# THE OMAHA DAILY BEE: FRIDAY, NOVEMBER 11, 1887.

# ONE MONOPOLY MASTERED.

Decision of the Supreme Court in the Mandamus Case.

HAS THE POWER TO FIX RATES.

The Board of Transportion May Compel Railroads to Reduce Charges as Scheduled - General Leese Sustained.

[FROM THE BEE'S LINCOLN BUREAU.] The supreme court to day filed the follow ing syllabus and opinion in the mandamus case to determine the powers of the board of transportation. The opinion was written by Judge Maxwell and concurred in by the other judges: for continuous cartage or shipment from any

State ex rel, Board of Transportation vs. Fremont, Elkhorn & Missouri Valley Rail-road Company, Mandamus, Demurrer overruled, Opinion by Maxwell, Chief Institut, Chief Justice.

The attorney general is the law officer of the state and required to prosecute or defend any case in the supreme court in which the state is a party, or interested; therefore, where a majority of the board of transporta-tion of the state adopted a resolution asking the supreme court to continue a case pending the supreme control company to company to compel such company to com-form its rates and charges to an order previously made by said board, held that the board had no authority to control the action of the attorney general in the manage-

ment of the case. 2. Where a railroad company demurred to 2. Where a railroad company demurred to an alternative writ requiring it to reduce its rates and charges to conform to an order of the board of transportation, and denied the power of the board to reduce such rates and charges, held that the court would deter-mine the question of the power of the board to make the order in question, before enter-ing upon an examination of the facts, and there are a summation of the facts. refore would not permit the demurrer to be withdrawn.

3. The act to regulate railroads and prevent unjust discriminations, approved March 31, 1887, provides that all charges made for services rendered, or to be rendered, by any railway company in this state, in the transportation of passengers or property, shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful; and re quires such railway company to print and keep for public inspection schedules showing the rates and fares and charges which have been established and are in force at the time upon such railroad. Held, that the board of transportation has authority to determine in the first instance what are just and reason able charges for the services rendered, or to

 4. The act in question prohibits any preference or advantage to any particular person, company, corporation or locality, or any par-ticular description of traffic to any projudice or disadvantage in any respect, and places the general supervision of all railroads within the state, in the board of transportaany complaint made in writing, and under oath, concerning any unjust discrimination against any person, firm, corporation or lo-cality, either in rates or facilities furnished, in order to prevent unjust discrimination against either persons or places. 5. The word "locality" mentioned in the

statute, means the territory unjustly discrim-Insted against, and may be a village, city, county, or portion of the state. 6. The power to determine what is an un-

first rate and charge and the extent of the same, and to prevent unjust discrimination, carries with it the power to decide what is a just rate and charge, and authorizes the board to fix just and reasonable rates and charges. 7. The finding of fact by the board of

transportation in any matter submitted to it under the above statute for determination, is prima facia evidence of the existence of such facts and of the reasonableness of an order made by said board in pursuance thereof.

made

8. The act to regulate railroads and pre vent unjust discriminations, approved March 81, 1887, being a remedial statute, is to receive a liberal construction to carry into effect the purpose for which it was enacted. 9. Where the board of transportation has investigated charges of unjust discrimination against a railroad company, and has found such unjust discrimination to exist, and gr-dered such railroad company to reduce its rates to conform to a schedule presented by

sum for the same service than was charged to the favorite shipper, that equal facilities, in many cases were not furnished to all who desired to ship either goods, grain and stock, and business as far as possible, was into the hands of favorite parties. It was also claimed that certain prominent compet-ing points in the state which had paid large sums as donations to secure competing lines had actually been discriminated against by the increase in rates, and that charges gen-erally throughout the state were much higher than those of other states having the same amount of business. Other wrongs were claimed, which need not be noticed here. To correct these wrongs, the legislature at its last session, passed "A act to regulate railroads, prevent unjust discrimination, provide for a board of transportation, and define its duties, and repeal articles 5 and 8 of chapter 72, entitled "Railroads," of the revised statutes, and all acts and parts of acts in conflict therewith. Compiled statutes of 1887, pp. 563-570. The first section of the act provides that it shall apply to any common carrier or carriers engaged in the transportation of pas-sengers or property by railroad under a com-mon control, management or arrangement

point in the state of Nebraska, to any other point in sold state, and requires that all charges made for any service rendered or to

be rendered in the transportation of passen-gers or property shall be reasonable and just,

and prohibits unjust and unreasonable charges and declares them to be unlawful.

The second section declares that no common carrier subject to the provisions of the act shall directly or indirectly by special rate,

rebate, drawback or other device, charge, de-mand, collect or receive from any person or persons, a greater compensation for any ser-

vice rendered or to be rendered in the trans-portation of passengers or property, than it

section declares it to be unlawful for any such

common carrier to give any preference or ad-

vantage to any particular person, company, firm, corporation or locality, or (on) any par-ticular description of traffic in any respect

whatever, or to subject any person, company, firm, corporation or locality or any particular description of traffic to any prejudice or dis-advantage in any respect whatsoever, and also declares that a railway connecting with

other lines shall not discriminate in their rates and charges between such connecting

lines. The fifth section prohibits the pool-ing of carnings of railways. The sixth sec-tion requires such railways to print and keep

for public inspection schedules showing the

done, by any common carrier subject to the provisions of this act, in contravention of the provisions thereof, may apply to said board by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the board to such common carrier who shall be called to such common carrier who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the board. If such com-mon carrier within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the com-plaint within the time specified, or there

shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the beard to investigate the matters complained of in such a manner and by such means as it shall deem proper. No com-plaint shall at any time be dismissed because of absence of direct damage to the com-plainant."

planant." That is railroads being public ways and subject to legislative control, any violation of the statute by them is a matter of public right to procure the enforcement of a public duty, and it is sufficient for the complainant duty, and it is sufficient for the complainant to show that he is a citizen, and as such, is interested in the execution of the laws. State v Shropshire, 4 Neb., 413-14; Hall v The People, ex rel. 57 Iil., 313; State ex rel. v Judge, 7 Iowa, 202; Hamilton v State, 3 Ind., 458; The people v Hisley, 37 N. Y., 348; The State v Stearns, 11 Neb., 106. The fourteenth section requires the board to make a report in writing in respect to any

to make a report in writing in respect to any investigation which they have made, which shall include the findings of fact, together with a recommendation as to what repara-tion, if any, can be made by the common car-

tion, if any, can be made by the common car-rier to the party injured, and such findings shall be deemed prima facie evidence of every such fact found. The fifteenth section declares that if it be made to appear to the satisfaction of the board, either by the testimony of witnesses or other evidence, that anything has been done, or permitted to be done in violation of the provisions of this act, or any law coemizcharges, demands, collects, or receive from nny other person or persons for doing for him or them a like and contempo-raneous service in the transportation of a like kind of traffic under substantially simi-lar circumstances and conditions. The third action declares is to be determined as the service of the provisions of this act, or any law cogniz-able by said board, by any common carrier, or that injury or damage has been sustained or that injury or damage has been sustained by the party or parties, complaining or by other parties aggrieved in consequence of any such violation, it shall be the duty of the board to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to such common carrier to cease and desist from such violation, or to make reparation for its in jury so found to have been done, or both, within a reasonable time to be specified by the board.

rates and fares and charges "for the trans The sixteenth section declares that "if such rates and threes and charges "for the trans-portation of passengers and property which any common carrier has estab-lished and which are in force at the time upon its railroad, as defined by the first section of this act. The schedules printed as aforesaid by any such common carriers shall plainly state the places upon its railroad between which property and pas-sengers will be carried, and shall contain the classification of freight in force upon such rallway companies shall violate, or refuse, or neglect to obey any lawful requirement of the board in this act named, it shall be the duty of the board, and lawful for any company or person interested in such order or re quirement, to apply in a summary way by petition filed in the judicial district in which the common carrier complained of has its principal office, or in the district in which the violation or disobedience or such order of classification of freight in force upon such railroad, and shall also state separately the requirements shall happen, alleging such vio-lation or disobedience, as the case may be, and the said court shall have power to hear and determine the matter on such short notice to the common carrier complained of railroad, and shall also state separately the terminal charges and any rules or regula-tions which in any wise change, affect or de-termine any part of the aggregate of such aforesaid rates and fares and charges. Such schedules shall be printed in large type, of at least the size of ordinary pica, and copies for the use of the public shall be kept in every depot or station upon any such rail-road, such places and in such form that they may be conveniently insuected. No advance as the court shall deem reasonable, and said court shall proceed to hear and determine the matter speedily as a court of equity, but in such manner as to do justice in the pre-mises; and to this end the court shall have, if may be conveniently inspected. No advance shall be made in the rates, fares and charges which have been established and published as aforesaid by any common carrier, in com-pliance with the requirements of this section, mises; and to this end the court shall have, if it think fit, to direct and prosecute in such mode and by such person as it may appoint; and such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the report of sud board shall be prima facie evidence of the matters therein stated; and if it be made to appear to such court on such hearing, or shall plainly state the changes proposed to be made in the schedule then in force and the time made in the schedule then in force, and time when the increased rates, fares or to appear to such court on such hearing, or on report of any such person or persons that the lawful order or requirement of said charges will go into effect; and the pro-posed changes shall be shown by printing new schedules, or shall be plainly indicated board drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper pro-cess, mandatory or otherwise, to restrain such a common carrier from further conupon the schedules then in force at the time and kept for public inspection. Reduction in such public rates, fares or charges may be nade without previous public notice; but whenever any such reduction is made, notice tinuing such violation or disobedience of said board, and enjoining obedience to the same; and in case of any disobedience of any of the same shall be publicly posted, and the changes made shall immediately be made public by printing new schedules, or shall imsuch writ of injunction or other proper pro-cess, mandatory or otherwise, it shall be law-ful for such court to issue writs of attachnediately be plainly indicated upon the chedule at the time in force and kept for ment or any other process of said court in-cident or applicable to writs of injunction or public inspection; and when any such com-mon carrier shall have established and pub-lished its rates, fares and charges, in compli-ance with the provisions of this section, it shall be unlawful for such common carrier to have downed collect or section for an other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers or agents of the same, or against any owner, lessee, trustee receiver or any person failing to obey such charge, demand, collect, or receive from any

pialuing of anything done or omitted to be

suppress the mischlef and advance the rem-edy. 1 Bl. Com., 97; Rogers vs Omaha Hotel company, 4 Neb., 53. Here is an act which declares that all charges shall be just and reasonable, prohib-its and declares unlawful all unjust and un-reasonable charges; which requires sched-ules of such just and reasonable charges to be posted for the use of the public, and pro-hibits an advance in rates except upon cer-tain conditions; which prohibits any prefer-ence in favor of, or against, any person or place; which requires the board to investi-gate all complaints against any railway cor-poration doing business in the state, and gives said board power to call for persons and papers in order that their investigations may be thorough, and the report thereof based upon facts, and also makes their finding of fact prima facie evidence thereof, and refact prima facie evidence thereot, and quires said board to investigate a and quires said board to investigate and prevent any unjust discrimination, against either any person, corpora-tion or locality. These are broad powers. They are not to be restricted. Such powers were conferred for the express and declared purpose of fixing charges which shall be rea-sonable and just, and prohibiting unjust and unreasonable charges, and unjust discrimination. The court has no authority to limit the board in any respect in that regard. Such board is to determine, in the first instance, at least, what are reasonable and just charges, what unreasonable and unjust; and when any person, firm, corporation or locality is un justly discriminated against. There can be no restriction of the word "locality." It may It may refer to a village, city, county, or portion of the state, the meaning in each case to be de-termined by the territory which the board to be unjustly discriminated against; and if there is discrimination against any person, firm or corporation, it is the duty of the board so to find, and to require the railway company to cease its discrimination. To do so such board has the authority to require such railway company to reduce its rates to a reasonable and just standard. The power to fix a seasonable and just standard. The power of fix a seasonable and just rate is clearly con-ferred on the board, as also the power to de termine what rates are unjust and unreason-able. It is the duty of the board to prevent unjust discrimination in all the forms menunjust discrimination in the torus may de-termine what is a proper charge to and from any points within the state, and its order in that regard, based on its finding of facts, will be prime facie evidence of the correctness of the order. In the case under consideration the board

found that the rates and charges of the respondent were excessive, in other words, that there was unjust discrimination against that part of the state, and having so found, the board is clothed with ample power to re-quire such railway company to reduce its rates and charges. The power of the board, therefore, to establish and regulate rates and charges upon railways within the state of

charges upon railways within the state of Nebraska, is full, ample and complete. 5. Some objection is made to the remedy by mandanus, and it is said by the attor-neys for the respondent, that the writ may not issue where there is a plain and adequate remedy in the ordinary course of the law (code, section 646); that, therefore, "it may rot issue in this case, be-cause there is a plain and adequate remedy in the law for enforcing the order of the board of transportation, if its order is a board of transportation, if its order is a lawful one, by application to the district court in the mode pointed out by the 16th section of the act of 1887; that the proceed-ing under the 16th section is both plain and adequate.

"That the legislature did not intend to authorize or permit the enforcing of all orders of the board by mandamus is clear, from the fact that as to the particular matters mentioned in the 17th section it gave author ity to proceed by mandamus as the only and exclusive remedy for enforcing such orders, and as to all other orders, in reference to all other matters mentioned in the act, the leg-islature provided as the only and exclusive remedy an application in the first instance to the district court as provided in section 16. "The fact that the legislature specifically

gave the right to proceed by mandamus in the cases mentioned in the seventeenth sec-tion only, and provided other specific and adequate remedy for all other cases, leave no doubt that it was the intention of that leaves hody that mandamus should only be resorted o in the cases provided for in the seven teenth section.'

These objections are untenable. They are that the district court alone, has jurisdiction, and not that the relator has another remedy besides mandamus. But even if the objec-tions were to the form of the remedy, they could not be sustained. The fact that an action will lie, does not supersede the remedy by mandamus. If the remedy by an action is not a plain and adquate remedy, a man-damus may be issued notwithstanding an ac-tion would lie. State vs. Stearns, 11 Neb., 107. Thus while a party aggricyed by some violation of the statute by the respondent might maintain an action against such re-spondent, yet if such remedy was not ade-quate, it would not prevent him from enforcing his rights by mandamus. The test to be applied in determining the right to relief by mandamus, is to inquire whether the relator has a clear legal right to such writ and whether he has any other adequate legal remedy. People vs Hcad, 25, Ill., 325; People a Hilliard, 29, 111., 418. In the case at bar the relators show a clear legal right to have the order made by them complied with. People vs Mayor, 51 Ill., 28; People vs Brooklyn, 1, Wend., 318. And this writ may be applied for in a proper case in the supreme court under any section of the act which authorizes the filing of an applica-tion in the distingt source. tion in the district court. In many cases the district court is unable to grant adequate re-lief, its jurisdiction being limited to a partic-ular county. Thus, suppose the board of transportation, as in the case under consideration, should order a railway company to re-duce its rates and charges on all its lines within the state, a question might, perhaps, arise as to the power of the district court to act on rates without the county in which the action was brought. So in cases of like character. But where the action is insti-tuted in the supreme court, no question of that kind can arise; nor can the party be debarred by any statute of a constitutional right. The supreme court, therefore, has urisdiction in the case and mandamus is the proper remedy. The demurrer, therefore, is overruled and a peremptory writ will issue within ten days from this date, unless the respondent, within that time, shall present to the court an an-swer showing compliance with the alterna-tive writ, or a defense upon the facts to the action

been arraigned before the grand jury yester-day but owing to the continuance of other im-

day but owing to the continuance of other im-portant matters, it is hardly probable that this case will be considered before next week. Alfred B. DeDong filed a suit yesterday against Charles P. Bingman in the dis-trict court. Mr. DeLong alleges that Mr. Bingman caused his arrest for trespass sometime since, and that he was incarcer-ated in the county bastile for four days, and afterwards discharged at the trial. He fur-ther states that the prosecution was a ma-licious one, and that he has suffered to the extent of \$10,6000, for which amount he asks judgment. tudgment

A suit against Martin Quick was begun A suit against Martin Quick was begun yesterday, the plaintiffs being Sachesse & Landeman, the real estate dealers. They, say that the defendant placed in their hands ninety acres of land to sell for \$28,000, and they were to have a commission of \$2,675 in case they sold it within one week. They did sell it to one Loverson, and threw off \$1,000 of their commission. The defendant refused to councly with the contract, and hence a suit to comply with the contract, and hence a suit for \$1,675 and costs. A mandate has been filed from the United

A mandate has been filed from the United States supreme court granting a new trial in the case of Samuel Clinton against the Mis-souri Pacific railway. Clinton wants \$8,000 from the railroad company for the right of way across property at Weeping Water. In the former trial he was allowed but \$500. William E. Lemmon was arraigned before the United States court yesterd<sup>and</sup> charged with obtaining resistered letters under false pretenses from the postoffice at Fairbury. He has plead guilty, and the judge will announce the penalty this morning. He is charged the penalty this morning. He is charged with two different offenses. The amounts secured each time were small.

### STRUCK BY A RATCHET.

A Pedestrian Narrowly Escapes Death

at Thirteenth and Farnam Streets. Yesterday morning a dangerous accident happened on Farnam street in front of the new building of the Merchant's National bank. On the roof several hands were at work, drilling iron beams and otherwise fitting the iron rafters, when a heavy ratchet, with which the work was being done, slipped from one of the workmen and fell down the inclined fire-proof covering and then to the walk below, striking a passer-by named A. J. Humberd, on the right side of the head. The scalp was cut in two places, in one of which the incision was three and one-half mches and in the other one inch in length, and, the man was felled to the ground and bled freely. He was latter carried to Dr. Harri-gan's office, corner of Douglas and Thirteenth streets where his induries were at tended. The doctor said there was no exter-nal fracture of the skull, and if an inner one had been made, it would not be developed for several days. The doctor took the injured man to his residence in the Amscow building northwest corner of Fourteenth and Leaven-worth streets. Humberd is a recent arrival and had come here from Iowa to work for a paving company.

#### "How Can She Ever Love Him?"

is what you often hear said when the prospective groom is the victim of catarrh. "How can she bear such a breath?" "How resolve to link her destiny with that of one with a disease. that unless arrested, will end in consumption or perhaps insanity?" Let the husband that is, or is to be, get Dr. Sage's Catarrn Remedy, and cure him-self before it is too late. By druggists.

### Real Estate Transfers.

Minerva Johnson to School District of Omaha, commencing at a point where the north and south quarter section line in sec 30, 15, 13 crosses the county road running thence south on the said quarter section line, 4 chains and 30 links to the center of said county road thence n 85 deg 40 min w to place of beginning, 

q c.... B Jackson and wife to Owen Ifor, lot 24 blk 6 Maynes add, w d. Nelson J Edholm et al to Mary Rock-

bud, lot 16 bik 5 Morse & Brunner's add, w d. Morris Morrison and wife to Mary Ann Phelps, s 29 ft of n 29 ft of w 14 of lot 20 clk 15 Improvement associa-

tion, w d. William Latey and wife to William V Benson, und ¼ of e 6 ft 3 inch of lot 5 and w 25 ft of lot 4 blk 3 Foster's add wid add, w.d. Robert Kerr (single) to Joseph W Bishop, lot 2 Flack's sub, w.d. 4,000

# SOUTH OMAHA NEWS. The hog market advanced 15 cents yes-

John Timmons, of Sloux City, Ia., was in

he city yesterday. The new depot will be ready for occupancy by Tuosday next.

George Backley, of North Platte, is in the city on a business trip. A switch engine in the B. & M. yards blew out a cylinder head last night. One case of disturbing the pence occupied the attention of Judge Reuther yesterday The party was sentenced to five days in the

city jail. During the past thirty days two and one

alf miles of sixteen inch water main has een laid within the corporate limits of the city and the work is only fairly begun.

The castern addition to the stockyards is nearing completion and will be finished in about four weeks. The need of greater space in the yards is daily becoming more apparent. Henry Girard, a bookkeeper in the wholesale house of Tootle, Hanna & Co., of Kansas City, passed through South Omaha yesterday on his way home from a trip to Chey-

enne. Mrs. S. M. Clarke, of Kansas City, Mo., is in the city looking for a location for a milli-nery establishment. She will doubtless purchase a piece of property and crect a building of her own.

Mrs. Wm. Barada, who for some time has been ill has nearly recovered and on Satur-day evening will leave with her mother for St. Joseph, Mo., where she will remain a month or two. month or two.

David Anderson returned from Columbus yesterday with a car load of hogs and a car of oats. Mr. Anderson's present resi-dence is at Columbus, but he will in a short time remove to this city.

Mr. T. J. Ritner, of Washington, D. C., is in the city and is making some large pur-chases of building lots in various portions of the city upon which he intends erecting a number of tenement houses.

As has been stated there is great demand in South Omaha for mechanics, and the field is enlarging each day. Bricklayers and carpenters are very scarce and fifty of each of these classes could readily find employment. The fact that South Omaha is progressing is demonstrated by the statement made by an Omaha real estate firm who have a branch office in this city to the effect that out of 103 building lots placed on their books during the latter part of September but eight are left. South Omaha needs a first class hotel for the accommodation of the many visitors who are constantly arriving. Those doing business at present are nearly always filled to their utmost capacity which causes a majority of the parties mentioned to stop in Omaha when were accommodations to be had in this city they would remain here.

The result of the recent census has been sent to the governor and his action regarding the issuing of a certificate declaring South Omaha a city of the seventh class, with a population of 5,000 and upwards, is awaited with much concern. As soon as this action is taken by the governor a special election, at which a propagition to issue hands for mubic which a proposition to issue bonds for public improvements will be submitted, will be ordered by the council.

ordered by the council. The lake lying between the Exchange building and the railroad yards will be drained as soon as the connection with the sewer running southward through the grounds of the Swift Packing company is completed. This will be accomplished by the latter part of next week. When the lake is drained N street will be extended from Twenty-seventh street to the new boulevard. The property holders will then fill their portion of the ground now covered. There is a great demand at present for

There is a great demand at present for brick which the local dealers are unable to supply. There are now at least twonty par supply. There are now at least twenty par-ties in the city who would erect buildings im-mediately could a supply of brick be ob-tained. Nearly all the yards have shut down for the winter, and the brick now being burned are all sold. Unless measures are taken to import material operations in the building line will be greatly delayed. The owner of the yard at Twenty-fourth and J

streets proposes to purchase a machine which can be kept in operation all winter. This yard, together with the one two miles 940 east of the city, will just about supply the demand for material for foundations during 300 the winter season.

When Your Nerves Bother You, invigorate them. When your night's repose is unsound or unrefreshing, your appetite jaded or capricious, when slight noises cause you to start, and annoyCONFIDENCE OPERATIVES The Methods Confidence Men Use

to Ensnare the Unwary,

#### How the Unsuspecting Farmer is Taken In-Good Solid Bankers Often Caught-The Experience of Jno Swanburg, of Omaha.

Bwandurg, of Omana.

MR. JOHN SWANBURG, resides with Mr. J. L. McNay, at Silver City, Iowa, and will corroborate the above to anyone who will address or call on him.

The following statement regarding Drs. Mc-Coy and Henry is made upon good authority: "Since these eminent physicians have been in the west, they have treated and cured more ste thous-and cases of estarrh and chronic throat and lung troubles, and of these cases 40 per cent had been declared and pronounced incurable."

### CATARRH DESCRIBED.

#### The Symptoms Attending that Disease Which Leads to Consumption.

When catarrh has existed in the head and the upper part of the throat for any length of time --the patient living in a district where people are subject to catarrhal affection-- and the dis-ease has been left uncured, the catarrh invari-ably, sometimes slowly, extends down the wind-pipe and into the bronchial tubes, which tubes convey the air into the different parts of the lungs. The tubes become affected from the swelling and the mucous arising from catarrh, and, in some instances, become affected from the swelling and the mucous arising from catarrh, and, in some instances, become affected from the start the air cannot get in as freely as it should. Shortness of breath follows, and the patient breathes with labor and difficulty. In either case there is a sound of crackling and wheezing inside the chest. At this stage of the disease the breathing is usually more rapid than when in health. The patient has also hot dashes over his body. The pain which accompanies this condition is of a duil character, feit in the chest, behind the breast bone or under the shoulder blade. The pain may come and go-lasts few days and then be absent for several others. The cough that occurs in the first stages of bronchial ca-tarth is dry, comes on a intervals, hacking in character, and is usually most troublesome in the morning on rising, or going to bed at night, and it may be in the first sridence of the disease extending into the lungs. When catarrh has existed in the head and the

extending into the lungs. Sometimes there are fits of coughing induced

such board, which order the railroad com pany neglected to comply with, mandamus is a proper remedy to enforce such order, and the mention of the district court in the statate will not preclude bringing the action in the supreme court, where the latter court has original jurisdiction. The State of Nebraska ex rel. the Board of

Transportation of the State of Nebraska vs the Fremont, Elkhorn & Missouri Valley Railroad Company. Opinion filed Novem-ber 10, 1887. Maxwell, Ch. J. On the 24th day of September, 1887, the board of transportation of this state served

notice upon the respondent, requiring it to reduce its freight charges 33% per cent on all its lines within the state of Nebraska, on or before October 1, 1887; a schedule of the charges to be made as reduced for freight on said line of road within the state being fur-nished to the respondent. The respondent neglected to comply with the order of the board of transportation, and on the 4th day of October, 1887, the board, through the attor-ney general of the state, applied for an alter-native writ of mandamus to compel the re-spondent to comply with said order. The writ was returnable on the 5th of that month, when the respondent, by its attorney, ap-peared and prayed for additional time in which to plead to the writ, which time was granted. The respondent demurred to the complaint and also to the alternative writ, and the case was set for hearing on the 17th day of Octo-ber, 1887. On that date the attorney for the per respondent not appearing, and the attorney general being absent at Washington on busi-ness pertaining to his office, the case was passed until his return. On his return the case was set for hearing on the 31st day of October, 1837. At that date the attorney for the respondent appeared and filed a state-ment of an alleged compromise with the board of transportation of the state, except the attorney general and also a resolution of said board except said attorney general, ask-ing the court to continue the case until the January term. This the attorney general resists, and insists that the case shall proceed in order that the authority of the board ceed in order that the authority of the board over the subject matter may be determined. The first question presented therefore, is the authority of the attorney general to proceed with the prosecution of the case against a protest of a majority of the board of transportation. Section 1 of article V., chapter 83 of the compiled statutes of 1887 provides that. "The attorney general shall provides that: "The attorney general shall appear for the state and prosecute and de-fend all actions and proceedings, criminal for civil in the supreme court in which the state shall be interested or a party, and shall also, when requested by the governor or either branch of the legislature, appear for the state and prosecute and defend in any court, or before any officer, any cause or whitter divid or officer in which the or matter, civil or criminal, in which the state may be a party or interested." The at-torney general is thus the law officer of the state and intrusted by law with the manage-ment and control of all cases in which the state is a party or interested. The majority of the state board of transpartation, there-fore, cannot control his action in the premises, and the motion to continue the cause must be overruled.

2. Upon the overruling of the motion for ntinuance, the attorney for the respondent ked leave to withdraw the demurrer and for time in which to prepare and file an an-swer. This, however, cannot be permitted. The respondent denies the authority of the The respondent denies the authority of the state board to regulate and control the rates of freight upon its lines of railway. The question of power is fully raised by the de-murrer, and should be decided before enter-ing upon the consideration of questions of fact. It is important too, that if such power should be found to exist, that the question be determined so that parties aggrieved may apply to the board for relief. The motion for leave to withdraw the domurrer and file an answer is therefore overruled. If, how-ever, the court should decide that the board of transportation has the power to regulate of transportation has the power to regulate rates as contended for in the petition and alternative writ, the demurrer will be over ruled and upon proper application the defend ant will have leave to answer.

2. It is a matter of public history of the state, that for a number of years prior to the Sist day of March, 1887, it was generally claimed that some or all of the railroads of the state had granted secret rebates to favorite shippers over their lines; that the effect of such rebates was to pharge a party not thus favored, a larger ing society, or any politic or manufactur-ing society, or any politic or manufactur-

person, or persons a greater compensation for the transportation of passengers or property, or for any services in connection therewith than is specified in such public schedule of rates, fares and charges as may

at the time be in force. It is contended by the attorneys for the re-spondent that without a charge actually made in reference to some specific freight, and against some particular person, the statute is not and cannot be violated, and it is said, page 6 of the respondent's brief: "A charge cannot be made when there is no property transported, and when there is no person for whom such property has been or is to be transported. There must be both a specific person and specific property, and the charge must be made for such specific property and against such specific person, and it nust be for such service rendered or to be rendered.'

The respondent's attorneys seem to ignore the remedy given by the statute, and place the claim for relief entirely upon the ground that there must be a charge actually made for services rendered before the question of the unlawful charges can be determined. The statute, however, requires the railway company to establish and publish its rates, forms and charges before sendering the care company to establish and publish its rates, fares and charges before sendering the ser-vice. Suppose A, residing at Columbus, or other point in the state, wishes to ship goods to Omaha or Lincoln, but decens the charges excessive, the statute gives him the right to complain of such charges as being excessive and ask that they shall be fixed at such sum as shall be reasonable and just as provided in the first and sixth sections of the act. The first section declares that every unjust and unreasonable charge is prohibited and de-clared to be unlawful. The board of trans-portation, therefore, is clothed with power to determine what is a just and reasonable charge on all the lines of railway within the state, and this may be done in advance of the

rendition of the service. 4. The seventh section requires the railway company to file with the board copies of its schedules of rates, fares and charges which have been established and published which have been established and published in compliance with the statute, and promptly to notify said board of all changes made in the same, and also to file with said board copies of all contracts, agreements or ar-rangements with other common car-riers in relation to any traffic af-fected by the provisions of this act to which it may be a party, and in cases where passengers and freight pass over con-tinuous, lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuons lines or or charges for such continuons lines or routes, copies of such joint tariff shall also in like manner be filed with said board. Such fares and charges that with said board. Such fares and charges thereon when so directed by the board and may be compelled to publish the same if on such request they neglect or refuse to do so. The eighth section makes it unlawful for such common carrier to enter into any combination, contract, or agreement. express or implied, to prevent by change of time schedule, carriage in different cars or by

other means or devices the carriage of freight being continuous from the place of shipment to the place of destination. The ninth section authorized a recovery against any such carrier as shall do, cause to be done, or percarrier as shall do, cause to be done, or per-mit to be done, any act, matter or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing in this act required to be done. The tenth section pro-vides the procedure of any person claiming to be damaged. The twelfth section authorizes the board to inquire into the management of all common carriers, subject to the provisall common carriers, subject to the provis-ions of the act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right obtain from such common carriers ful complete information necessary to enable the board to perform the duties and carry out the object for which it was created, and it is clothed with power to require the attendance and tes-timony of witnesses and the production of books, papers, tariffs, contracts agreements and documents relating to any matter under investigation, and it may invoke the aid of either the district or supreme court to require the production of the re-quired witnesses or documents. The thirteenth section provides that any person, firm, corporation or association, or any mercantile, agricultural or manufactur-

writ of injunction, or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing is a such common carrier, or other person so dis-obeying such writ of injunction, or other proper process mandatory or otherwise, to pay such sum of money not exceeding for such carrier or person in default, the sum of \$500 for every day after a day to be named in the order that such carrier or other person shall fail to obey such injunction, or other

proper process mandatory or otherwise." The mention of the district court in the above section does not preclude the supreme court from hearing any case in which it has original jurisdiction. Section 17 provides that "Said board shall have the general supervision of all the rail-roads operated by steam in the state, and

shall inquire into any neglect of duty or vio lation of any of the laws of this state by railor by any officer, agent or employee of any railroad corporation doing busi-ness in this state; and shall from time to time carefully examine and inspect the condition of each railroad in this state and its equipment and manuer of the conduct and management of the same, with reference to the public safety, interest and convenience. It shall carefully investigate any complaint made in writing, and under oath, concerning any lack of facilities or accommodations fur nished by any railroad corporation doing business in this state for the comfort, convenience and accommodation of individuals and the public; or any unjust discrimination and the public; or any unjust discrimination against either any person, firm or corpora-tion or locality, either in rates, facilities furnished or otherwise; and whenever, in the judgment of said board, any repairs are necessary upon any portion of the road or upon any stations, depots, station houses or warehouses or upon any of the rolling stork warehouses, or upon any of the rolling stock of any railroad doing business in this state,

or additions to, or any changes in its rolling stock, stations, depots, station houses or warehouses are nec-essary in order to secure the safety, comfort, accommodation and convenience of the public and individuals, or any change in the mode of conducting its business o operating its road is reasonable and expedient in order to promote the security and accommodation of the public, or in order to pre-vent unjust discriminations against either persons or places; it shall make a finding of the facts and an order requiring said railroad corporation to make such repairs, improvements or addition to its rolling stock, road, stations, depots, or warehouses, or to make such changes either in the manner of conducting its business or in the manner of coperating its road as such board shall deem proper, reasonable and expedient." It will thus be seen that the board is clothed with the "general supervision of all railroads operated by steam in the state"

 and it is made its duty to "carefully investigate any complaint in writing, and under oath concerning
 any unjust discrimination against either any person, firm or corporation or locality, either in rates, faclifies furnished or otherwise \* \* in order to prevent unjust dis-crimination against either persons or places; it shall make a fluding

places; it shall make a finding of the facts and an order requiring said rail-road corporation to make such changes in the manner of conducting its busi-ness as such board shall decree proper, reasonable and expedient.

Webster defines the word "supervision" to be, "The act of overseeing; inspection; super-intendence." The board, therefore, is clothed with the power of overseeing, inspecting and superintending the railways within the state, for the purpose of carrying into effect the provisions of this act; and they are clothed with power to prevent unjust discriminations against either persons or places. The attorneys for the respondent contend

that the act is to receive a strict construction. No satisfactory reason, however, was given for the adoption of such rule. The act is remedial in its nature and is designed to pre-vent and punish abuses in the management of some, or all, of the railways of the state, and

some, or all, of the railways of the state, and in construing remedial statutes there are three points to be considered, viz.: the old law, the mischief, and the remedy: that is, how the law stood at the making of the act, what the mis-chief was for which the former law did not provide, and what remody the legislature has provided to cure this mischief; and it is the business of courts so to construe the act as to

business of courts so to construe the act as to

#### Judgement accordingly. The other judges concur.

# MORTUARY MATTERS.

#### Facts About Those Who Have Departed This Life.

JOHN VAUGHN. The great mortality which has been experienced this season by the graders in an about this city, was increased Wednesday by the death of one of the contractors, John Vaughn, who has been a partner of Ed O'Brien in a grading job on Howard street, near Thirty-sixth. The remains lay in the camp until yesterday when they were in-terred in St. Mary's cemetery. The de-ceased was fifty years of age and resided for-merly in Columbus in this state.

ALEX. BICHARDSON. This gentleman, an old resident of this city, having been here since 1857, died at his residence in North Saunders street, yesterday morning at 12:45 o'clock. He was sixty-three years of age, known to and respected by a large circle of acquaintances and one of the oldest members of the Bricklayer's union o this city. The funeral will take place to day.

#### ZACHART THOMASON.

The remains of Zachary Thomason, the well known and enterprising capitalist of this city, who it will be remembered died in Kingsville, Mo., three weeks ago, were buried in Rose-Hill cemetery, Chicago, yesterday. The body had lain in a vault awaiting the return from Europe of the two daughters of the deceased, who at the time of their futher's death were travilly for placence on father's death were traveling for pleasure on the continent. Both of these arrived a few days ago and were present at the interment. M. A. Upton, of this city, a partner of the de-coursed was also present ceased, was also present.

ccased, was also present. S. W. POWERS. The Rev. C. W. Savidge took the train for Kearney Wednesday evening to conduct the funeral services of Mr. S. W. Powers, who was killed recently in Montana. Mr. Powers was well known here, and was for many years stock agent for the Union Pacific, but at the time of his death he was in the employ of the St. Paul, Minneapolis & Maniloba railway. Mr. Savidge returns this morning. railway. Mr. Savidge returns this morning.

#### United States Court Notes.

The case of Isadore Frank against Emma L. Van Etta, for the possion of a small strip of land, is still in progress before Judge Dundy

Barada, the Indian murderer was to have

Harry H Miller (single) to Joseph W Bishop, lot 25 blk 2 Himebaugh & Patterson's sub, w d. John F Toft and wife to Joseph W Bishop, lot 14 blk lot 2 Flack's sub, w d.

Bishop, lot 11 blk 2 Pruyn's sub, w d ... Francis D Cooper and wife to Joseph W Bishop, lot 27 blk 1 Baker place,

w d..... Larmon P Pruyn and wife to Joseph

Larmon P Pruyn and wife to Joseph W Biscop, lots 4 and 5 blk 2 and lot 3 blk 3 Pruyn's park w d. David D Smeaton and wife to Win Vaughan, jr., lots 10, 11, 12 and 13 blk 2 Burlington Center ad w d.... Edwin S Rood and wife to William F Martin, lots 1 and 2 blk 10 Albright's Annea w d. Annex w d.

FE&MVRR to Fannie Croft et al. com on the north line of tax lot 23 in the ne  $\frac{1}{2}$  of the sw  $\frac{1}{2}$  soction 3, 15, 13 e at a point 21 feet east of the west line of of the right of way strip on said railroad, thence running se to the south line of said lot 23 at a point 20 feet east to the said west line of 30 feet east to the said west line of the said right of way, thence nw to to the north line of said lot 23 at a point 21 feet west of the place of beginning, thence east to place of be-

ginning q c. A C Troup to Eben K Long, lots 19 and 22 A Kountze's ad w d and guar-

dian's deed. Annie G Long et al to Eben K Long, lot 23 A Kountze's ad q c Union Pacific Ry to Jos F Sheeley et

Chion Pacine Ry to Jos F Sheeley et al. 1 1-10 acres in the ne ¼ of the se ¼ section 23, 15, 13.
 Helen C Rapp (single) to Louis Bradford, in trust, lot 11 blk 15 Walnut Hill additional

Hill w d. Carly A Hultgren and wife to John D Danielson, lots 7 'and 8 blk 4 McCor- B Chandler to Alex A Campbell, lot
 E B Chandler to Alex A Campbell, lot
 12. blk 5, Melrose Hill, w d.
 Geo Muldoon and wife to American Waterworks company, lot 7, blk 75, 800 450

city of Florence, w d. 250city of Florence, w d. remont N Jaynes and wife to Elma L Jaynes, blks 1 and 2, lots 1 to 7 and 13 to 24 in blk 3, blk 4, lots 20 to 24 in blk 5, North Omaha, w d..... James M Wheeler and wife to Edwin 30,000 A Leavenworth, west % of lot 5, and the east % of lot 6, Kountze's 2d add,

7,260

the east ½ of lot 6, Kountze's 3d add, wd.
Gilbert M Hitchcock and wife to Dan-Diel T Hiller, lot 9, blk 8, Hitchcock's 1st add, w d.
W L Selby and wife to Peter Reinhurt, south 33 ft of lots 11 and 12, blk 0, Lowe's 1st add, w d.
Reuben H Pickard and wife to Claus Matthics, south ¼ of ne ¼ of the se ¼ of sec 26-15-12 e, w d.
Batthas Jetter and wife to Jacob Kendis et al, lot 3, blk 1, Jetter's 1st add.

dis et al, lot 3, blk 1, Jetter's 1st add,

lot 25 blk 2, South Exchange place add, q c. Charles P Simmonds and wife to John S Carmichael. lot 1 blk7, Pratt's sub, w d. Catharina Bursik and husband to Kate Ball, s 50 ft of lot S, Barker's allot-

ment, w d. Robert G King and wife to John A Pearson, lots 3 and 4 blk 1, Pruyn's

In making the assertion that Pozzoni's medicated complexion powder is entirely free from injurions or deadly poisons we do it upon the authority of a thorough chemical analysis. It is one of the old ost face powders in the American market and is used in the families of some of our most prominent medical men who have personally acknowledged to the proprietor that they not only considered it harmless, but esteemed it highly beneficial in every respect. Sold by all druggists.

ances of slight worry you, know three things, viz: 1st, That your nerves are week; 2d, that you need a tonic; 3d, that its name is 650 Hostetter's Stomach Bitters, the promptest, safest, and most popular ar-300 ticle of its class. The nerves are sus ceptible of invigoration only by promot-

ing an increase of vigor in the processes of digestion and invigoration. Narcot ics and sedatives have their utility, but 1,650 in the main, and if their use be continued, they are unsafe. A wineglass of the Bitters before retiring, and a repe-2.600 tition of the same during the day before or after meals, is far more likely to confer health-yielding sleep than repeated doses of an opiate. Dyspepsia, debility, inactivity of the kidneys and bladder, fever and ague, and other malarial com-230

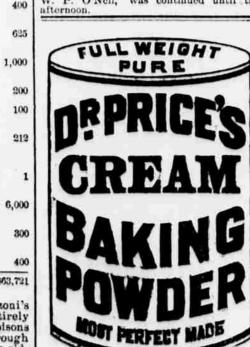
plaints, are always dominated and subdued by it. THE DOUGLAS STREET BRIDGE.

### To Be Completed and Ready for Travel

by the First of May. The new Douglas street bridge across the Missouri river is to be ready for travel by the first of May next. In the event of a failure on the part of the contractors to complete the work, they will forfeit nearly a half million dollars. Of this, however, they claim there is no possible likelihood. They are perfectly cognizant of the magnitude of the job on hand, and will govern themselves accordingly. A large force of skilled workmen have been engaged for each department of construction and the requirements of each have been mapped out and detailed with the precision of clock work. The progress so far has even exceeded that which would be required to finish the entire contract within the pre-scribed time, and the contractors say by the last of April the great span will have been completed entire.

Dearth of Business at the Station.

The grind at the police court yesterday was small and uninteresting. Ten drunks were disposed of, two, Frank Carney and William Mosten, by small fines, and the others dismissed. The case of J. J. Borker, charged with threatening to kill a book agent, W. P. O'Neil, was continued until this



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by the tough mucus so violent as to cause vom by the tough muchs so violent as to cause vom-iting. Later on the mucus that is raised is found to contain small particles of yellow mat-ter, which indicates that the small tubes in the lungs are now affected. With this there are of-ten streaks of blood mixed with the mucus. In some cases the patient becomes very pale, has fever, and expectorates before any cough ap-pears.

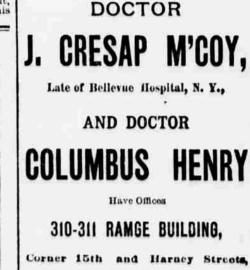
fever, and expectorates before any cough ap-pears. In some cases small masses of cheesy sub-stance are spit up, which, when pressed between the fingers, emit a bad odor. In other cases par-ticles of a hard, chalky nature are spit up. The raising of cheesy or chalky lumps indicates se-rious mischief at work in the lungs. In some cases catarrh will extend into the lungs in a few weeks; in other cases it may be months, and even years, before the disease at-tacks the lungs sufficiently to cause serious in-terference with the general health. When the disease has developed to such a point the pa-tient is said to have catarrhal consumption. With bronchial catarrh there is more or less fever which differs with the different parts of the day-slight in the morning, higher in the afternoon and evening.

### SNEEZING CATARRH.

What It Means, How It Acts, and What It Is.

You sneeze when you get up in the morning you try to sneeze your nose off every time you are exposed to the least draf tof air. You have a fullness over the front of the forchead, and the nose feels as if there was a plug in each nos-tril, which you cannot dislodge. You blow your nose until your ears crack, but it don't do any good, and the only result is that you succeed in getting up a very re-mose, and you so irreate the lining membrane of that organ that you are unable to breathe through it at all. This is a cor-rect and not overdrawn pleture of an acute attack of catarrh, or "Sneezing Catarrh," as it is

tack of catarrh, or "Sneezing Catarrh," as it is called. Now, what does this condition indicate? First a cold that causes mucus to be poured out by the glands in the nose; then those diseased glands are attacked by swarns of little germs —the catarrh germ—that float in the air in a lo-cality where the disease is prevalent. These an-imaleulae, in their efforts to find a lodgment, irritate the sensitive membrane lining of the nose and nature undertakes to rid herself of them by producing a fit of sneezing. —When the nose becomes filled with thickened diseased mucus the natural channels for the in-troduction of air into the lungs is interfered with, and the person so affected must breathe through the mouth, and by such means the through the throat find lungs.



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sub, w d..... Total sales..... \$63,721

w d.... Edwin S Rood and wife to H Spigle, lot 15 blk 8, Albright's annex, w d... Edwin S Rood and wife to A Lewis et al, lot 3 blk 10 and lot 23 blk 11, Albright's annex, w d David M Stuart and wife to George C Hobbie, lots 3 9 7 and 26 blk 1 and