

FEE FROM MEN PROSECUTED.

Why Judge Dundy Holds That Attorneys May Collect Them.

JUDGE CALDWELL DIFFERS FROM HIM.

Other Cases of Interest Disposed of Yesterday by These Jurists in the United States Court.

When the United States court opened yesterday Judge Caldwell announced his ruling in the case of Kimball vs. Knowlton, a suit on notes aggregating \$1,800, together with interest, which made the amount sued for \$2,390. This was the case which was submitted to the court last week in which the attorney had secured a verdict for the plaintiff and asked for "an allowance against the defendant for attorneys' fees," being very summarily set down upon by Judge Caldwell, who held that the allowance was illegal.

It had not developed at that time that the amount of the notes, exclusive of interest, was only \$1,800, and to this phase of the case Judge Caldwell turned his attention first, stating that, in his opinion, the court plainly had no jurisdiction in the case, unless the amount sued for exceeded, exclusive of interest and costs, \$2,000.

Continuing, the judge stated very emphatically that it was unheard of that a creditor might make interest upon interest by attaching coupons to the amount of the note. The pleading in the case showed that the suit was based on two notes for \$500 and \$1,300 respectively, and a sufficient number of interest coupons had been attached to make the amount over \$2,000.

The judge held that the note itself showed that the coupons were for interest on the principal note and not a part of the principal, and he declared that the court should not be asked to declare that what the parties themselves had agreed to was false. The whole line of attack, he held, must be set out of court, as the latter had no jurisdiction over them.

Respecting the assessing of attorney's fees against the defendant, Judge Caldwell repeated his former ruling and stated that the state statute allowing these fees had been repealed many years ago, and it was a standing rule of the United States court to be bound by the laws of the state in which court was held. The supreme court of Nebraska had decided four times that attorney's fees cannot be assessed against the defendant, and the decision of the state court must be binding upon the United States court in cases not involving federal questions.

Judge Caldwell continued that years ago in Arkansas he had had occasion to pass on this question when there had been no decision of the supreme court of that state, and the law of the state bearing on the subject, and in that instance, as in all others that had since come under his ruling, he had decided against the allowance of attorney's fees unless the laws of the state specifically provided for it.

The judge further stated that when the borrower agreed to repay the lender the full amount of money borrowed and to pay the maximum rate of interest, any other obligation was without consideration and therefore void, consequently any effort to collect attorney's fees of the defendant was illegal. He characterized as unseemly and contrary to public policy the practice of attorneys to prosecute a man and then attempt to compel him to pay them their fees for prosecuting him.

Judge Caldwell delivered his opinion in a forcible manner and every word was closely listened to. Judge Dundy then gave expression to his views on the matter, in which he differed from Judge Caldwell on the question of attorney's fees, making no reference to the question of jurisdiction.

He said the laws of the state at one time provided for the allowance of attorney's fees and the legislature subsequently repealed the law. Some times the law is repealed and some before him in which the question was involved, the allowance of fees being a part of the contract. The case was not decided at the current term and went over until the next term. In the meantime the judge had consulted authorities and arrived at the same conclusion as Judge Caldwell, and he announced, but Justice Miller came along about that time and so at once decided that the contract was void and the fees were denied. Judge Dundy continued that he had presented his views on the matter to Justice Miller but the latter adhered to his opinion and the case was decided as announced. Subsequently, Judges McCrary and Brewster had coincided with Justice Miller's views, and Judge Dundy had followed in the same line, thinking that it was his duty to adhere to the law and not to attempt to decide contrary to such a weight of legal opinion.

"I have had a long," exclaimed Judge Dundy, "and I to satisfy myself by acknowledging that I have decided wrong all these years! Until the supreme court settles this question I will adhere to the law and not to the previous rulings of this court."

Judge Caldwell then announced that he intended to prepare a written opinion on the question. C. S. Montgomery, in a short address, touching upon the recent memorial to the late Justice Miller, and the question of the appointment of the committee of five to prepare and present suitable resolutions to the court.

The court announced that the committee would be appointed later. Judges Dundy and Caldwell heard arguments on a motion to remand the case of Palmer against the St. Joseph & Grand Island railway company to the district court. The case comes from Adams county and is one involving a contract for the transportation of freight from Hastings to the station at Oregon. The Union Pacific is interested in this case. The plaintiff holds that the contract comes under the interstate commerce act and the trial must come in the United States court, as everything in the contract is subject to the United States laws.

The arguments in this case consumed the time of the court until adjournment and no decision was given. This morning Judge Caldwell will take up the case of the Rock Island and railroad company against the Denver & Rio Grande railroad company, which is partly heard in Denver. The case is one involving the terms of a contract between both roads in Denver and grows out of a contract between the companies for the joint use and occupancy of a part of the line of road of the Denver & Rio Grande and the terminal facilities of that road at Denver.

The grand jury returned a batch of forty-seven indictments yesterday afternoon, most of them being for selling liquor without a license and selling to Indians.

The Y. M. C. A. Debt. The campaign to raise the funds urgently needed to carry on the work of the Young Men's Christian Association for the current year and to liquidate its indebtedness has begun in earnest. Messrs. Ober and Nash, international and state secretaries respectively, who are here to manage the work in company with different members of the association's board of directors and certain influential members of the association, will call upon citizens to contribute and solicit subscriptions payable on or before May 1, 1891. Grand Island, Hastings, Kearney, Kearney, Clay and others contribute annually from \$1,500 to \$5,000 to these respective associations. Omaha in the past year has given but \$600 for the same purpose.

No use to deny the fact that Salvation Oil is fast taking the place of all other liniments. It is better and cheaper than most of them. Dr. Bull's Cough Syrup meets the wants of suffering humanity. It will cure a cold or cough better and sooner than any other cough medicine.

The Italian Elections. ROME, Nov. 24.—[Special Cablegram to THE BEE.]—The returns thus far received of the election for members of the chamber of deputies show the election of 108 ministerialists, 3 oppositionists, 4 radicals, 10 socialists, 3 radicals, 10 socialists. The radicals lost all four of the seats previously held by them in Liguria.

Dr. Birney cures catarrh, Bee bldg.

WHEN GOULD COMES IN.

There Will Be a Reorganization of the Union Pacific Railroad.

A former Union Pacific officer, who is as well acquainted as any outside party with the methods employed by Gould in the operation of his railroads, predicts that there will be a complete reorganization of the management and plan of operating the Union Pacific road under the new order.

Speaking on this point this gentleman said: "As great a difference as there is between day and night exists between Gould's plan of operating a railroad and that employed by the Adams administration, and as Gould has a habit of having his own plans carried out there are few things less probable than the chances of his continuing the present system. Gould is a great consolidator, and his active management of the Union Pacific would mean the dropping out of a whole array of officials now connected with the road.

"Take the operating department for instance. There you have five general divisions and a batch of general officers for each. In the Missouri river division there is General Manager Brinkerhoff, Superintendent Ricks, Superintendent Palmer, Assistant Superintendent Park, Assistant Superintendent Bovard and Assistant Superintendent Rush. In the St. Joseph & Grand Island division there is General Manager Robinson, a superintendent and three assistants. In the mountain division is General Manager Reseggie, three superintendents and three assistant superintendents. The Gulf division has General Manager Meek, one general superintendent and two division superintendents. And in the Pacific division is General Manager McNeil and three superintendents.

"This system runs through the entire road. In the passenger department there are five general passenger agents, each with an assistant, and in some cases several assistants. There is a general freight agent and a corps of assistants for every division too, and no end to the list of 'generals' of some department or other.

"The result of this arrangement is that the pay roll of the road is something sufficient to alarm any set of stockholders and to keep the net earnings down to the minimum. Then there is always a clash of authority wherever there are so many heads of equal rank and this has been shown in many instances within the past year.

"If Gould assumes active control of the road you will find this force wonderfully reduced. There will be a head of each department in Omaha, and the divisions, each of which now supports a set of general officers with assistants and clerical forces, will each be in the hands of a division superintendent, who will report directly to headquarters. At a careful estimate there would be a saving of at least a half million dollars a year in official salaries and the same number of employees would be retained from the division of authority under the Adams administration.

"Still we will be able to tell better what changes will be made after the result of S. H. Clark's consultation with Gould is given out. Clark is the most trusted of all of Gould's lieutenants. His former experience as general manager of the Union Pacific qualifies him to suggest the changes essential to bring the road into harmony with Gould's system of management.

"The changes are more than even that Clark will be the active manager of the Union Pacific. He will probably retain his position as president of the Union Pacific, but will leave the active management of that road in other hands. With Clark in the general manager's chair of the Union Pacific there would be a general clean out of the Adams forces along the line."

To Advance Freight Rates. The Transcontinental association has decided to advance freight rates on all Pacific coast business on December 1. The increase will amount to about 10 per cent.

The Western freight association will hold a special meeting in Chicago on December 3, and will probably decide upon a general advance in freight rates on all classes from Chicago to western and northwestern points.

The Burlington in the Ranks. The victory of the Union Pacific in the recent contest over the division of through freight business from the west was completed on Saturday when the Chicago, Burlington & Quincy, which has alone held out against the Union Pacific's demand for an increased percentage, came into line and will hereafter do business with the Union Pacific on the same bases as the other roads.

Notes and Personals. General Freight Agent Crosby of the Burlington, is home from Denver. J. W. Stonebraker, one of the directors of the Washington & Ohio, went west on the Q en route to San Francisco. He was accompanied by his wife and two daughters.

CONGRESSMEN THAT WERE LOST. The People Four Times Out of Five Reverse a President's Victory. Philadelphia Press: Secretary Blaine, in his speech at the academy of music, said:

"I do not mean to imply at all, gentlemen, that the result of the elections for congress—whether we lose it or whether we gain it—will in any great degree affect the republican party. I believe in the power of the presidency of Andrew Jackson, with one exception, down to the time of Abraham Lincoln [Cheers] —I go back further, from the time of John Quincy Adams to Abraham Lincoln, with one exception, every administration has been republican. Here is the summary of congressional elections between presidential years for the last fifty years, compiled by the Press:

1840—William H. Harrison (whig) elected president. Congress elected stood: Whigs, 133; locofocos, 102. The congress elected in 1842 stood: Whigs, 69; locofocos, 140. In 1844—James K. Polk (dem.) elected president. Congress elected stood: Whigs, 76; locofocos, 133. The congress elected in 1846 stood: Whigs, 115; locofocos, 108. 1848—Zachary Taylor (whig) elected president. Congress elected stood: Whigs, 111; locofocos, 116. The congress elected in 1850 stood: Whigs, 88; opposition, 141. 1852—Franklin Pierce (dem.) elected president. Congress elected stood: Whigs, 71; democrats, 159. The congress elected in 1854 stood: Republicans, 108; democrats, 83; Fillmore Americans, 7. 1856—James Buchanan (dem.) elected president. Congress elected stood: Democrats, 131; republicans, 62. The congress elected in 1858 stood: Repub licans, 114; democrats, 87. 1860—Abraham Lincoln (rep.) elected president. Congress elected stood: Republicans, 106; democrats, 40. The congress elected in 1862 stood: Republicans, 102; democrats, 75. 1864—Abraham Lincoln (rep.) elected president. Congress elected stood: Republicans, 143; democrats, 49. 1868—Ulysses S. Grant (rep.) elected president. Congress elected stood: Republicans, 159; democrats, 61. The congress elected in 1870 stood: Republicans, 131; democrats, 95. 1872—Ulysses S. Grant (rep.) reelected president. Congress elected stood: Republicans, 195; democrats, 88. The congress elected in 1874 stood: Republicans, 108; democrats, 108. 1876—Rutherford B. Hayes (rep.) elected president. Congress elected stood: Republicans, 140; democrats, 153. The congress elected in 1878 stood: Republicans, 130; democrats, 149. 1880—James A. Garfield (rep.) elected president. Congress elected stood: Republicans, 152; democrats, 130. The congress elected in 1882 stood: Republicans, 119; democrats, 200. 1884—Grover Cleveland (dem.) elected president. Congress elected stood: Republicans, 138; democrats, 182. The congress elected in 1886 stood: Republicans, 122; democrats, 109.

OFFICERS' PROMOTION.

How They Must Be Examined Before They Can Ascend.

The following methods of procedure have been adopted by the various boards for the examination of officers prior to promotion. The full board meets in undress uniform. The candidate for promotion presents himself in similar dress. Each member of the board is sworn in the presence of the officer to "impartially and thoroughly examine him." The recorder of the board is sworn by the president to "faithfully and accurately record the proceedings." The officer is asked if he has any objection to be sworn by any member present, named in the order, which has just been read by the recorder. The officer states that "he has," or that "he has not," as the case may be. The members of the board then hand to the officer, through the president, a series of written questions which had been previously prepared. The officer is placed in his own room, and he will either receive no assistance from any source in his answers to the questions. He is conducted to a room by himself, in which he finds a desk and writing materials. He is shut up there going out to his meals or to his sleeping apartments only at night, until he has in writing answered every question which has been propounded to him. He then notifies the board that he is ready to again appear before it, and when granted permission to do so, he deposits with the recorder the questions and his answers in writing.

The questions asked are from the "Regulations in the Army," "Blunt's Rifle and Carbine Firing," "Keenon's Manual of Guard Duty," "The Procedure and Practice of Court-Martial," "Orders and Tactics for the Army," "Aments to the Regulations," and "General Orders of the War Department."

They embrace the full scope of each of the books mentioned and are comprehensive and searching to a high degree. Prior to this mental examination the officer is to the hospital and there a rigid physical examination as it is possible to subject an individual to is undergone.

The written answers which the officer has given to the board are appended to the proceedings of the board, which are forwarded to the secretary in Washington. If the officer gets off with twenty pages of legal copy, closely written, each page bearing short and clear answers, that are ready for searching and technical questions, he may consider himself very fortunate.

The physical examination will, beyond doubt, eliminate many candidates, as it is extremely exacting. The mental examination will also doubtless eliminate some, and have the excellent effect of causing an officer to be at all times thoroughly and accurately informed on the practical workings of his profession. The board, in addition to considering the physical condition and mental capacity of the officer, is willing to receive from him and give due consideration to any papers bearing on his past record, or any professional books which he may have published and which are standard.

Among the officers ordered to appear before the board, the following are now serving in the department: Platoon Captain, Captain Worth, Eighth infantry; Captain Nedejnyer, Sixth infantry; First Lieutenant Wright, Ninth cavalry; Second Lieutenant Lee, Third infantry; First Lieutenant Sarsen, Second infantry; First Lieutenant Pitcher, Eighth infantry. All the officers named are the ranking in their respective regiments for the next higher grade in the arm of the service to which they now belong, irrespective of the number of the regiment to which they are to be promoted.

Of these, Lieutenant Roe appeared before the board on Friday last. Lieutenant Sarsen, who had also been summoned, has been detailed at Fort Omaha by his duties as post quartermaster, while one-half of the garrison is in the field at Pine Ridge.

The detail for the board, which is now in session at Leavenworth is as follows: Colonel Edwin F. Townsend, Twelfth infantry; Lieutenant Colonel George B. Ely, Ninth cavalry; Major John Brooke, surgeon; Captain Samuel M. Swigart, Second cavalry; First Lieutenant Benjamin L. Ten Eyck, assistant surgeon; First Lieutenant E. S. Dudley, Second artillery recorder.

Leave of absence for four months to take effect after January 1, has been granted Lieutenant Sarsen, formerly stationed at Fort Omaha, has been assigned to duty at the War Department, New York, near the home of the steward.

Second Lieutenant W. L. Graves Seventh infantry, has been transferred from company D to company stationing at Fort Omaha. Lieutenant Graves has been ordered to join his new company.

The Washington Evening Star says that Secretary Proctor of the war department, had had a horse sold formerly ridden by one of his messengers and purchased a bicycle for the use of his messengers.

Private Dennis Connell company A, Second infantry, has been placed on the retired list and ordered to his home.

Dr. Birney cures catarrh, Bee bldg. Dr. E. Egan of the Chadron Journal was in the city yesterday.

Improved Smoking Arrangements.

Quite a change appears to be taking place in the general opinion as to the best arrangement of smoking room accommodations on some classes of passenger trains, and it is quite possible that the common smoking car will, before long, cease to form a part of the better class of trains. Quite a number of railroads have constructed their chair cars with smoking rooms of sufficient capacity to provide accommodations for the occupants of each car. The practice of thus furnishing a smoking room for each car is rapidly extending to the common day coaches, and a number of very prominent roads are putting a smoking compartment in nearly every car that they are building, some even fitting up the second class day coaches in this manner.

Dr. Birney cures catarrh, Bee bldg. How to Preserve the Voice. How to preserve the voice and keep it presumably fresh is almost like asking how to keep from getting cold. Writes Cam pain in the Ladies Home Journal. Some people grow fatter and do not take care of themselves. The voice should not be imposed upon, and instead of growing husky in a decade it should remain comparatively fresh for two and even four decades. Patti's voice is a fine example of one that has never been imposed upon, never been forced to sing six nights in a week and once at a matinee. A grand opera singer should sing only twice a week, perhaps three times if his or her physical condition warrants it. Singers should have plenty of sleep, good appetites, nothing to make them nervous, and, if possible, a more or less phlegmatic disposition. The latter they rarely possess to any great degree. Overwork is death to a voice. A singer will not notice at first the inroads that gradually undermine a voice and leave it a cobb of its former sweetness.

Albright's Choice, buy early. Many Royal Widows in Europe. Almost every country in Europe has an illustrious widow, from Victoria in England to the young Duchess of Aosta in Italy; the Empress Frederick in Germany, Christiana in Spain, Charlotte, wife of Maximilian, emperor of Mexico, who is melancholy mad in the Chateau of Conchout; Princess Stephanie, Archduchess of Austria, and Natalie, worse than widow, ex-queen of Serbia, and the unhappy, heart broken Eugenie, empress of the French.

Albright's Choice, 521-23 N. Y. Life. Large Warships. The Italia and Lepanto of the Italian navy are two of the largest warships ever built. They are 400 feet long, 74 feet broad, and possess a mean draught of water exceeding thirty feet.

Dr. Birney cures catarrh, Bee Bldg. Drunkenness in Glasgow. Sheriff Allison is authority for the statement that the city of Glasgow alone 30,000 people get drunk every Saturday night, and crime has increased six times faster than population.

Dr. Birney cures catarrh, Bee Bldg. S. F. Smith, general manager, and W. A. Deuel, general superintendent of the Denver & Rio Grande, came in yesterday from the west.

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Social Laws for Girls. You think the laws of society are severe. You do not believe that conventionality is a great sword held up, not to strike you, but to protect you, and you shrug your pretty shoulders and say; 'I know I was doing nothing wrong and I don't care what people say.' A Warning to Your Daughter, In the NOVEMBER Ladies' Home Journal. Let your wife read it. Have it regularly in the family. Half a million copies already go to Half a Million families. A larger circulation than ever before attained by any magazine in the world. Another topic in the November Journal is an article under the caption "To be Easy in Conversation." How we make ourselves ridiculous. How we miss that nice balance of ready thinking before folks, that gives one ease—that hardest achievement—ease. NOVEMBER ready on the News Stands. 10 Cents a Copy. Send us ONE DOLLAR for an 1891 Subscription and you may have the THANKSGIVING and CHRISTMAS numbers FREE. CURTIS PUBLISHING CO., Philadelphia, Pa.

ERRORS MADE BY MAN! Tolve up to all that you make—is an error. Not to carefully consider where to buy and why you should buy—is an error. To pay a big price for clothing because the store advertises heavily and charges big rates in order to maintain big expenses—is worse than an error. To suppose that you can do better than you can at the Misfit Parlors—is an error. To pay \$35.00 for a ready-made suit when the Misfit Parlors will sell you a \$45 custom-made suit for \$20.00—is an error. To pay \$6 and \$8 for poorer pants than the Misfit Parlors will sell you \$3 and \$4—is an error that costs. ALL ALTERATIONS DONE FREE OF CHARGE TO INSURE A PERFECT FIT. SEE WHAT YU OUCAN SAVE. FULL DRESS SUITS FOR SALE OR HIRE. ORIGINAL MISFIT CLOTHING PARLORS, Open evenings until 9 o'clock. Saturday evenings until 10 o'clock. 1309 Farnam Street, Omaha, Neb. 1309

G. S. RAYMOND WATCHES, DIAMONDS and FINE JEWELRY Sole Agent in Omaha for Gorham Manufacturing Co's Sterling Silverware MANTLE CLOCKS, RICH CUT GLASS and CHINA. Our Stock of Fine Goods is the Largest and Our Prices the Lowest. Come and see us. Cor. Douglas & 15th St G. A. Lindquest IS AGAIN IN THE Merchant Tailoring business and invites his old friends and patrons, as well as the general public to call and inspect his new stock of imported cut domestic wools. Everything first class and ESTABLISHED 1874. - 315 S 15TH; DR. GLUCK, Eye and Ear.

DR. RICHARDS, Practice Limited to DISEASES OF THE LUNGS AND NERVOUS SYSTEM. Rooms 316 to 320 Bee Bldg Omaha. DR. E. C. WEST'S NERVE AND BRAIN TREATMENT. Specific for Hypertension, Dizziness, Pits, Neuritis, Wakefulness, that nervous exhaustion, put you in a fit state for instantly and leading to injury, decay and death. Premature old age, nervousness, and other ailments, in either sex, involuntarily, and in a most distressing manner. Dr. Richards' Nervine, and other remedies, are the only ones that make you feel better, and give you strength and endurance. Each box contains one month's treatment. A box of six for \$5, sent by mail prepaid. With each order the six boxes, will send purchase guarantee to return money if the treatment fails to cure. (Guarantee issued and genuine sold only by GOODMAN DRUG CO., 310 Farnam Street, Omaha, Neb.) UNION PACIFIC Tickets ON SALE TO ALL PRINCIPAL POINTS EAST, WEST, NORTH and SOUTH 1302 Farnam Street. HARRY P. DEUEL, City Passenger and Ticket Agent California's Great Remedy DR. ROBERT'S LITTLE VEGETABLE PILLS. Will free you from all the above and other ailments, and give you strength and endurance. Each box contains one month's treatment. A box of six for \$5, sent by mail prepaid. With each order the six boxes, will send purchase guarantee to return money if the treatment fails to cure. (Guarantee issued and genuine sold only by GOODMAN DRUG CO., 310 Farnam Street, Omaha, Neb.) FOR MEN ONLY! VIGOR AND STRENGTH. (General and Nervous Debility, Weakness, and other ailments, in either sex, involuntarily, and in a most distressing manner. Dr. Richards' Nervine, and other remedies, are the only ones that make you feel better, and give you strength and endurance. Each box contains one month's treatment. A box of six for \$5, sent by mail prepaid. With each order the six boxes, will send purchase guarantee to return money if the treatment fails to cure. (Guarantee issued and genuine sold only by GOODMAN DRUG CO., 310 Farnam Street, Omaha, Neb.) THE OLD RUT and old methods are not the easiest by far. Many people travel them because they have not tried the better way. It is a relief from a sort of slavery to break away from old-fashioned methods and adopt the labor-saving and strength-sparing inventions of modern times. Get out of old ruts and into new ways by using a cake of SAPOLIO in your house-cleaning.