ECHOES FROM THE CAPITAL.

An Important Case Called in the State Supreme Court.

THE SALINE ELECTION MATTER.

Prisoners in the Lancaster County Jail Make an Unsuccessful Break for Liberty — Lincoln News Notes.

LINCOLN BUREAU OF THE OMAHA BEE, 1029 P STREET, LINCOLN, Sept. 26.

The case of the state ex rel John Singleton vs John N. VanDuyn, county clerk of Saline county, was called before the supreme court this morning on a demurrer filed by General Webster, of Lincoln. The case is an action for mandamus to compel the county clerk to call an election of three members of the house of representatives from Saline county under the apportionment of 1881, instead of two members under the act of 1887. With the great change in relative weight of the different counties of the state between the census of 1880 and that of 1885, only thirty-four representative districts by the act of 1887 retained the representation held under the act of 1885. This fact shows the far-reaching character of the question involved as affecting the public interest and the organization of the legislative department of the state.

Mr. Webster submitted his brief and a thorough abstract of the course of the bill, and submitted his argument upon the following distinct propositions:

1. Is parole evidence admissible to show the fact not appearing in the senate journal of the action of the conference committee? This is not to traverse any fact recorded, but to supplement an incomplete record.

2. If this is not permissible, then does the failure of the evidence of concurring action of the two houses in respect to the Ninth district invalidate the whole act, or merely that portion of the act? In other words, is the apportionment an entirety, or may so much as was correctly considered stand?

I am not aware that this court has ever spoken decidedly on the first question. In the well considered case of the State vs McLeliand, Eighteenth Nebraska, this court has said the validity of an act cannot be sustained unless the journals show affirmatively that a majority of all the members voted by yeas and nays entered into the journal, in favor of its passage. But this rule seems to be based upon the constitutional requirement. The court cites with approval Gardner vs Collection, 6 Wall, 499, and quotes that the judges who are called upon to decide, upon the existence of a statute, have a right to resort to any source of information which in its nature of conveying to the judicial mind a clear and satisfactory answer to such question, always seeking first for that which in its nature is most appropriate, unless the positive law has enacted a different rule. And at page 240 the courts say, in speaking of the absolute verity according to the journals of the parliament at common law: It must be borne in mind that the parliament of England before its separation into two bodies was a high court of judicature. In this country, however, legislative bodies do not possess judicial powers. The records, therefore, are not those of a court, but are nevertheless primary evidence to show the action of each house on any matter before it. This much was all that was necessary to say in the case; but the present case involves a further question—are the journals on matters not required by the absolute rule of the constitution to be recorded, anything more than primary evidence. An examination of the legislative journal of the session, March 31, 1887, when the action in question was taken, ought to be an answer to this question. One hundred and sixty-four printed pages form the journal of that day's proceedings; the legislature adjourned and the journal was never read or approved. To hold this to import absolute verity is according too much to the ability of the recording officer, who has this amount of record to make during the session of a single day, and whose work is never submitted to the review and approval of the chamber, whose transactions of such length are to be recorded in a single day.

The other question is the apportionment act entire. If one district be omitted must the whole fall, is one of some difficulty and upon which, in the limited time allowed, counsel have found no authority. The act as passed, dropping district nine as invalid, omits Sarpy county. The constitution, section 2 article 3, requires apportionment of the senators and representatives according to the number of inhabitants, at the first regular session after each federal and state census, and at no other time. To hold the present apportionment bad, will, under the letter of the constitution, preclude any apportionment till after the federal census of 1890. So unjust a result ought if possible to be avoided.

It is to be observed that but ninety-nine members have been apportioned (excluding the Ninth district) and by the act the house is made to consist of 100 members. There is one unapportioned chair. By the census Sarpy county would be entitled to one representative. On the meeting the house, which is the sole judge of the eligibility of its members, would no doubt recognize Sarpy as entitled to fill this chair. This is not entirely satisfactory, but still would be less objectionable than to exclude the rapidly growing population of the whole western part of the state from any fair representation.

In so far as the new act repeals the apportionment of Sarpy (having also one member under the former law) without giving that county representation, it will be held unconstitutional. The result would be the same as if the entire present statute were withheld. The house would consist of 100 members, and Sarpy would be represented.

It is a well-settled rule of this court that an entire act will not be declared unconstitutional, and though some part of it may be so, if that part which is bad is not so necessarily connected with the remainder of the act that all must fall together. The assignment of members to each separate district is an entire subject of itself, and directly concerns no other. No doubt by an amendatory act the legislature might mention only such counties or districts as by relative increase or decrease of population had changed in their relative power or right of representation. Thirty-four of the counties, including Sarpy, have held their relative positions in population the past five years from the federal to the state census. By the new act they have the same representation as previously. No change in their representation was made or necessary, and no mention of these thirty-four counties need have been made in the house apportionment. The same is true of four of the thirty-three senatorial districts. Had the new bill made no mention of them but proceeded to apportion or amend the apportionment of the remaining counties and districts no legal objections could have been taken. It, however, seems simpler for the legislature to attempt to go over the whole field.

For the purpose of argument, assume they have failed, that ought not to invalidate their action unless that part of the field is too large to be represented by the chair not assigned. On examination it appears that Sarpy county only is omitted from mention. By its population it is entitled to no more than one seat. That by the former act it had but one seat; holding that its former apportionment can not constitutionally be taken away until some new act makes a new apportionment, avoids the necessity to strike down the present act, even if the district in question were not erected under the present law.

To the following propositions of law General Webster cited numerous authorities:

An act may be good in part though other provisions may be unconstitutional.

A statute should not be held void unless clearly so. Every intendment is in favor of the upholding of the statute.

The statute will not be declared unconstitutional merely because it is imperfect.

The apportionment act is not an entirety, of which each part is dependent on the other, but each sub-division is distinct and may stand by itself.

Silence of the journal on matters not required by the constitution to be shown in the journal, does not overcome the presumption arising from proper authentication. An act for such irregularity will not be held invalid.

In reply to General Webster's argument and brief Judge Abbott said that he regarded the position of the respondent more than ordinarily fair. "The brief," said the speaker, "is a fair index of the situation. But the question is purely constitutional in the issues raised. The constitution requires that any bill on its passage shall receive two-thirds of the votes of both branches of the legislature. The journals show conclusively that such is not the case in the question now pending before this court. Two distinct bills passed the legislature relative to the question in hand, one passing the house providing for 33 members of the senate and 99 members of the house and 66 representative districts and one in the senate providing for 33 members of the senate, 100 members of the house and 67 representative districts. It may be possible to add to," continued the speaker, "but it is impossible under the constitution to take from. Sarpy county is left out in the cold. As the law stands now the county is left without representation. The constitution declares against this. Recognizing the fact that the supreme court is the court of remedy, the matter ought to be settled for all time, and now."

The speaker expressed the opinion that the written evidence was abundant and that the court ought to consider it wisely. The journals show upon their face the situation, the irregularities and the manner of the passage of the bill. "If small matters," said the judge, "are permitted live, the precedent for future considerations will be bad. There can be no safe place for kindred matters to end. The court should stand squarely upon the constitution and the law, and let the results take care of themselves. Sufficient for the day is the evil thereof.

Gilbert of York, followed for the state in an exhaustive argument. Foss of Crete, concluded for the respondent and discoursed at great length upon the duties of the members of the supreme bench.

JAIL BREAKING ATTEMPTED.

An attempt was made to escape from the county jail last night that came well nigh being successful. The chief actor was Frank Clark, who is imprisoned on the charge of highway robbery. The attention of the watchman, whom the sheriff keeps on a constant lookout, was attracted by noises about midnight. Sheriff Melick was awakened and gave instructions to let the good work on. He sent the jailer to assist the watchman as additional precaution. About 2 o'clock a sharp twinkle, as though a saw had been dropped, was heard and after that no noise was heard from the cell. Watch was kept until morning when examination showed that some liquid had been used to soften the bars and a fine saw had then been employed very effectively. Two bars were sawed nearly in two. The noise heard was caused by the breaking off of about two inches of the saw, and the piece was found outside where it fell. But the saw itself has not yet been found. The prisoners most concerned have been locked in separate and different cells and now diet on bread and water. They will be kept on this kind of food until they divulge all they know about the matter. It is pretty certain that outside help has been tendered to the "birds," and the sheriff is bound to learn from what quarter.

CITY NEWS AND NOTES.

Ernest Schmidt and Miss Carrie Newton were married this evening by Judge Carter. The happy couple left on the 10:30 train for Denver, Colo., where they will make their future home.

Judge Harlan, of York, was in the capital city to-day.

The gravel sweepers on the cedar block paving contract struck for higher wages last night when they quit work.

The only case heard before the supreme court to-day was the Saline county mandamus. Court adjourned until to-morrow at 9 o'clock, when a decision will be given on the demurrer. In the event that the demurrer is overruled the case will be tried on the answer now ready to be filed.

Food makes Blood and Blood makes Beauty. Improper digestion of food necessarily produces bad blood, resulting in a feeling of fullness in the stomach, acidity, heartburn, sickheadache, and other dyspeptic symptoms. A closely confined life causes indigestion, constipation, biliousness and loss of appetite. To remove these troubles there is no remedy equal to Prickly Ash Bitters. it has been tried and proven to be a specific.

The Papal Exchequer.

Brussels Courier: The annual expenses of the papacy are said to amount to about 7,000,000 francs. The burden is substantially met by the Peter's penny, "which was originally," observes the Courier, "an English idea. But in 1861, after the twenty provinces of the papal states had been reduced to five, the Peter's penney was quickened into new life in Belgium." The first incitement to the generous endowment of the papacy by the freewill offerings of the faithful, rich and poor, was given by the diocese of Ghent. Its example was quickly followed in other lands. Until the year 1870 the average yearly result of the Peter's penney was 7,117,000 francs. Since that date it has constituted the sole income of the pope, and in no single year has it been lower than 6,000,000 francs. During the present jubilee year the bishops of Latin Christendom have handed in to the pope the extrordinary sum of 32,500,000 francs. The jubilee mass of Leo XIII. brought nearly 3,000,000 francs. The papal treasury is consequently in a good condition. The "Work for the Extension of the Faith," founded at Lyons in 1822, provides the papacy with a fund for missions; it has contributed from 1822 to 1887 no less a sum than 220,000,000 francs. Its contribution for the last twelve months amounted to 6,648,000, of which Germany contributed only 409,000 francs and Austria only 80,000 francs, as the reporter observes with regret.

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An Eloquent Passage.

Cincinnati Enquirer: George D. Prentice, probably one of the most gifted writers that ever added lustre to American journalism, once said: It cannot be that earth is man's only abiding place. It cannot be that our life is a bubble cast up by the ocean of eternity, to float a moment upon its waves and sink into nothingness. Else why these high and glorious aspirations which leap like angels from the temple of our hearts, forever wandering unsatisfied? Why is it that the rainbow and clouds come over us with a beauty that is not of earth, and then pass off to leave us to muse on their loveliness? Why is it that stars which hold their festival around the midnight throne, are set above the grasp of our limited faculties, forever mocking us with their unapproachable glory? And finally, why is it that the bright forms of human beauty are presented to our view and taken from us, leaving the thousand streams of our affections to flock back in Alpine torrents upon our hearts? We were born for a higher destiny than earth. There is a realm where the rainbow never fades, where the stars will be spread out before us like islands that slumber on the ocean, and where the beautiful beings that pass before us will stay forever in our presence.

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DR. A. M. BILBY, Mitchell, Dak., says: "I have used it in a number of cases of nervous debility, with very good results."

The Bible in Shorthand.

Brooklyn Eagle: In the library of Dr. Williams, in London, is a copy of the Bible in shorthand. It is exquisitely written, and is said to have belonged to an apprentice of the time of James II., who feared that the Bible was about to be prohibited, and so wrote this copy.

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We, the VEILED PROPHET, notwithstanding that within the secret recesses of the mountains beyond the Great Seas of Ind we keep ourselves, our Priests and our Court hidden from the profaning gaze of mortal eyes, yet do we maintain a perpetual and most careful watch over the progress and welfare of our beloved City of St. Louis and over the favored people of the Great States of the West and Southwest immediately within her influence. Our never-sleeping EYE has had careful regard of the doings of our said trusty and well-beloved people of St. Louis during the period that has elapsed since our last visit to them, and we have been well pleased.

So great has been the satisfaction they have given us that WE have commanded our High Priests and Acolytes, our Courtiers, Generals, Knights and Retainers of high and low degree, that they shall be and appear in our train in the streets of the said City of St. Louis on the night of October 2d, 1888, the occasion of our Annual Festival and Progress through our beloved city, in greater numbers and splendor than ever. As a special mark of our high pleasure, we have commanded our High Chamberlain and our Grand Marshals to illuminate the streets of our said city in greater glory than has been known aforetime; and have further ordained that our Lord High Treasurer shall open our treasure vaults and lavish our wealth and jewels in producing the most gorgeous spectacle that has ever been seen by our people of America, all to our great HONOR and GLORY, and to the furtherance of the renown of our City of St. Louis.

And, in order that all the peoples who dwell in the Great Valley of the Father of Waters may be enabled to partake in the festivities thus ordained by us, we have issued our High Commands to each and all our Servants, the Railroad Managers of the Great West, that they shall, during the progress of the festivities which we shall inaugurate by our entry into and procession through the streets of our said City of St. Louis, cause all dwellers in the said Valley of the Father of Waters to be transported to and from our said city at the least possible cost to themselves. To this end we have commanded all Railroad Managers to run frequent excursion trains at the lowest possible rates, and to provide all and further such accommodations as shall redound most to the interest and well-being of our said people, to our beloved citizens of St. Louis and to our own honor.

In witness whereof we have hereunto set our Prophetic Hand and caused our Great Seal to be affixed.

ALOYSIUS

Done at our Secret Palace this 21st Day of September, in the year of Grace, 1888.

A PROMPT and GENEROUS COMPLIANCE.

The Great and Mysterious VEILED PROPHET having issued his commands, as above, the Railroad Managers have been prompt to obey. In most cases they have made one-half fares for the round trip from all points to and from St. Louis, and many of them have made merely nominal rates.

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