

COURT DOINGS AT LINCOLN.

Business Before the United States and Superior Tribunals at the Capital.

AUGUST SCOEHEIT MEMORIAL Several Important Decisions Handed Down—Brief State House Notes—Prisoners Escape From the City Jail—City Notes.

(FROM THE BEE'S LINCOLN BUREAU.)

The session of the United States court yesterday was occupied by a suit in which the government sued on the bond of Barrett Scott for failure to deliver hay at Fort Snobara according to contract.

The suit is on a \$1,500 bond, with District Attorney Lamberton for the government. In the afternoon the following resolutions in memory of August Schoehet, of Falls City, were presented and remarks appropriate to the occasion were made by Mr. Lamberton, Judge Dundy, Messrs. C. G. H. and Dr. W. C. H. following are the resolutions as presented by the committee:

Resolved, That the officers of this court and members of the bar have received with profound sorrow the news of the untimely death of August Schoehet, of Falls City, Neb., at the ripe age of 55 years, who was for twenty-seven years a resident of the state and for nearly fifty years a member of this bar.

Resolved, That in his death we lose a citizen of conspicuous virtue, a lawyer of marked ability, a man whose kindness, generosity and genial qualities endeared him to his family and friends.

Resolved, That we tender to the family of the deceased our deepest sympathy and condolences, that the clerk of the court communicate these resolutions to the family, that they be placed and a copy of the same on the records of the court.

Resolved, That as a mark of respect to the memory of Mr. Schoehet that the business of the court be not suspended, that proper tribute may be made to his virtues.

Wednesday the jury in the case of Trester versus the directors of the railroad company returned a verdict for the plaintiff for \$1,300. The amount sued for was \$10,000, and the case was brought over dissection at the awards made in condemnation of city property.

IN SUPREME COURT. The supreme court has handed down a number of important decisions, among them being the decision on the bond case in a proceeding in this court. This precedent issued \$13,000 in bonds to a branch of the Union Pacific, and the auditor, under advice of the attorney general, refused to register them on the ground of illegality of issue.

The case was taken to the supreme court on mandamus proceedings to compel the registration of the bonds, but the court has decided against the company. Following are the decisions handed down: Price vs. McCann. Error from Lancaster county. Reversed and remanded. Opinion by Maxwell, Ch. J.

1. A chattel mortgage to one P. on certain chattels, described as follows: "Ten head of two-year-old steers, valued \$5 per head. The above described chattels are now in my possession, care and control by me and free from all incumbrances in all respects," and on the next day said A. executed a chattel mortgage to one M. on nine head of cattle, described as follows: "Nine head of steers, valued \$5 per head, situated on farm south of Bennett, Neb., one and one-fourth miles. The above described chattels are now in my possession, care and control by me, and are free from all incumbrances in all respects." A., at the time of executing said mortgages, possessed ninety-eight head of steers of the description named on his farm in Adams county, and said steers were mortgaged to one P. and were not separated from the others, but the description applied equally to the ninety-eight steers owned by A. Held, first, that the mortgage created by A. in favor of M. is void, and, as against an attaching creditor, is a nullity.

2. The fact that before the levy of the attachment certain steers had been separated from the others, and were claimed under second mortgage, was unavailing as against such creditors unless it was shown that at the time the mortgage was executed there was an agreement that it should apply to such steers. McClure vs. Lavender. Appeal from Lancaster county. It appears no request within twenty days, and the case will be remanded to compute the amount of lien, and upon the filing of his report the decree will be modified to correspond thereto. If no such request be filed, the decree of the district court will be affirmed. Opinion by Reese, J.

3. Before a writ of habeas corpus will be reversed for alleged errors occurring at the trial of the case, such errors must be made to appear affirmatively of record. Error is not presumed. 4. The statute which authorizes a proceeding to run on the right to enforce a lien for taxes, when the title under the tax deed falls. Bryant vs. Estabrook, 16 Neb. 217.

5. Under the provisions of article 9, section 1 of the constitution, it is not necessary to serve a notice on the defendant before bringing a suit to enforce a tax lien. 1b. Yeoman vs. State. Error from Hamilton county. Reversed and remanded. Opinion by Reese, J.

1. Plaintiff in error was indicted alone for the crime of incest, under the provisions of section 2000, of the penal code. Held, that it was properly so indicted and that it was not necessary that the indictment should be against both parties to the incestuous intercourse.

2. Where in a prosecution for incest it was proven that the person with whom the incestuous intercourse was alleged to have been had, was of the age of sixteen years, that she resided at home with her parents, that the accused had no contact with the family, that they were often together alone, that she had no suitor, and kept company with no other person, that the relation of uncle and niece existed between them, that she became pregnant, and when her pregnancy was discovered the accused confessed the paternity of the child which was afterwards born, admitted the intercourse and settled the claims of the mother, satisfaction of proceedings in bastardy, and tried to induce a physician to produce an abortion, it was held that the corpus delicti had been sufficiently proven to require the submission of the case to the trial jury.

3. On the trial of such case the court charged the jury that it was not necessary a trial of the defense be proven to have been committed on the day alleged in the indictment, but that it would be sufficient if proven to have been committed within three years prior to the finding of the indictment. The instruction was held to be correct.

4. On a trial of a defendant charged with incest with his niece, the woman was not examined as a witness by the state, but the defendant examined her as a witness in his behalf. On being asked if defendant had ever had sexual intercourse with her she answered he had not. On the cross examination counsel for the prosecution presented by her affidavit that which she had made, by which proceedings in bastardy had been instituted, and in answer to his question she stated that she had signed the affidavit. On re-examination she was asked if the signing of the affidavit was voluntary on her part. The question was objected to and the objection sustained; held, error.

5. A large discretion is given the district court as to the order in which testimony may be introduced. Griffith vs. Remaley. Error from Sarpy county. Affirmed. Opinion by Reese, J.

1. Where lands are leased to a tenant for one year for a stipulated rent reserved, and after the expiration of the lease the tenant without further contract remains in possession and is recognized as a tenant by the landlord, in the receipt of rent for another year, this will create a tenancy from year to year.

2. In such case the testimony can only be terminated by the agreement of the parties, express or implied, or by notice given six calendar months, ending with the period of the year at which the tenancy commenced.

Bendix vs. Fenton. Opinion by Douglas county. Affirmed. Opinion by Reese, J.

1. A tax deed, to be valid, must have the official seal of the county treasurer attached. Sullivan vs. Merriam, 16 Neb. 177.

2. A tax deed must be valid on its face to entitle the party claiming under it to the benefit of the special limitation of the revenue law. Housel vs. Boggs, 17 Neb. 44.

State ex rel. O. & R. R. Co. vs. Babcock. Mandamus. Writ denied. Opinion by Maxwell, Charles J.

Under the provisions of section 14, chapter 45, of the compiled statutes, to authorize the county commissioners to call a special precinct election for the purpose of voting bonds in a precinct in order to improve, improve, improve, etc., a petition signed by not less than fifty freeholders of such precinct must be presented to such county commissioners, setting forth the nature of the work contemplated, the amount to be levied, and to be voted, the rate of interest, and the date when the principal and interest shall become due. An election called and held without such petition is of no validity. Snowden vs. Tyler. Appeal from Clay county. Reversed as to defendant Lyle. Opinion by Maxwell, Charles J.

1. The remedy for the recovery of real estate by one claiming a legal title thereto, against one in possession claiming an estate therein, is an action of ejectment in which the facts may be submitted to a jury; and an action to quiet title is not proper, and will not lie.

2. Where a party out of possession of real estate brings an action to quiet title, and the defendant answers alleging a cloud upon his title caused by the plaintiff, and praying for a decree cancelling the same, the court has jurisdiction to determine the title of the respective parties. A defect which appears on the face of the petition should be a ground for dismissal. Snowdon vs. Tyler. Appeal from Clay county. Reversed as to defendant Lyle. Opinion by Maxwell, Charles J.

3. A quiet claim of a defendant, made while a proceeding is pending, and where it appears in a chain of title on the proper records of the county, is sufficient to justify a bona fide purchaser for valuable consideration, in relying upon it as a valid conveyance. It is a bona fide purchaser for valuable consideration and not a donee who is protected.

4. One claiming a legal title to real estate to one Snowdon, who failed to register his deed, and in 1870 one Poe sought to purchase the land of Shirk, but was informed that it was sold and conveyed to Snowdon. Poe then applied to the adult heirs, and administrator of the estate of Snowdon, and the guardian of the minor heirs, and was informed that the deed in question had been lost and destroyed. Poe thereupon purchased the land, taking a deed from the adult heirs, and with their consent quit claim deed from Shirk, which last deed he placed on record. Held, that a bona fide purchaser for valuable consideration from a grantor who took the title as against an heir, who was a minor at the time the deed from Shirk was obtained, but a mere donee from Poe was not protected.

5. Where heirs come into a court of equity to claim an interest in lands which have not been conveyed, but which have been held adversely by other parties for a long time, and the court is satisfied that a just proportion of the taxes and interest due thereon.

6. A purchaser pendente lite from a purchaser who bought with notice and a bona fide belief that the title was protected himself under the first purchase.

AT THE STATE HOUSE. Articles of incorporation of the Keith county bank, located at Ogallala, were filed with the secretary of state yesterday. The capital stock of the bank is \$100,000, divided into shares of \$100 each, and business was commenced last November. The corporation to continue until 1907. The incorporators are: H. D. McWilliams and O. T. Carlson.

County Attorney Tanner, of Hastings, was in Lincoln yesterday, interested, with other parties, in securing requisition papers upon which to bring from Kansas an offender who is wanted for trial in Adams county. The papers asked were granted.

VISITING KNIGHTS. It was 6 a. m. yesterday when the work of instituting Capital City Lodge, Knights of Pythias, was completed, the work commencing at two o'clock, and ending at 3:30 Lincoln knights were in attendance on the occasion, including a delegation of fifteen from Omaha, who were guests for the night. Among the Omaha delegates were: J. E. Smith, J. E. Cummings, R. H. Lucas, H. C. Wells, Harry Merriam, Messrs. Wolf, Bendorf and others. Grand Prelate Lanus of Grand Island, and visiting knights from Plattsmouth, Hickman and other points, were the list of guests. The new lodge starts with a membership of over one hundred.

A JAIL DELIVERY. When the policeman in charge of the jail opened up the doors this morning he found that a part of the prisoners had not been at sleep through the night, but that the four parties sentenced for robbery at their mode of work, and that they secured a bar of iron that was bolted across the stove in the corridor. With this they opened the cell where two of the parties were, and together they climbed to the upper deck over the cells, and with their iron bar broke a hole through the brick wall of the building and departed to parts unknown.

The gospel army, that is at present attracting large crowds nightly in this city, and which works something after the manner of the salivations, has been greatly augmented by a company of respectable characters, who invade the meetings to scoff and raise riot generally. So obnoxious did these characters become that a few days ago the police were asked to assist the army in their tolls with the roughs, and at their request a member of the army was commissioned a special police for protection at the meetings.

THE MARKETS. West Lincoln markets were quite animated yesterday, the receipts of hogs being 917, a slight increase over the day before. The market opened active and strong at yesterday's prices at closing. The quality yesterday was above the average run for sometime past. Four cars extra choice heavy weights were shipped by Reynolds Powell & Co., and Messier & Co., of Decherster. The market closed strong at top prices reached with all cleared up.

DELEGATIONS IN THE CITY. C. P. R. Williams, A. H. Bak and C. W. S. Hart, were a delegation from the Grand Island board of trade in Lincoln yesterday. J. W. Johnson, J. N. Clark, Henry Grosshans and L. D. Fowler, were registered from Sutton. C. G. Dewey, Nicholas L. B. Gray and Dr. R. W. Cowell were in the city yesterday from Omaha and among the transients were County Treasurer Campbell and Hon. Wm. Neville of Plattsmouth. A. S. Baldwin of Plum Creek and George T. Snaulley of Plum Creek.

There are many accidents and diseases which afflict stock and cause serious inconvenience, and loss to the farmer in his work, which may be quickly remedied by the use of Dr. J. H. McLean's Volcanic Oil Liniment.

ABOUT RAILROAD GARNISHES

A History of How Creditors Enforce Payment Against Union Pacific Employees.

PROSPECTS FOR A REMEDY. Instances of Wrongs Committed by Courts—How the Law Operates on the Nebraska Side—A Few Facts About the Courts.

At the recurrence of the first of each month the paymaster of the Union Pacific railway company is besieged by garnishee notices from various points along the line. The principal place from which these processes are issued is Council Bluffs. This has been so only about two years, since the time the supreme court of this state handed down the opinion in the case of the Chicago, Burlington & Quincy railway company vs. Wright, reported in the nineteenth of Nebraska. In that suit it was attempted to enforce the payment of a debt against a defendant, the head of a family, resident of Iowa and an employe of the Chicago, Burlington & Quincy railway company by an attachment against his wages, issued from a justice court in Omaha. From an order by the justice to pay the wages, owing the defendant, into court, the case was taken finally to the supreme court where it was held that the money in controversy was exempt. It had previously been the prevailing opinion among the justices throughout the state that the law in the case was otherwise and the result of this decision has been to drive the collection of foreign claims against Union Pacific employes and heads of families into states where the law is more favorable to the creditor.

As regards the exemption of wages there is no state invaded by the Union Pacific railway, whose laws and courts operate more against the employe than in Iowa and the location of Council Bluffs at the terminus of that line makes it a most advantageous point for the issuance of these processes. The supreme court of that state has held that the law of exempt wages applies only to residents of Iowa. The consequence has been to enforce the payment of nearly all claims against Union Pacific employes at Council Bluffs, in place of Iowa, where service of garnishee notices can be legally made upon that corporation. The collections made through Council Bluffs courts do not all come from places without this state, but many Nebraska creditors have learned that their accounts can be pushed to a successful termination by the aid of these tribunals. This is particularly true of not a few Omaha creditors whose interests in Iowa are where service of garnishee notices can be legally made upon that corporation. The collections made through Council Bluffs courts do not all come from places without this state, but many Nebraska creditors have learned that their accounts can be pushed to a successful termination by the aid of these tribunals. This is particularly true of not a few Omaha creditors whose interests in Iowa are where service of garnishee notices can be legally made upon that corporation. The collections made through Council Bluffs courts do not all come from places without this state, but many Nebraska creditors have learned that their accounts can be pushed to a successful termination by the aid of these tribunals. This is particularly true of not a few Omaha creditors whose interests in Iowa are where service of garnishee notices can be legally made upon that corporation.

FOREIGN CLAIMS. For collection of these real or fraudulent transfers one of two benefits arise; if real the Council Bluffs citizen makes a real profit on his investment in what was deemed by the creditors to be a worthless account, and if fraudulent the claimant is saved the trouble of furnishing a bond or advancing the costs of suit. This business of late, however, has become a regular trade.

It has become a regular trade, and several employes of the company are horrified daily to learn that their wages have been garnished in a Council Bluffs tribunal, and that their name, which is a badge of honor, is in the docket, wears a fringe of grey whiskers under his chin, walks with a cane, has the appearance of a man at the end of his tether, and is visited to Omaha in the pursuit of his business. He was formerly a constable, but age seems to have destroyed his usefulness in that line and he has since resorted to the business of a constable, and general and against the Union Pacific employes in particular. Jerman himself, it appears, rebels against his disgraceful business, and it is not to be followed by his present pursuit were it not that he could do nothing else. The garnishes from Omaha and Council Bluffs number about five per month, and are fully 50 per cent of the wages of a man appears as plaintiff. There were twelve garnishes from Council Bluffs received at the Union Pacific headquarters on Friday last, and ten of them were issued by Jerman. The number of attachments and garnishment suits against Union Pacific employes from the Douglas county courts varies from five to fifteen per month.

One of the great causes of complaint against the action of the Council Bluffs officials is the matter of costs. The initial expense in an attachment and garnishment suit is not trifling, and it is a universally established legal principle in attachment cases where service of a summons cannot be had upon the defendant, that jurisdiction is obtained only by taking the property or money of the debtor into the custody of the law. In the garnishment cases instituted in the Bluffs, however, the moment that the company is served with notice, and a few days, and sometimes weeks, before the garnishee has made answer by which it may be known whether or not there is anything for the law to operate upon, service by publication is resorted to, and an additional expense of from three to five dollars is incurred thereby to the defendant who finding himself not entitled in Iowa to the right of removal to the state of his residence, in many cases out of ten is obliged to settle on the terms of the plaintiff to avoid further costs, trouble and loss of time. Another grievance arises from the avary of creditors. Bills which by the law of the place of contract are non-collectible, against which the statute of limitation has run, debts incurred in her own name by the wife are sent to this place for enforcement, and in many such cases the defendant, being too poor to take his case to the appellate tribunal, is forced to capitulate, and what never was an obligation of what had ceased to be such, is paid by the debtor.

It has not been the policy of the Union Pacific railway to hinder creditors in the collection of their honest claims where their debtor employe can pay without depriving their families of the necessities of life, but against all such as have the appearance of being trumped up or fraudulent, it has issued a protest, and generally unsuccessful fight. It has spent many hundreds of dollars in costs and attorney's fees and has taken two test cases to the supreme court of Iowa, in both of which the company was defeated. In the first case the defendant only was a resident of Nebraska, and the court of last resort held that his wages were not exempt. In the second both were residents of Nebraska, and the company contending on the ground of want of jurisdiction, the court held that where there is no fraud in obtaining jurisdiction a non-resident could sue a non-resident and the latter's wages were not exempt. The supreme court of Kansas, Missouri, Nebraska and Illinois hold exactly the opposite of the two cases mentioned.

The law of exemption said the supreme court of Iowa many years ago, is based upon the idea that as a matter

of public policy for the promotion of the prosperity of the state, and to render independent and above want each head of the family of the government, he should be so protected that he may live beyond the reach of financial misfortune and the demands of creditors, who have given him credit under such law. This body disregarding these principles so laid down has brought tears to many homes in this city and allowed the wolf to look into the faces of famishing wives and children.

The injustice of Iowa courts in many cases in this city has oppressed the laboring man's family, for it is against this class of workmen only that these laws apply with their terrible force.

It has only been a few weeks ago that the writer met an acquaintance, a clerk at the headquarters, at the corner of Sixteenth and Farina streets. Being asked how he was doing he said he was now long past his hours of toil, my wife who has been confined to her bed for several weeks by sickness is, I know, waiting for my return, with my last month's pay, and I have learned it was garnished across the river for a butcher bill of \$16. Our doctor has refused to attend her further unless paid, my landlord has served me with a notice to quit, and I have no heart to go home. The next day he went to the Bluffs, paid the claim and costs, and out of a salary of \$34 per month had \$33 left. The clerk admitted the bill was correct but sickness and necessity had prevented its payment. Another case was that of a helper in the shops. Several years ago his wife, in her own name, contracted debts, and he, two or three months ago, was served with a claim, garnished the wages of the husband. His wages per month never exceeded \$50. He had no means with which to terminate his debt, and he settled on the terms of the plaintiff.

A SAD CASE. The case of one Hartlieb, a suit brought in Justice Hestley's court in this city some ten days ago, exemplifies the extreme law of the state against the laborer. Hartlieb formerly lived in this city, was employed by the Union Pacific and kept five or six boarders at his home on Council Tenth street. His employer offered him a better situation on the Bluffs side and he accepted it. About six months ago he moved with his family to Council Bluffs, owing his grocer \$28.40. A suit in attachment on the ground of non-payment was instituted against him, returnable last Saturday morning at 9 o'clock. The railway company answered it was owing the clerk \$28.15, Saturday morning before 9 o'clock when the justice court to his office he found Hartlieb, his wife and boy, about five years old, waiting for the arrival of the official. They were all clad in rags, and the great living shavings of Carlisle, and she had been an employe in a cigar factory in the same place. When he realized the jeopardy in which his monthly stipend was placed he offered to pay the debt, but the creditor longer. He bevalued the fate that had ever led him and his family from his fatherland, where he said they lived much more comfortably and respectably than his growth in this country, and he continued, "I have worked on bread and coffee alone. My wife and child have shared this same fate with me. Now if you take my pay from me you can't get any more, and I have no other resources for support for my wife and child, or become a thief and a robber. I was kept at work through the winter by my boss simply because I was an ignorant fellow, and I don't know any longer. He bevalued the fate that had ever led him and his family from his fatherland, where he said they lived much more comfortably and respectably than his growth in this country, and he continued, "I have worked on bread and coffee alone. My wife and child have shared this same fate with me. 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