wrote? A. I cannot give the names of the places or the dates.

Q. Have you any of the letters that you received from Mr. Hoffman during the time of his absence? A. I have not; I had these letters with the contracts, and I think a year ago last summer it was I burned a great many of the letters and contracts, as I did not think I needed them; I think I burned all of my old letters and papers that I had at my house which I had no use for.

Q. Did you write him more than one letter in regard to what you heard from Evans? A. I could not say whether one or several letters passed between us.

Q. Could you recollect whether this first letter that you have mentioned, in which you stated that you had heard from Mr. Evans, was directed to him in Arkansas or Missouri? A. I should judge that it was directed to him in Kansas, as I don't think he had got that far down then, somewhere in Kansas.

Q. Did you ever receive a letter from him in which he mentioned having sold a horse at all? A. No, sir.

Q. He never did write such a letter, did he? A. He never wrote me that he had sold the horse, gave it away or lost it, or anything of the kind; he has never told me as yet, although I have requested him to do so and tried to find out long ago when it was a matter of interest to me.

Q. Did you at any time from any point receive a letter from him in which he mentioned having sold the horse. A. Mr. Hoffman has neither, by writing or by word, ever admitted that he sold the horse, lost it or gave it away, or what he did with it.

Q. You have not received such a letter from Mr. Hoffman in which he mentioned it at all? A. Not that I have any recollection of, or any phase of intimation of, no sir.

Q. Did you receive a letter from Mr. Hoffman, saying that he would be in Lincoln about the first of April next, after the date of that letter? A. After I wrote him, I don't know whether or not he wrote back to me when he would be here; I am not positive whether he wrote me or not; I wrote him to come home.

Q. You mentioned receiving a telegram from some officer in Missouri, didn't you? A. Yes, sir.

Q. Have you got that telegram? A. I have not; it was with the other papers; they were all together; the matter had passed and I cared nothing about them; I had no feeling against Mr. Hoffman, and I would have done him a favor or kindness as quick as I would for any other man; in fact, I think I should have made an extra effort to have done so.

Q. You never did accuse Mr. Hoffman of stealing the horse, did you? A. No, sir; the word was never used between Mr. Hoffman and me to my recollection.

Q. You never swore out a warrant against him, here or elsewhere? A. No, sir.

Q. Nor directed his arrest? A. No, sir; I did not wish it; that was Mr. Hedges' operation.

Q. And you never filed an information in any court against him? A. No; I had no idea of it, and so told Mr. Hoffman when he came home; I told him so when I signed the paper; that it wasn't necessary, and that he need have no fear of me.

Q. There were two copies of the memorandum of agreement between you and Mr. Hoffman? A. Yes, sir.

Q. Were they prepared by yourself? A. I think Mr. Hoffman drew both of them up; I believe they are in his handwriting; the one I had was in his handwriting; maybe the one that he had was in my handwriting; the one that I had was in his handwriting.

Q. Who drew it up in the first place? A. Hoffman had it already drawn when he came to my office.

Q. The terms had been arranged and you had talked it over? A. Yes, sir.

Q. And you read it over? A. Yes, sir; we set out the whole business transaction; I had employed a great many agents, but had never drawn up a written contract before, but he wanted it and he drew it up; I have had some trouble with a few of my agents, and by some of them I have lost considerable sums of money.

Q. Now what you told Rosewater was told substantially? A. Indeed it was.

Q. How did you come to tell it, Mr. Barnes? A. Well, Mr. Rosewater and I were in room 31 at the Gorham house talking about some other business and he put the question to me as to whom he could get down here to act as correspondent for his paper. He wanted a good man. I thought for some little time, and I said I think Mr. Milton Hoffman would be the man. Mr. Rosewater put the question to me as to who he was or some other question preliminary. I told him that he was the private secretary of Governor Dawes. I recommended him; no one would have done Mr. Hoffman a favor quicker than I would have done. He was much younger when this transaction happened, and I told him that anything I could do for him in the world, I would do.

Q. You told him these facts in the way of a recommendation, did you? A. No, sir.

Q. I thought you were recommending Mr. Hoffman at this time. A. I did. He put the question to me, wanted to know if I had had any deal with him. I told him I had had. He wanted to know how. I told him I had one little deal and everything had been fixed up satisfactorally, and in the conversation there the matter came out. I told him that everything had been fixed. Mr. Rosewater had mentioned at the time that he wouldn't hire him as Mr. Hoffman had written some scurrilous articles for the Chicago Times against him; that was his objection.

Q. And that is the way the matter came to be spoken of? A. Yes sir. Mr. Rosewater asked me as to the dates in the matter. As a matter of fact if I had known that he was going to make it public I would not have spoken to him.

Q. Did you tell Mr. Rosewater at that time that Mr. Hoffman had stolen your horse? A. No, sir.

Q. And you never did tell him that? A. No; I gave him a short statement of the facts. At the time Mr. Hoffman did it of course I felt just as hard against him as if he had taken the horse, but after the matter had been settled up, I let it pass, let it go by.

Q. On or about the 25th day of June, 1885, here at Lincoln, in the presence of Mr. Robert McCarthy of this county, did you have any conversation with Mr. Hoffman? A. I don't know Mr. McCarthy; I never saw him to my knowledge.

Q. In the presence of Mr. McCarthy and in conversation with Mr. Hoffman, on the afternoon of the 25th day of June, 1885, here in Lincoln, did you state to Mr. Hoffman in substance that you wanted to speak to him (Hoffman), and then said that you regretted the misunderstanding between Mr. Hoffman and Mr. Rosewater; that you had told Mr. Rosewater a few things in confidence and that Rosewater had put a wrong construction upon what you had said, or that in substance? A. I have no recollection or knowledge of the man McCarthy in the world.

Q. Did you so state to Mr. Hoffman at that time and place? A. I told Mr. Hoffman that I was sorry about the trouble existing between them; that Rosewater had gone too far in the matter. I did not see the article by Mr. Rosewater charging him with being a horsethief. Mr. Hoffman told me what he had charged him with and I told him that Mr. Rosewater had gone too far in making such a charge; that the remarks were made by me in confidence. I made the remark to Mr. Rosewater at the time, "If he published that, that would make a harder article against Mr. Hoffman than he published against you"; it would be a hard matter and I did not wish to see it occur to a young man.

Q. At that time didn't you state to Mr. Hoffman that you had not told Mr. Rosewater that Hoffman was a horsethief nor intimated that in substance? A. I think I told Mr. Hoffman that I had never charged him with being a horsethief, and that I didn't think that Mr. Rosewater would have published the matter that I had told him; that I felt as ugly at the time as though he had stolen the horse, but that it was settled and I was all over it; I did not feel pleased at having my confidence betrayed, and no other man would.

Q. In that conversation did you say to Mr. Hoffman that Mr. Rosewater had misrepresented you, or that in substance? A. I could not say; I only read two of the articles, one where he called him a man on horseback and the other one.

Q. Did you state in that conversation that Mr. Rosewater had misrepresented you in the matter, or that in substance? A. I could not say that, as I did not read his representations.

Q. Did you say it? A. I believe not; I told Mr. Hoffman when he read that article, he either did that or he stated to me that he had called him that, basing his statement back on mine, that Mr. Rosewater had misrepresented me, that I hadn't made such a statement that he was a horsethief, I could not do it; as to the date you speak of, I don't recollect it.

Q. On or about the 20th day of October, 1885, at the Burlington & Missouri depot at Lincoln, did you have a conversation with Mr. Hoffman, Mr. Marquette and Mrs. Hoffman being present? A. Mr. and Mrs. Hoffman were in the Burlington & Missouri depot; I spoke to Mr. Hoffman, called him aside and had some conversation concerning this; Mr. Marquette was there.

Q. Were Mr. Sawyer, Mr. Kelly and Mr. Marquette there? A. I don't recollect seeing Mr. Sawyer there; I met Mr. Kelly going home that evening and I recollect seeing Mr. Marquette, as I went up and shook hands with him.

Q. Did you say this to Mr. Hoffman, or this in substance: "I am sorry to see you feeling hard towards me, because of this Rosewater affair; I don't want you to feel that way; I did not intend doing you any injury; what I said to Mr. Rosewater was understood to be in confidence," or that in substance? A. Yes, sir.

Q. Did you say that? A. Yes, sir; Mr. Hoffman was feeling pretty bad about it.

Q. Did Mr. Hoffman ask you this: "Didn't you tell Rosewater that I was a horsethief?" or that in substance; do you remember his asking you that question that day? A. I don't remember whether he asked it that day or not, but he did once.

Q. Did you say to him: "Oh no, I said nothing of the kind?" A. Whenever he asked that question I told him that I never told Mr. Rosewater that in the world.

Q. You never did tell him that? A. No, sir.

Q. Did you say to Mr. Hoffman this, that you had never regarded it in that light? A. I remember telling Mr. Hoffman when he came back that it was no better than horse stealing, the way he had done; as to using that sentence to any one else, I have no recollection of using it at all.

Q. At the time when Mr. Sawyer, Mr. Kelly and Mr. Marquett were at the Burlington & Missouri depot in this city, about the 20th of October, 1885, didn't you say that you never regarded it in that light, or that in substance, to Mr. Hoffman? A. It is possible I said that there, for I never considered that he had stolen the horse right out; but he got my horse and I never received it back.

Q. You say it is possible that you said that to Mr. Hoffman? A. Yes, sir.

Q. On reflection you rather think that you did, don't you? A. Yes, sir; at the same time I gave him to understand very clearly that I had never made that representation to Mr. Rosewater.

Q. That is not what I am asking you. A. I could not give the exact time.

Q. You rather think that you said that to Mr. Hoffman, then and there? A. That I hadn't regarded him as a horse thief?

Q. Yes, sir? A. Yes, I think so; at that conversation that was the subject of the meeting.

Q. Did you say this further, "There was a little difference between us and you settled it in an honorable way," at that time in the Burlington & Missouri depot in the city of Lincoln? A. I did not say there was any difference between us, but that he had settled it in an honorable way.

Q. You didn't use the words "There was a little difference between us," but you did say he settled it? A. Yes, sir; I settled it with Hoffman on his own proposition.

Q. Did you say this, "I told Mr. Rosewater a few little trifling things and he put an exaggerated construction on my words," or that in substance? A. No; I did not tell Mr. Hoffman that.

Q. You didn't tell him that at that time and place? A. No, sir.

Q. Did you not say to him, "It is not reasonable to suppose that I would villify you to any one," or that in substance? A. No; I did not use the word villify at all.

Q. Did you say anything equivalent to it? A. Not that I remember of.

Q. In that conversation did you say that you havn't told Mr. Rosewater what Mr. Rosewater had published in his paper about Mr. Hoffman, or that in substance? A. Mr. Hoffman told me that Mr. Rosewater had charged him with being a horsethief, and then I told him that I hadn't told Mr. Rosewater that.

Q. Didn't you tell him that you hadn't told Mr. Rosewater what Mr. Rosewater had published in his paper, or that in substance? A. That was the only article that he made mention of as having been published that was very pointed, and I told him that I hadn't told Mr. Rosewater that.

Q. How long was it after Mr. Hoffman returned before he adjusted this matter with you? A. Promptly—right away.

Q. He wrote you before his arrival here that he was going to come? A. I could not say that he did.

Q. Would you say that he did not? A. I would not say either way; I wrote him, and I had full confidence that he would be here.

Q. Who were present when this second written contract was given by Hoffman, when this adjustment was made and this written memorandum or contract which you say was given to Hoffman by you, who was present? A. It was in my office, and I have no recollection of anyone being there.

Q. You don't recollect whether or not anyone was present? A. No; I think that is a matter we would not have talked over before anyone very publicly, either of us.

Q. Do you mean to be understood as saying that no one was present? A. I don't think there was.

Q. Do you mean to say that your recollection is so indistinct about it that you cannot say anyone was present or not? A. I don't think I would have permitted anyone to be in my office at the time we were talking in that way, as I had no desire to make it public.

Q. State whether or not you recollect about that. A. I have no recollection of anyone being in the office.

Q. Have you any recollection that no one was in the office? A. I don't recollect seeing anyone in the office.

Q. Do you recollect that you and he were alone in the office? A. I think that we were.

Q. Is that your recollection? A. Yes; when the last memorandum was written. When our contract was made there may have been different parties round in the office.

Q. I am speaking of the memorandum; do you recollect that no one was present in the office at that time? A. I swear that I have no recollection of anyone being there.

Q. Do you recollect that you were alone? A. I believe that we were.

Q. Your recollection on that is just as clear as it is upon any other part of your testimony? A. No, sir; in offices people will pass in and out, and I may not have observed some one that was there.

Q. Someone might have been there? A. There might, but I have no recollection of it.

Q. Did Mr. Hoffman give you a receipt for $35 which you furnished him when he went away? A. I believe not; he gave me no receipt for that or the property which I let him have.

Q. Did you pay it in cash or by check? A. I paid it to him in cash, I believe.

Q. Are you confident that is the amount you gave him? A. The sum total that I was in for to him was $50 about. The weather was cold and he wanted some arctics and other things; it was $45 or $50; the cash he had at that date was $85.

Q. Part of that was money and part articles purchased? A. I went out with him, it was cold weather, and bought him what he wanted and paid him $35 in cash, which was all right.

Q. The exact amount was $35 in cash? A. I believe it was; yes, I think so: I don't think there was any receipt given either way.

Q. If it was paid by check would you have that check now? A. Yes; I believe I would.

Q. That is you preserve your old checks? A. Yes, sir; I have every check I ever gave on the First National bank.

Q. Did Mr. Evans first speak to you about Mr. Hoffman and the horse? A. Yes, sir.

Q. Did he know the man? A. No; he described the man.

Q. Did he say he knew the horse? A. No; he described the horse at that time; Mr. Hoffman had a ring on his finger that I knew, light moustache, arctics, saddle, bridle and the ring.

Q. Did he mention to you how he came to speak about the horse. A. Yes, he did.

Q. All the matters which you have testified to transpired during the time from the time that Mr. Hoffman left here until he met you again, or were they matters reported to you by others, nothing that came under your own observation. A. There is the evidence for you to run over yourself, I can draw no such conclusions.

Q. From the time that Mr. Hoffman went away until he came back you did not see him and talk with him?

Q. You had one or two letters from him? A. Yes, sir.

Q. And that was the only communication you had with him? A. Yes, sir.

Q. Did you ever state to Mr. Rosewater that Mr. Hoffman had been in jail in Kansas? A. I did not.

Q. Did you state that he had been in prison in Missouri? A. No.

Q. Or in any other place? A. No, sir.

Q. You stated it to Mr. Rosewater as heresay evidence; it was merely heresay as far as you knew anything about it? A. Yes.

Q. You never stated such a thing to Mr. Rosewater? A. No, sir; I stated to him what I had heard Mr. Hedges tell me; that was after this war had begun.

Q. And Hoffman never stated to you what had become of the horse? A. No, sir.

Q. As far as you knew the horse was stolen from him, or died; as far as you knew anything about it, you don't know what became of it? A. I never knew except what Mr. Evans reported to me of what he saw at Firth.

Q. And that was hearsay testimony? A. Yes, sir.

Q. Can you state what were the terms of Mr. Hoffman's employment. A. I don't know whether I made him my agent or my partner.

Q. He may have been either your partner or your agent as far as you recollect? A. In the purchasing of these claims I don't recollect just how that was. The property he took from me he had no interest in nor partnership in it at all.

Q. In the spring of 1880 did you read in the Globe-Democrat an article about additional eighties or supposed land frauds entitled "Stand From Under?" A. Mr. Hoffman, or some one else had shown me an article which appeared down there that I think he had written up, and made money from the democratic papers on these articles; some one showed it to me.

Q. Was it Mr. Hoffman that showed it to you? A. I don't know; I saw an article in some paper; I cannot state the name of the paper about "Stand From Under," or something about these claims.

Q. Did that cause any feeling on your part? A. Yes, sir.

Q. Was it against him? A. I respected him very much for it; it was a legal business and it could not have been carried in any other way; I was glad that he wrote it; all of my papers went through the interior department at Washington; no paper passed my hand until it had passed through the interior department and every paper came to the First National bank in this city; I had suffered the loss of several thousand dollars by just such men, and that was the reason that I sent Hoffman there to buy claims because I could not trust the men in that country to buy them; I generally kept my own agents out, men that I thought I could confide in; at that time it created a feeling against Mr. Hoffman down there, and I think they persecuted him; if he had any trouble down there, I have an idea that that was the origin of it rather than what he did to me; I think that Mr. Hedges felt ill will against him; I don't know what it was, but there was some trouble between them; they were very mad about these articles that he wrote.

Q. Now what you stated to Mr. Rosewater during that conversation when he asked you to recommend someone as a correspondent was all that you told him about this affair? A. Why, after I was through with it I told him that it was confidential conversation; I did when we started out; told him not to make any newspaper article out of it and Mr. Rosewater promised me he would not.

Q. Did you speak to him afterwards about it? A. After one article was out I saw him on the street and I said to him: "Here, you promised me that you would not make a newspaper article of that;" he laughed and said that that could not be helped with a newspaper man; I told him not to make any more articles, as it was stirring up bad blood among friends of mine; I didn't want any more; I am inclined to think that I was indiscreet in telling Mr. Rosewater about it in the beginning.

RE-DIRECT EXAMINATION BY MR. WHEDON.

Q. About what time did you first tell Mr. Rosewater about this matter to the best of your recollection? A. It was just before or during the legislature.

Q. Of what year? A. A year ago wasn't it?

Q. The legislature of last winter, in the year 1885? A. Yes, sir.

Q. About how long after that was it before the matter was mentioned again? A. When we were talking about that he asked if I had some of the dates; I told him that I had some of the dates and papers, but that I didn't want any newspaper article about it; he said he would like them as a matter of curiosity, and I told him that he could have them if he would keep it to himself; he told that he was going to Washington and I was going to be there also, and I told him that I had a lot of the papers in my room, which I did not give to him.

Q. When was the first conversation? A. That was in February when we talked, I think.

Q. You remember the incident of the so-called robbery of the state treasury? A. Yes, sir.

Q. Do you remember having any conversation with Mr. Rosewater at about the time that you heard of that transaction? A. Yes, sir.

Q. How long before that transaction at the capitol would you think it was that you had that conversation with Mr. Rosewater? A. I could not fix the date; I don't recollect just when that transaction was; I know it was during the sitting of the session of the legislature, because some of the members were used for witnesses.

Q. That was in March, I think; do you recollect how long before that time it was that you talked with Mr. Rosewater? A. I could not tell you.

Q. Do you recollect having a conversation with him after that time at your house? A. Yes, Mr. Rosewater was out there once.

Q. And did you then recite these same facts to him at this conversation at your house there, do you remember? A. I have forgotten what that conversation was; it was especially as to dates; he asked me about the dates.

Q. And he asked you if you were not mistaken in the man; do you recollect of his asking you were not mistaken in the man? A. Something was said about being mistaken in the man, but I have forgotten what it was.

Q. Do you remember who was present when you had that conversation with Mr. Rosewater at your house? A. He drove out there with a double team and some man came with him.

Q. Could you remember whether Major Kluetsch was present? A. Major Kluetsch was the man.

Q. Do you remember whether these facts were talked over then? A. Something was talked about them that day, but he was afraid of getting left on his train, so our talk was very hurried.

Q. Was the talk in regard to this matter? A. Yes, sir; and this state capitol business was connected with it also.

Q. Do you recollect about what time you were in Washington when you saw Mr. Rosewater? A. It was in February.

Q. February of 1885? A. Yes, sir.

Q. How long after that time was it before you met Mr. Rosewater in Lincoln, if you remember, about? A. I think probably three weeks, something like that; I was there about three weeks.

Q. The first conversation that you had with Mr. Rosewater was before the legislature met at all? A. I believe that the legislature at that time wasn't in session; I believe that it commenced the next week.

Q. Mr. Rosewater was trying to find a room, wasn't he, when this conversation came up? A. I had a room, No. 31, reserved at that time, and when he was over there then this conversation came up.

Q. And the next conversation that you had with him was in Washington? A. I believe