

DEFEATED THE UNION PACIFIC

Raymond Bros. Suit in the Lancaster District Court.

A VERDICT FOR THE PLAINTIFF.

Suit of a German Who Claims That His Wife Has Defrauded Him—Supreme Court Decisions—A Hospital Incorporated.

[FROM THE BEE'S LINCOLN BUREAU.]

The most important case heard in the district court the present term was given to the jury at noon yesterday. It was the first of a number of cases which have been tried in the past six months against the railroads, in which the firms refused to pay the rates demanded on California shipments, and repudiated their goods. The case on trial was Raymond Bros. & Co. vs the Union Pacific railroad, and the goods repudiated were several car loads of sugar. These goods were shipped from California to Omaha at a rate of 15 cents per 100. At Omaha they were reshipped without increasing the rate to Lincoln and a local rate of 15 cents per 100 was added, making the total rate to Lincoln from San Francisco 30 cents. The Lincoln wholesalers objected to the added local rate, holding that the Union Pacific, in operating a line to Lincoln, should have sent the freight via Valley direct to this point without doubling into Omaha and making the local rate back to Lincoln. It is but twenty miles further distant from San Francisco than Omaha, and consequently when the goods arrived the wholesalers here tendered to the Union Pacific the regular 60 cent rate and the proportionate additional rate to cover the extra twenty miles. This the Union Pacific refused and the goods were reinvoyed and it was the possession of the goods upon the payment of the rate tendered that the suit is brought. The case was heard by Judge Chapman and a jury. Mr. Poppleton, of Omaha, and Mr. Kelley, of this city, appeared for the road, and Messrs. Abbott, Lansing & Holmes for the wholesalers. The case has called the entire bar of the city and many citizens as spectators at the court, and the arguments were listened to closely by all. Mr. Poppleton restated the same old story that the goods were shipped from San Francisco to points of like or greater distance, such fact is competent to be considered in deciding whether the rate is unreasonable or unjust. If, from the evidence, it appears that the charge from San Francisco to Lincoln is greater than to points of greater distance, the presumption is that the rate charged plaintiffs is unreasonably high, and, if not overcome by testimony, your verdict should be for plaintiffs. In determining from the evidence what is a reasonable rate you are instructed that such a rate is one that will compensate defendants for the actual cost of transportation and a fair profit, and in so determining you should consider all testimony submitted to you. You are further instructed that if you find from the evidence that defendant made an agreement to ship goods at a rate not to exceed 60 cents to Omaha, then you are instructed that defendant can only charge a proportionate rate for extra miles. If plaintiffs tendered this proportionate rate you are to find for plaintiff. If, in conjunction with other lines of road, as common carriers, defendants have imposed an unreasonable charge, defendants would be liable, and upon tender of a fair and reasonable compensation, the present case can be maintained. Evidence showing rates heretofore in existence is admissible and proper testimony in arriving at reasonable compensation. You are instructed that defendant is a common carrier subject to all the duties and liabilities of such position and bound to carry and deliver goods for a just, reasonable and fair compensation without unjust discrimination.

The jury returned a verdict at 4 p. m. finding for the plaintiff and finding, in addition, that the plaintiff had tendered the amount for a reasonable rate under the testimony. Notice of appeal was at once given.

NEW CASES IN DISTRICT COURT.

In district court yesterday John E. Rothchild filed his petition against the Missouri Pacific railroad, asking judgment for \$1,900 in damages. The suit is based on the fact that the road has constructed a track along the entire length of Mr. Rothchild's lots in Lincoln, greatly damaging their worth. Henry Klockmeyer, a German resident of this county, has brought suit to recover possession of a farm that he claims was deeded by him to his wife under false representations, and that, since he deeded the place, she has driven him from home, taken all his personal property and made him dependent upon his daily labor for a living. The title was deeded to his wife with the understanding that it would settle all differences between them, including the divorce proceedings then pending, but, being ignorant of the language and the tenor of the instrument, he thought he asks that the title and property be restored by the court to his keeping.

SUPREME COURT DECISIONS.

Dorsey vs Clapp. Error from Buffalo county. Reversed. Opinion by Reese, J.

1. In an action for malicious prosecution it was claimed by the defendant, who was a constable, that he had sufficient cause for making the complaint against the plaintiff charging him with the crime of burglary, his information being that of a youth, whom he had previously arrested for the same crime, and which confession was voluntarily given, and by which he implicated plaintiff as being a confederate and accessory. These facts being testified to by defendant. On his cross-examination he was asked if, prior to the confession and while the youth was in custody, he did not, in the hearing of the party under arrest, tell another constable to take him to jail and by the time he had laid there long enough he would confess, or otherwise to the effect that he was a male and the objection sustained. Held error.

2. The general reputation of a party to an action cannot be established by the proof of specific acts.

Shaffer vs State. Error from Kenney county. Reversed. Opinion by Reese, J.

1. Intent or purpose to kill is essential to constitute the crime of murder in the first or second degree, as defined by sections 2 and 4 of the criminal code, and this intent must be specifically and directly averred as part of the description of the offense, in every indictment for either of those crimes.

An avowment that the accused "feloniously, purposefully, deliberately and premeditatedly" did make an assault on the deceased, and that he then and there "feloniously, purposefully, deliberately and premeditatedly" did shoot the deceased with a gun loaded, etc., inflicting a mortal wound of which the deceased then and there died, does not satisfy the requirements of the law; for though the accused may have purposely and premeditatedly made an assault on the deceased, and shot him, it does not follow that the shooting was with the design and purpose to produce death.

3. Where the purpose to kill is not averred by way of description of the offense, the omission cannot be aided by the ordinary formal conclusion of the indictment which avers that the jury do find and say that the accused "did in manner and form aforesaid, feloniously, purposefully and premeditatedly, purposely and of his deliberate and premeditated malice aforethought, kill and murder" the deceased. Such allegation being nothing more than a legal conclusion arising from the facts previously stated cannot cure any defects in the premises on which it assumes to be predicated.

4. Instruction numbered thirteen, copied from instruction number nine, in Williams v. The State of Nebraska, 1884, and printed therein at page 196, criticised and the concluding words thereof held unnecessary. Ex parte John Carr. Habeas corpus. Judgment of district court held void and prisoner to be discharged unless proper authorities commence proceedings to prosecute within fifteen days. Opinion by Maxwell, Ch. J. Reese, J. dissents.

1. Under chapter 10 of the revised statute of 1886, all unorganized counties were attached to the nearest organized county directly east, for election, judicial and revenue purposes; therefore where a murder was alleged to have been committed in the county of Sioux, the party accused of committing the same could not be indicted and tried for the offense in Cheyenne county, it being directly south of Sioux county.

2. Where the record of the indictment against a party accused of committing a crime has been omitted, or lost or destroyed, the court will receive secondary evidence as to the essential facts stated in the indictment, which conferred jurisdiction on the trial court.

Cowan vs State. Error from Valley county. Reversed. Opinion by Maxwell, Ch. J.

1. Where it appears that the charges in the preliminary examination was substantially the same as that set forth in an information filed in the district court, a preliminary examination will be unavailing.

2. Where it is claimed there was no preliminary examination of a party accused of crime, to wit, an intrusion, and that he was held in the district court, the question should be raised by a plea in abatement.

3. Where in an information against a party reciting money by false pretenses, it is alleged that "by reason of the false pretenses the accused obtained the money," the words of the statute being "by false pretenses," the allegation was sufficient.

4. In a prosecution against a party for obtaining money under false pretenses from a bank note given by him for the money and mortgage to secure the same, which is introduced in evidence, are sufficient in that case to prove the de facto existence of the bank. People vs Hughes, 29 Neb. 399. Platte Valley bank vs Harding, 29 Neb. 401.

5. Except in cases where it is necessary to show guilty knowledge, it is not admissible to prove that an accused party committed a crime committed or attempted to commit a crime similar to that with which he stands charged.

6. The court, in defining a reasonable rate, held, the amount which the jury can give a reason based upon the testimony." Held, erroneous and calculated to mislead.

Potter vs Grimes. Error from Johnson county. Reversed. Opinion by Maxwell, Ch. J.

1. The insolvency of a mortgagor, although a circumstance which may be taken together with other material facts, to show a fraudulent design in disposing of property, is not itself sufficient to establish that the mortgagor intended to defraud the mortgagee.

2. Where a firm is insolvent the partnership property will be applied to the partnership debts, and a creditor of a member of the firm cannot sue to secure his partnership property to the exclusion of creditors of the firm.

3. A mortgage of partnership goods given to secure the duties on a bond of a member of the firm for the faithful performance of his duties as guardian, is not available as against creditors of an insolvent firm.

Dowrie vs. Lathrop, 29 Neb. 400. Platte Valley bank vs Harding, 29 Neb. 401.

Reversed. Opinion by Maxwell, Ch. J.

1. Where in an action on a promissory note the defendant set up in his answer a plea entered into between the parties for the conveyance of certain property in full satisfaction of the debt, and alleged a performance in compliance with the contract, and there was testimony tending to sustain the answer—Held, that in case of defect of title of, or incumbrance on part of the property so conveyed, the measure of damages was not the amount of the note less the value of the property conveyed, but the amount of the incumbrance or value of the property to which the title had failed.

2. Where the parties have made up the issues in a case without objection to the particular form of the action, they will be held to have waived any errors in that regard.

SUPREME COURT PROCEEDINGS.

In the supreme court during the past two days, A. M. Kellogg, esq., of Aurora; George M. O'Brien, and Eugene Montgomery, of Omaha, were admitted to practice.

The case of Jones vs Miller was dismissed. The following cases were argued and submitted: State ex rel Gregory vs S. D. 7 Sherman county, Colvin vs Republican Valley Land association, Miller vs Woods, Prohm vs State, Brounly vs Daniels, Rosenbaum & Co. vs Hayden, State ex rel Clarke vs Webster county, Black vs Steen, Hawks vs Steen, State ex rel Burnham vs Hawbeck, Hays vs Marceller, Wilson vs Wilson, O'Brien vs Gaslin, motion; Stettin vs Lamb.

State ex rel Clark vs Webster county, submission vacated and leave to file answer granted.

Hastings vs C. B. & Q. R. R. Co. and Gervin vs Gervin, dismissed.

Ex parte Carr, prisoner to be discharged if proper authorities fail to prosecute in fifteen days. Reese, J. dissenting.

Court adjourned to Thursday, December 1, at 8:30 o'clock a. m., when the docket of the Twelfth judicial district will be called.

HASTINGS INCORPORATES A HOSPITAL.

Articles incorporated for the Hastings hospital were filed with the secretary of state yesterday. The hospital is incorporated by and will be entirely in charge of the ladies of the Hastings. The incorporators are: J. H. Garrison, Oliver, Mary P. Newlan, Pauline S. Reagan, Gertrude A. Clark, Rosa E. Shield, A. Elizabeth Kirby, Candace W. Tussy, Maggie G. Hostwick, Henrietta Leach, Harriet Pratt, Alice T. Learning, Nellie T. Cronkite.

Two Workmen Injured.

Theodore Ellsberry and Harry Clements, employees of the Paxton-Vierling iron works, were quite badly injured at Lier's new building, corner of Sixteenth and Jackson streets, at an early hour yesterday morning. They were engaged in loading the iron facing for that story, when the platform upon which they were standing gave way and precipitated them into the basement, iron work and all, a distance of some twenty feet. It is a miracle that both men were not instantly killed. As it was, they escaped, with a painfully lacerated head and bruised body, while Clements sustained a distressing strain of the back and several scalp wounds.

Rheumatism.

is undoubtedly caused by lactic acid in the blood. This acid attacks the fibrous tissues, and causes the pains and aches in the back, shoulders, knees, ankles, hips, and wrists. Thousands of people have found in Hood's Sarsaparilla a positive cure for rheumatism. This medicine by its purifying action neutralizes the acidity of the blood and also builds up and strengthens the whole body.

Says She Picked His Pocket.

Albion Wilder appeared at the police station yesterday and swore out a warrant for the arrest of Mollie Pettis, a colored woman, on a charge of having relieved him of \$13. Wilder says the woman picked his pocket while they were having a mug of beer together in the wine room of Gus Shultz's saloon. Mollie Pettis was run in about noon.

Physicians prescribe Dr. J. H. McLean's Tar Wine Lung Balm, in it they find no trace of opium or morphia, while its efficacy in curing all throat or lung diseases is wonderful. 25 cents a bottle.

Loyal Veterans.

The commandery of Nebraska of the military order of the Loyal Legion will hold its annual reunion in this city at the Millard on the 15th of next month, when it is expected that several distinguished soldiers from abroad will be in attendance. The committee of arrangements are: J. R. Manchester, C. M. Dorrell, T. S. Glasgow, W. R. Abernethy, Thomas Swope and J. K. Brown.

Children Cry for Pitcher's Castoria.

When baby was sick, we gave her Castoria.

When she was a Child, she cried for Castoria.

When she became ill, she clung to Castoria.

When she had Colic, she gave them Castoria.

When she had Cholera, she gave them Castoria.

When she had Worms, she gave them Castoria.

When she had Croup, she gave them Castoria.

When she had Whooping Cough, she gave them Castoria.

When she had Sore Throat, she gave them Castoria.

When she had Measles, she gave them Castoria.

When she had Mumps, she gave them Castoria.

When she had Scarlet Fever, she gave them Castoria.

When she had Diphtheria, she gave them Castoria.

When she had Typhoid Fever, she gave them Castoria.

When she had Cholera Infantum, she gave them Castoria.

When she had Diarrhoea, she gave them Castoria.

When she had Spasms, she gave them Castoria.

When she had Convulsions, she gave them Castoria.

When she had Stomach Ache, she gave them Castoria.

When she had Wind Colic, she gave them Castoria.

When she had Hiccups, she gave them Castoria.

When she had Scurvy, she gave them Castoria.

When she had Dropsy, she gave them Castoria.

When she had Jaundice, she gave them Castoria.

When she had Biliousness, she gave them Castoria.

When she had Indigestion, she gave them Castoria.

When she had Flatulency, she gave them Castoria.

When she had Acid Eructation, she gave them Castoria.

When she had Heartburn, she gave them Castoria.

When she had Nausea, she gave them Castoria.

When she had Vomiting, she gave them Castoria.

When she had Stomach Pain, she gave them Castoria.

When she had Liver Complaint, she gave them Castoria.

When she had Gall Bladder Trouble, she gave them Castoria.

When she had Bilious Stomach, she gave them Castoria.

When she had Constipation, she gave them Castoria.

When she had Hemorrhoids, she gave them Castoria.

When she had Piles, she gave them Castoria.

When she had Stricture, she gave them Castoria.

When she had Gonorrhoea, she gave them Castoria.

When she had Syphilis, she gave them Castoria.

When she had Scrofula, she gave them Castoria.

When she had Eczema, she gave them Castoria.

When she had Psoriasis, she gave them Castoria.

When she had Itch, she gave them Castoria.

When she had Ringworm, she gave them Castoria.

When she had Tetter, she gave them Castoria.

When she had Scabies, she gave them Castoria.

When she had Prurigo, she gave them Castoria.

When she had Erythema, she gave them Castoria.

When she had Dermatitis, she gave them Castoria.

When she had Ulcer, she gave them Castoria.

When she had Fungus, she gave them Castoria.

When she had Cancer, she gave them Castoria.

When she had Melancholia, she gave them Castoria.

When she had Hypochondria, she gave them Castoria.

When she had Nephritis, she gave them Castoria.

When she had Catarrh, she gave them Castoria.

When she had Stricture, she gave them Castoria.

When she had Gonorrhoea, she gave them Castoria.

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When she had Fungus, she gave them Castoria.

A GREAT MANY

Of our customers, after seeing the incomparable bargains we offered during the last two weeks express astonishment at the prices. The secret is simply this. The warm weather and late season have had a very depressing effect upon the wholesale trade. Manufacturers are overstocked and discouraged and the same goods which a few weeks ago they intended and expected should bring them a fair profit, they are now ready to sacrifice at almost any price. This is the chance for the retailer. It is merely a question of who can use the quantities. The firm that does a large business can take advantage of such opportunities. We are in this happy position. Our ample resources enables us to buy in enormous quantities for cash; we sell on same terms and the quick return of the money makes the smallest profit satisfactory. Any one can see the force of these remarks by coming and pricing our goods.

Another lot of those fine Chinchilla Satin Lined Overcoats at \$14.50. The first lot sold so quick that during the past few days we had to disappoint many customers, who called for that coat. We are now pleased to say that we have received another supply of these same coats, only with this difference, that the first ones were velvet piped while these opened now are with corded edges; otherwise in every respect the same first class garment, the like of which was never offered for less than twice what we ask for it, \$14.50.

Another lot of Overcoats to which we call attention is a splendid Shetland, lined with double warp Italian satin sleeve lining, silk velvet collar and corded edge. These we have in blue and Oxford colors, sizes 33 to 38. It is an elegant coat for a young man, very nobby and of splendid cut. We offer it at \$8.90 and guarantee the real retail value of it to be at least \$15.

In Single Pants, we make for this week the following remarkable offers:— One lot strictly all wool, heavy winter weight, grey striped Cassimere Pants, well made at \$1.50, fully worth \$3. One lot heavy all wool Fine Cassimere Pants, in dark neat striped patterns at \$2.10, worth \$4. One lot very fine silk mixed Cassimere Pants at \$3.50, worth \$5.50. One lot of elegant Worsted Goods, in choice patterns, at \$3.90. These last are equal to any custom made pants and have never been offered for less than \$6 to \$7.

Remember that in our Boys' and Children's department can be found suits and overcoats at about one half their real value and for which we challenge comparison.

In our Hat and Cap department, we offer a large assortment of fur and other winter caps, far below the prices of others. Genuine imported Scotch caps, high crown, at 35c; sold everywhere at 60c to 75c. Good heavy knit caps, turban style, men's and boys' sizes at 30c. Jersey caps, silk lined, men's and boys' sizes at 40c, which cannot be bought elsewhere for less than 75c to \$1.

In our Glove department, we carry the largest assortment of winter gloves and mitts and offer some big drives.

Good heavy knit wool mitts, men's sizes 20c, boys' sizes 15c. Very heavy best fulled wool mitts at 40c and 45c; sold by other dealers for 75c. Good lamb lined kid gloves at 50c, which would be cheap at \$1. Good fur top gloves at 50c, worth 75c.

All goods marked in plain figures and at strictly one price.

Nebraska Clothing Company,

Corner Douglas and 14th Streets, Omaha.

A Great CATASTROPHE!

30 STYLES

OF OUR

\$14, \$15, \$17 & \$18 SUITS

HAVE FALLEN TO

—\$10.00—

This is the cheapest lot of goods ever sold in Omaha. If you want a suit of clothes, buy now, as this cut will only last 10 DAYS. OVERCOATS for \$6.50, \$7.50, \$9 and \$10; worth double the price.

THE NEW YORK AND OMAHA CLOTHING CO.

LEADING CLOTHIERS, 1308 FARNAM STREET.

Yonkegely logo and text: Display at their warerooms, 1305 and 1307 Farnam Street, the largest assortment of Pianos and Organs to be found at any establishment west of Chicago. The stock embraces the highest class and medium grades, including

STEINWAY, FISCHER, LYON & HEALY

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Prices, quality and durability considered, are placed at the lowest living rates for cash or time payments, while the long established reputation of the house, coupled with their most liberal interpretation of the guarantee on their goods, affords the purchaser an absolute safeguard against loss by possible defects in materials and workmanship.

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This hotel and most popular Hotel in the State. Location central, appointments first class. Headquarters for commercial men and all political and public gatherings.

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HIMEBAUGH & TAYLOR, Wire Rope, Plows, Markers, Hooks, Grapples, Slide Iron. Buffalo Scales, Scale Repair Shop. OMAHA.

ANY MAN Who is WEAK, NERVOUS, DEBILITATED, who suffers from PALENESS and BLOOD LOSS, who has TRIPLED away his VIGOR OF BODY, MIND and MANHOOD, causing exhausting drains upon his system, such as HEADACHE, BACKACHE, DREAMS, NIGHT SWEATS, WEAKNESS of MEMORY, HAZARDY FEELING IN SOCIETY, FLIMSY OPINION, and all the EFFECTS leading to EARLY DEATH, and perhaps to INSANITY, should consult at once the CELEBRATED Dr. Clarke, Established 1839, Dr. C. C. CLARKE'S NERVOUS DEBILITY, CHRONIC and all Diseases of the GENITO URINARY Organs a Life Saver. It makes NO DIFFERENCE whether you have taken or WHOOP has failed to cure you. Dr. CLARKE'S A friendly letter or call may cure the most severe cases. Send 2 cents postage for speedy relief and cure. Send 2 cents postage for work on your disease. Send 4 cents postage for Celebrated Works on Chronic, Nervous and Delicate Diseases, sent by mail, free. Consult the old Doctor. Thousands cured. Offices and parlors private. For those contemplating Marriage send for Dr. Clarke's celebrated guide "Male and Female," each 10c, both 20c (stamp). Before confiding your case, consult Dr. CLARKE. A friendly letter or call may cure the most severe cases. Send 2 cents postage for "Book 'Life's Secret' Errors," 2c. (stamp). Medicine and writings sent everywhere. Send 2 cents postage. Hours 8 to 8; Sundays, 9 to 12. Address, F. D. CLARKE, M. D., 186 So. Clark St., CHICAGO, ILL.

'88.

FOR the year 1888 FRANK LESLIE'S "POPULAR MONTHLY," which has been aptly styled "THE MONARCH OF THE MONTHLIES," will be better than ever. Articles upon topics of current public interest, sketches of eminent persons, strong and brilliant stories, and poetry of a high order, profusely illustrated by the best artists, and all by writers of recognized merit, will fill its pages. To the old and favorite corps of contributors will be added writers of promise, and no effort will be spared to keep the magazine in the foremost rank. In the November number was begun an earnest and powerful tale,

"PRINCE LUCIFER," by Etta W. Pierce, which has already attracted widespread attention and charmed multitudes of readers. Subscriptions may begin, if desired, with the November number. Each issue contains a

Full-Page Picture in Colors,

the series of twelve forming for the year a beautiful collection of gems of modern art. The "Popular Monthly" contains 128 large octavo pages, nearly twice the matter of similar publications, and is not only the best, but by far the cheapest, of any of the magazines for the people.