ference would result differently and bring about a settlement. To refer the matter to a master or three masters would only result in delay, and the whole matter would have to be settled in court finally. If the parties wished it the court would proceed to hear and decide the case now. If the men were not satisfied with the findings of the court they could quit the service of the court, but he receivers must abide by the decision of the court, as the court had more authority The judge again stated that the old schedules were prima facts correct and just, and the burden of proof was on the recelvers to prove to the contrary. thought the rules and regulations had better

be taken up first. Mr. Thurston stated that Mr. Clark was sick and unable to appear in court, but if the hearing was postponed until today he would probably be present, and he alone was capable of handling these questions. The hearing of the case, from the very nature of must be largely conducted by the ofit, must be largely conducted by the ficials of the company and the representatives of the men, who were alone capable of elucidating the mysteries of railroad operation. Mr. Hodges agreed with Mr. Thurston that railroad operations and the effect of the various rules were beyond the ken of the average lawyers, and the presace and advice of officials were abso indispensable. He thought the hearing had better go over until morning, when Mr. Clark could be present. It was then decided that the present rules

under which the Union Pacific company and the receivers had so far operated should be taken up and when one was encountered over which there was a difference it would be discussed and decided by the court, the rules relating to the engineers and firemen to be taken up first.

OLD RULES THE BASIS. Mr. Thurston suggested that the new rules be taken up and discussed, but the court again affirmed its position that the old rules

should be the basis of the hearing. In passing, Judge Caldwell said that if Mr Clark and the heads of the organizations of employs were to largely conduct the case, to exclusion of the lawyers, it would doubtthe best conducted lawsuit it had been his pleasure to hear.

At the coming into court this morning the receivers will present a copy of the old rules, with the portions to which they object marked and state their reasons for the change desired, and the men will present their reasons why they should remain in Court was then adjourned until this

The men thoroughly appreciate the facthat the holding of the hearing on the basis of the old schedule is a great victory, inasmuch as the consideration of that schedule was utterly eliminated from the conference with Mr. Clark, and the throwing of the burden of proof upon the receivers is also an advantage not to be despised.

Just before the adjournment of court Mr. Hodges called up the portion of the report of Mr. Clark, which referred to the settlement of the pending difficulties with the telegraphers and the receivers and the court approved of the settlement and it is now in full force and effect. The exact schedule is not obtainable, but from the very best of authority it is learned that new schedule does not provide for any reduction in the gross amount that the company will have to pay for telegraph service While the salaries are cut in some instances the allowances for overtime and extra calls will make up for it on the basis of the present amount of work of this kind done by the operators on the system. vantage the men claim for this even over the present schedule is that every man on system will know just what he is to receive for his services and if he is called upon to do more work than the hours of duty require him to do he will not feel that he is doing it for nothing for he just what he is to receive for it. It will also stop the practice which has been prevalent to some extent of keeping men on duty for the simple reason that they might possibly be wanted.

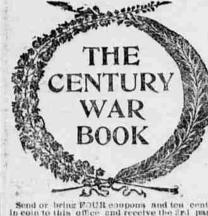
MR. CLARK'S REPORT.

Specific Reasons for Disagreeing with the

Men-An Exhaustive Review. At the opening of court Mr. Thurston Presented the report of Mr. Clark of his doings as referee in hearing the case of the men on the system. So far as the report was completed at that time it was published ex-clusively in The Bee yesterday morning. In addition to the matter contained therein the addition to the matter contained therein the report says that one reason for the fact that a settlement was arrived at with the operators was the fact that the wages of the op-erators had not been increased any for several years, and in many instances they had previously been reduced, while the report says the wages paid enginemen and trainmen lad been in late years increased until the were about 15 per cent more than was paid the first meeting Mr. Clark states he

told the men that he understood he was ap

NUMBER 3.



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pointed to adjust with them the rates of pay and the rules and regulations that were to govern the system and that it was his purpose to reach a result which would be fair in view of the present situation. Mr. Clark recites that as the conference progressed in the discussion of the new rules and schedules of pay proposed by the receivers the mon objected to all or nearly all of the proposed changes, for reasons which did not appear to him to be well founded, and seeing greement on that basis was not he asked the men to prepare a set of rules and schedules for discussion, which they did. Without going into details in discussing these Mr. Clark states that careful estimates on them showed that f but into force on the system they would increase the expense of operating the lines several hundred thousand dollars per year over the amount now paid under the exist-ing rules. The men themselves admitted anid Mr. Clark, that the new rules would not decrease the expense of operating the system, but they said they were the rules hey proposed to stand upon. I Mr. Clark the rules proposed by the men would largely have the effect of taking the management of the read out of the hands of the recelvers and place it in the hands of the men. Mr. Clark further states that previous to the appointment of the receivers fully half he time of the officers of the road taken up in hearing the gricvances of the men, and one of the objects of the prop rules was to do away with this diffimity. It appeared to him that from the taken by the employes that tead of accepting the present conditions and participating in any necessary economies they were insisting upon an increase over the wages at present paid on the system. He became convinced that nothing could be accomplished by the conference and had to report that with very few exceptions the men objected to all the proposed new rules, and could not consistently approve he ones proposed by them for the following reasons: First, because they would increas the expenses of the system several hundred thousand dollars annually. Second, because

the rules proposed by them would only aug-ment instead of decrease disputes, which would require more time for settlement. RELATIONS TO THE MEN Mr. Clark states that it is with profound egret that he is compelled to make this report, and in this connection he states that during his long service with the company, dating back to 1867, in positions ranging from division superintendent to president, it had been his aim to so perform his duty as to merit the respect of both his employers and employes. Mr. Clark refers to the fact that he has always been the friend of the

men employed on the system and has en-deavored in all ways and at all times to treat them fairly and justly and has tried to ecure subordinates who would do the same It is only from a knowledge of the ties that exist, Mr. Clark says, that he asks the court to put into effect the proposed rules and schedules of pay.

After generally reviewing the phases of he wage conference, which are now thor well known to the readers of The Bee, Mr. Clark, in his report, gives specific reasons for his inability to agree with the schedules, rules and regulations as prop y the enginemen and trainmen and which vere made a part of the document sub nitted to the court yesterday.

As to the basis of pay, which the engineers eek to have made the same as per schedule f November 1, 1891, Mr. Clark says that this proposition would revive the old schedule and place in effect the old rate of pay and excess mileage as allowed on the severa divisions and allow no reduction in the rate of pay of engineers and firemen, and which leads him to observe that this article ! practically a demand for the continuation of the old rates.

3, which provides for switching and unloading stock at "all terminals," would, in Mr.

Clark's eyes, cause an increase in view of the fact that the old rule applied only to

main line district terminals. Article 4 is

the same as now in force, which is also true

of article 9. Article 10, relating to "seni-ority of rights," is taken up and discussed at considerable length. The report states that by the rule proposed on the part of the men the officials are left without discretion

in the selection of men for important and

referred runs, as the rule requires that the

oldest man in the service must be given the

position, regardless of his ability, character, habits or fitness for the position or past

service rendered by him to the company. The second section of the "seniority of

rights" clause, the report states, has been the cause of a great deal of dissatisfaction

at all points on the road between engineers

particularly on the Rocky Mountain division where a special committee has been ap-

en in the district, but which works a hard-

ship on some of the men and which gives

freight engineers an opportunity to run pas-senger engines regardless of ability to give

CAUSED DISSATISFACTION.

The effect of the old rules, in many in

stances, has been very unsatisfactory, says

the report, particularly the rule referring t

ferring to sleeping hours, overhauling en

the assignment of engineers, the rule re

gines and engines laid up with snow plow.

As to article 8, which provides that the

company shall not assign any more engines than necessary to move the traffic, Mr. Clark

states that it has been the practice of the engineers through their brotherhoods, when business has fallen off on the road and the

men were not making enough time, to pass resolutions in their lodges demanding that

the master mechanic should take of cer-

tain extra men in order that the men re-maining might make more pay per month,

By this means it has added largely to the extra list when traffic on the road was light. In support of this Mr. Clark states he has a number of letters from divisions

of engineers in the west requesting the di-vision foreman to reduce the extra list on

the ground that there were too many men on the extra list to make a living. Th

received communications from other divis-

ions of engineers condemning the action of certain other divisions asking for this change

in the extra service, and so the story con-

Then follows a recital of the rules pro-

posed by the engineers regarding "sleeping hours," "overhauling engines," "engines laid up with snow plows." As to the latter

ice an engineer shall have the care of the engine in order to keep it in proper readi-

plows attached which engineers cannot se

over will not be required to pull a train

Engineers will not be required to use flanges with snow plow engines, except in case of special emergency." By this rule, says the report, the company has been compelled to pay men during the winter months

for doing absolutely nothing. There have been cases where engines have been sta-tioned with snew plow and not used for

sixty days; the engineer and fireman having nothing to do and refusing to perform

any rervice on account of this rule requir

ing them to have the care of the engine When it is necessary to put an engine in

snow plow service an engineer and fire-man has to be assigned to the care of that engine, and unless used in snow plow serv-

ice are not expected to do any work, ex-cept it might be to make a trip on the

road. The company has had engineers absolutely refuse to do anything, falling back on this rule for protection, claiming that the schedule gave them protection in

To carry out this rule it is estimated that

it would necessitate placing a crew on fit-teen snow plows at a salary of \$183 per month and a crew on six rotary plows at a salary of \$230 per month for five months each year, making a total expense for five months of \$14,575.

Taking up the rules proposed by the fire-

men the report states they are the same as those put in force November 1, 1891, with an addition of a few new rules. Article 20.

concerning cleaning, which lays down the rule that firemen shall not be compelled to

paint front ends nor stacks, nor to clean

ness for snow service.

When an engine is laid up for snow serv-

Engines with snov

pointed to regulate and locate the differ

satisfaction on a passenger run.

Article 2 of the engineers' schedule, which is entitled "engines to run first in in running the same number of miles than was performed ten years ago." and first out," Mr. Clark takes exception to Attached to the report is a statement showing the cost per mile for engineeers, on the ground that it would cause an increase in cost per mile for engineers and firemen, from the fact that the old rules firemen, wipers and hostlers on the Union Pacific for 1893, and a comparison showing specify "fast mail." "passenger" and "nassenger freight" service, while the rules of the engineers as proposed by them leave out "passenger freight" service, how much more it costs the Union Pacific for the same service than the roads specified. The engine mileage on the Union Pathereby leaving claim for a class of service cific for the year 1893 was 28,669,472 miles; the cost for wages of engineers, firemen, which has not heretofore been allowed In hostlers and wipers for this period was \$2,635,316,31, or 9.19 cents per mile. article 3, which in the engineers' schedul is entitled "time begins and ends," Mo Clark states certain words are omitted which This is shown in a recapitulation as folthe old schedule contains. As to the second

Cost per mile for engineers, firemen hostlers and wipers for the year 1893, furnished by auditing department

an opportunity to introduce some figures

xpense in operating the motive power de

he relieved of all cleaning on locomotives

the engines in their present condition i

would be necessary to employ 200 men of the Union Pacific system to take care of the

work that properly belongs to the firemen and to do this would increase expenses \$144.

The latter clause of the rule, which reads:

Firemen will not be compelled to pull pins,

circumstances," would necessitate the place

ing of a brakeman on every helping engine

on service in the Union Pacific system, says

the report. This would necessitate putting

per annum. The enforcement of this rule would cost the Union Pacific system \$165,900

per year more than at present. Its object

s to relieve the firemen of every duty in

connection with a locomotive except putting

coal in fire box. The custom practiced on

other roads is, where firemen have regula-

engines, they do the cleaning in cab and above running board; where engines are

pooled and have no regular men assigned

to them the management keeps the engine

On the Union Pacific system all

clean and the firemen are not expected t

engines have regular crews assigned them

doubled crewed and are in twenty-four hour

the Union Pacific states that the schedul

except in cases where helping engines are

As a general proposition the president of

with the engineers and firemen has been the means of increasing the cost per mile for wages of engineers, firemen, hostlers and

wipers from 6.37 cents per mile in 1883 to 9.19 cents per mile in 1893, or an increase

The reasons for this increase are stated

to be on account of concessions made to

the organizations above mentioned, due in

most part to changes in the manner of fixing wages. For many years the wages of enginemen and trainmen were by the

month, says Mr. Clark. Eventually, at the carnest solicitation of the employes.

this system of monthly compensation was

changed to a mileage basis; and to this mileage basis has been added, from time to

time, certain arbitrary allowances of mile-age not run, and for overtime, which have tended to considerably increase the rates

AS TO HEAVIER TRAINS.

they are operating engines of greater hauling capacity than formerly and that

trainmen now run trains of greatly in-creased tonnage and that thereby the value

of their services is much greater than in former years, the president says: "But it will be found that in every instance the

rates have fallen so much more rapidly than the capacity of the rolling stock and

the motive power has increased that much less revenue is received today for the same

train service than was received in those

former years of less powerful engines, smaller cars and lighter trains.

"The only person whose actual labor has been increased by reason of the mere im-

provement in motive power is the fireman

formerly did. But to offset this is the fact

that by concessions made to the demands of the enginemen, the firemen have been

ctual work formerly imposed upon them.

Such is also the case with the engineers. And it is a fact today, that less actual labor

is performed by both engineers and firemen

relieved from a considerable portion

perhaps, shovels more coal than he

In answer to the claims of the men that

of pay as formerly established.

Eventually, at

600 per annum.

service.

oth inside and outside of cab, and to keep

By this rule firemen would be re

ROAD.	Cost	Cost for	Less than
	per	same	amt p'd for
	mile	service,	Union Pac.
Great Northern Southern Pacific. A. T. & S. F. Missouri Pacific. M. K. & Texas. Louisville & Nashville C. M. & St. P. C. R. I. & Pacific. C. B. & Q. C. & N. W. Chicage & Alton.	8, 38e 8, 10c 7, 64c 8, 65c 7, 60c 6, 52c 6, 74c 7, 68c	2,492,501,75 2,322,227,23 2,190,347,66 2,488,540,17 2,178,672,87 1,975,326,62 1,869,248,57 1,923,322,41 2,029,798,62	282 814 56 511 089 08 444 965 67 146 896 14 456 4 6 44 650 989 69 706 968 74 702 993 90 605 517 69

hostlers and wipers on the Union Pacific system at the rate proposed in new schedule March 1, 1894, 8.60 cents per mile, compared with cost of same service on following roads: Cost for Less than same ser- amt. paid vice. on U. P. 12,465,574.59

	per
	mile.
Union Pacific	8,60
Great Northern	7.90
Southern Pacific.	. 8,28
A. T. & S. F	8.10
Missouri Pacific	7.64
M. K. & T. Ry	. 8.68
Louis. & Nash	. 7.60
C. M. & St. P. Ry	6.89
C., R. I. & P. Ry	6.52
C., B. & Q	6.74
C. & N. W. Ry.	7.08
Chicago & Alton	. 8.27
TOTAL STREET	

12.465,574.59 2.264,883.29 2.902,591.75 63.072.84 2.392,237.23 143,347.36 2.190,347.66 2.190,347.66 2.190,347.66 2.190,347.66 2.190,347.66 2.190,347.66 2.190,347.66 2.190,347.66 2.190,347.76 2.190,

More than amount paid on Union Pacific. Cost per mile given in cents. Note-Great Northern is figured in above or 19 per cent cut, which has been made. OBJECTIONS TO NEW RULES.

Then follows specific objections on Mr. Clark's part to the proposed rules and regulations submitted by the trainmen. Articles 1, 2, 3, 4, 5, 6, 8, 9, 11, 13, 15, 20 are thought to be objectionable to the receivers, and the reasons given. As to article 3, relative to overtime, the report says the words "over-time will be paid for on passenger runs less than two hours" objected to; passenger men are paid on a monthly basis and the compensation is fixed to cover all the service re quired of them.

Article 5, relating to "work trains," finds little favor for the reason that the brake-man's rate is too high; should be \$69 per month. Also object to the words "per cal-endar working month" and the words "except that runs before and after regular work urs shall be computed on mileage The receivers contend that the rates \$90 and \$60 per month, in their proposed schedule, are fair and equitable and cover all of the service required. This is on the basis of 3 and 2 cents per 100 miles per day, thirty days per month, and the receivers expect to pay overtime after twelve hours.

Article 11, relating to "extra service," is pummeled for the reason that it provides for extra pay for assigned crews on branches when required to perform extra service There are a great many short runs where the compensation fixed is with a view of using them occasionally for extra service without additional pay. Section 2, objected to: it should read "handling main line passenger trains will be allowed mileage rates."

The receivers believe that on branch lines. where there are assigned crows whose serv ice is light, it is not unfair to requestra service from them occasionally; not unfair to require matter to be left to the judgment of the superintendent, who will give them extra ompensation, if, in his judgment, they

should have it Article 13, relating to "doubling hills," is opposed as follows: "Objected to; allow-once should be made for doubling hills only when the train is made up with the inten-tion of having it double; the rule as proposed by the trainmen places a premium of doubling and would tend to increase such service; and the delay caused by such doubling would, in many cases, be paid for a second time under the overtime rule."

Article 20, treating of "what constitutes a crew," is given a black eye as follows: "The receivers object to this rule in its entirety; this is a question of management and must be left to the management. If accepted, it would add to the expenses of operation at least \$35,000 per annum and not increase or benefit the service.

CONCERNING STRIKE TALK. Upon the general proposition of the proposed cut Mr. Clark states that the general wages of enginemen and trainmen as pro-posed by the receivers will still be consider-ably in excess of those which had prevailed on the Union Pacific system up to 1885. "I also respectfully submit," says Mr. Clark, "that I have a full stenographic report of all the proceedings of the conference with the employes, which I am ready to submit for

your honor's examination and consideration, and I think it will hear me out in all of the pins, make couplings or throw switches under any circumstances, gives Mr. Clark statements I have made with respect to my efforts to bring about an adjustment of ex He states that the adoption of this rule would add very largely to the company's isting differences with the employes have been most anglous to effect a settle-ment of differences in order to avert any possibility of a strike on the Union Pacific system. This system is so vast in extent and so much of it is operated through a sparsely settled country, that it would be almost impossible to avoid irreparable inleved of the care of their engines, and it is jury if it were exposed to the dangers and disasters incident to a general walkout of its

"I have the utmost confidence in the intelifgence, loyalty and law abiding character of the great body of employes on the Union Pacific system, but I also have the most certain and reliable information that there are men in its employ who are end-avoring cake couplings or throw switches under any to bring on a general strike and who do no hesitate to threaten all sorts of injury and disaster to the property in charge of your receivers unless what they term their de-mands are complied with." on thirty brakemen on these engines, at an expense of \$60 per month each, or \$21,900

In support of this startling assertion the report contains a letter from John Galligher, residing at Mountpeller, Idaho, addressed to railway employes west of the Mississippi stating the action taken at a union meeting of all the branches of labor, and reciting the resolutions adopted at the meeting. which were in effect that should any reduction be made in wages these labor organizations had concluded to strike, disregarding the heads of the different organizations to which they belonged. This letter is submitted without comment.

And then Mr. Clark concludes the recommendation that a man be appointed by the court to go over lines of railroad situated similarly to the Union Pacific, examining every condition pertaining thereto that can affect the question of wages, and report his finding of facts and recommendation as to pay on the Union Pacific, which, on being approved by the court shall be considered as a settlement of the controversy.

Denial from Debs. In an interview esterda Eugene Debs lenied the utterance of the incendiary remarks to which Receiver Clark refers in his report to the circuit court. Mr. says both his order and himself been misrepresented in this matter.

MILLER BOUND OVER.

Must Stand Trial for Shooting and Robbing Frank Ribak.

Martin Miller, who was arrested a few weeks ago for shooting Frank Ribak, the Clark street grocer, and who has been confined in jail waiting till Ribak's condition would permit him to appear against him, was placed on trial vesterday afternoon. Ribak was there to appear and also hi

As was stated when Miller was taken t their residence for identification, both Mr. and Mrs. Ribak positively identified him as the assailant, and shortly after Ribak filed two complaints against him, one for shooting with intent to kill and another for rob-

The trial consumed the greater part of The trial consumed the greater part of the afternoon. Half a dozen witnesses were produced for the defense to show that Miller was not in the vicinity of Clark street at the time the robbery and shooting are alleged to have taken place. When it came to the point, however, of proving an alibi, none of them were sure as to the time they saw Miller, and as near as any could say for certain was that he was seen could say for certain was that he was see

sometime during the evening in the vicinity of Eleventh and Dodge.

The fermer identification by both Mr. and Mrs. Ribak was not shaken in the least, and they were just as positive yesterday that he was the right man as they were the day he was taken to their residence.

dence.
Judge Berka said that as Mr. and Mrs.
Ribak were both so certain that Miller was
the man, and as the other witnesses when
closely questioned were not positive, he
thought he was justified in binding Miller His bond for the first count, that of shooting with intent to kill, was placed at \$1,000, and a like amount was fixed for the charge of robbery.

WEATHER FORECASTS.

It Will Be Fair and Colder Throughout Nebraska Today. WASHINGTON, March 29.—Forecast for

For Nebraska, South Dakota and Colorado-Fair; south winds; colder Saturday morning. For Kansas, Missouri and Iowa-Fair;

warmer; south winds.

ANNOUNCEMENTS.

The largest advance sale of the present season indicates that Herrmann will be greeted tonight by one of the largest audience of the season. Herrmann has the happy faculty of catering equally to all sorts and conditions of mankind. His admirers are legion, and range from states men and ministers to the humble gallery god. A feature of the performance is the dancing done by Mme. Herrmann, who has proved herself an artist of a high order of She dances the "Serpentine," "La se," "Butterfly" and other unique Blanche." dances with marked effect.

Movements of Scagoing Vessels March 29 At San Francisco-Cleared-City of Peking, for Yokohama and Hong Kong; Dynomne, for Queenstown; Jane A. Falkenberg, for fishing; Fremont, for fishing; schooner Maid of Orleans, for Kahuaka. Departed-St. Paul, for Guaymas; W. W. Crave, for Fort Townsend; bark Sea King, for Naniamo.

Nanianio. Eureka—Arrived—Tainer. Departure Bay—Sailed—Costa Rica Departure Bay—Salled—Costa Rica, San Francisco, Naniamo—Salled—General Fairchild, San Francisco. t Halifax, N. S.—Arrived—Carthagenian, Gibraltar-Passed-Fuerst Bismarck.

Intermittent Arc Lights

Reports have been received by the chief of police from patrolmen regarding the of police from patrolmen regarding the electric street lights. The five are lights on South Tenth street from Williams to Bancroft streets went out Wednesday night at 12:39 and not a glimmer came from them until 2:39 a. m., when the lamps started up again and shed their light for lifty-five minutes and then went out. On South Thirteenth street from Mason to Vinton streets six are lights went out shortly after midnight and stayed out until almost daybreak. The lights on Eleventh street south of Jackson street acted the same way. son street acted the same way "The Garroters."

"The Garroters," one of Howells' bes farces, will be given in the parlors of the

Unitarian church, Seventeenth and Cass streets, this evening. The characters in this farce are: Mrs. Roberts, Mr. Roberts, Mrs. Crashaw, Mr. Campbell, Dr. Lawton, Mr. Bemis, Mrs. Alfred Bemis, Mr. Alfred Bemis and Bella. The entertainment is free to members of the Unity club and practi-cally so to others, but 10 cents being taken at the door. Waite is Not in It.

DENVER, March 29, Governor Waite has refused a request to endorse the Coxey move ment and issue a call for the unemployed of Denver to march to Washington.

PERSONAL PARAGRAPHS.

Captain Tibbetts, the oldest traveling ssenger agent in the United States, is at the Paxton. Mrs. Carrie Cummings has returned from

Tipton, Ia., whers, she went to visit he father, who is ill. Nebraskans in Omaha At the Murray Jelin Bratt, of North Platte.

At the Mercer-J. Barsley of Pairmont J. L. Harvey of Seward. At the Drexel-P Crotty of Norfolk and T. N. Mann of Hastings. At the Millard-F. M. Blish of Lincoln, J. M. Wertz and wife of Grand Island. At the Colonnade—J. R. Watts and H. F. Savage of Waterloo, C. F. Bailey of Rush

At the Dellong-M. Waldron of Lincoln W. Frank of Grand Igland, M. B. Irvin o At the Arcade J. E. How of Norfolk, M. E. Cowen of Tecumseh and J. R. Cain of Falls City. At the Paxton-C. P. Shaw of Kearney, J. Burch of Wymore, H. A. Hughes and

At the Windsor-C. P. Hammond of O'Neill, J. B. Cox of David City and A. H. McDowell of McCook. the Merchants-James Leonard of North Platte, George Krumm of Tilden, W. L. Perkins of David City, A. R. Nisbet of

Grinding: Razors, shears, cutlery and edge S. Stanfield & Co., 1518 Dodge.

wife of Ravenna.

DECIDED AGAINST THE GULF

Judge Sanborn Completely Vindicates the Action of the Receivers.

OBLIGATIONS NOT ASSUMED BY COURTS

Question of Jurisdiction Decided in Payor of the Nebraska Courts-Gulf Officials Left with Only Their Lines of Rails.-The Decision.

Judge Sanborn surprised the attorneys interested in the argument in the Gulf case yesterday on the convening of the circult court by announcing that the court had listened with patience to the arguments in the case, but had come to the conclusion that further arguments were useless, as the court had prepared an opinion in the case.

Judge Thurston was ready to proceed to the close of his argument, but when Judge Sanborn announced that a decision had been reached Mr. Thurston quietly took his seat while the legal lights hitched up their chairs to catch the words of the court,

In effect the opinion was a complete vindi-

cation of the course taken by the receivers of the Union Pacific, and leaves the Guif company with little to stand upon except that it does not deprive Receiver Trumbull of his line of rails. The question of jurisdiction was also decided in favor of the Nebraska court, the court, however, deciding that par-ties having suits against the Union Pacific company would not be compelled to come into proceedings in the district in which they re-sided. The effect of the ruling, the court decided, will be that the receivers are to re-port to the circuit court of Nebraska, and as to the Julesburg branch the receivers are relieved absolutely from the terms of the tract of April 1, 1890, but the court, upon in terrogation by Mr. Hobson, said that he thought traffic arrangements satisfactory to all the receivers could be made. This Mr. Anderson said could be done he thought on a mileage basis. The court then appointed William D. Cornish of St. Paul special master in chancery to whom the receivers will make monthly reports and after examination by Mr. Cornish they will be referred to the circuit court of Omaha, the court of original jurisdiction. Mr. Cornish is also empowered to hear evidence on the interest features of the Gulf case and report his findings to the circuit court. As to the general accounting between the companies which the court ordered in its ulings, the master is directed to sit either in Denver or Omaha upon agreement of both arties to the suit.

Orders will be made at once covering the main features of the opinion. Judge Santhen announced that he was pelled to leave for St. Paul and would not participate in the wage matter next on the calendar, but that Judge Riner would sit with Judge Caldwell on the hearing.

Mr. Thurston endeavored to have Judge Sanborn remain until he could read Mr Clark's report and recommendation, which Thurston announced would be ready at 2 o'clock. But Judge Sanborn was averse to hearing one side and refused to participate in the hearing on the ground that he would be unable to remain until the close of the Mr. Thurston then announced that Mr. Clark's special report would be ready at 2

'cleck, and the court took a recess until that hour. JUDGE SANBORN'S OPINION. Following is the opinion delivered by Judge

"The question presented to the court in this rehearing is to what extent, if any, the receivers of the Pacific company are bound by the traffic agreements between the Palific company and the Gulf company dated

April 1, 1890, and July 5, 1892. "For the purpose of this hearing these contracts will be treated as valid agree-ments of the contracting parties. The covenants of the Pacific company contained in these agreements do not run with or bind any of the real or personal property and what is said in this opinion has no reference enants that do.

"It is well settled that the receivers of an insolvent railroad corporation appointed by a court of chancery to preserve its proprty and operate its railroads do not stand in the shoes of the corporation. They are orporation nor its creditors nor stockhold they are the officers and representatives of the court, in which it holds the prop orty while it operates the railroads of the insolvent corporation for the benefit of those altimately entitled to the property and the

NOT BOUND TO PAY DEBTS. "The court is not bound to pay the debts or to perform the obligations of the insolvent, nor are its receivers. No one ever contends that the obligations of the insolvent corporation to pay its debts are assumed by The only difference between the liability of such receivers to pay the debts and to perform the executory contracts of an insolvent corporation is that the conelderation of the former is generally received by the insolvent, while the consideration of the latter may be obtained by the receivers, and if after an unreasonable length of time they accept the benefits they may thereby assume the liabilities of such contracts.

"The possibility of such an assumption of

liability has imposed upon these re-ceivers a corresponding duty. This duty was to carefully examine every lease, traffic or other executory contract of the Pacific company and to determine in each case whether or not it was for the best interests of all the creditors and stockholders of the of all the creations and stockholders of the insolvent corporation for whose ultimate benefit they held its property that they should accept the benefits and assume the burdens of such lease or contract. They were entitled to a reasonable time after their appointment to make this examination and de-termination. They were appointed October 13, 1893; they renounced these contracts January 15, 1894. In view of the great number of executory contracts the Pacific company was a party to, and the heavy interests in volved in this receivership, this was not an unreasonable time, in our opinion, to use in the examination and determination of this

"Moreover, we think the chief consideration for the assumption by the Pacific com-pany of its liabilities under these con-tracts was that the Gulf company should be perated in harmony with and practically inder the supervision and control of the Pacific company itself. THE GULF'S DIVORCE ACTION.

"December 12, 1893, a separate receiver for the Gult company was appointed, who, on December 18, 1893, took from the receivers of the Pacific company possession and control of the Gulf company. This receiver has since operated the railroad of the Gulf company free from supervision and control of the receivers of the Pacific company, and has thus withdrawn from them that congideration. This of itself is, in our opinion, sufficient reason why the receivers of the Pacific company should not be re-quired to perform the covenants of that company contained in these contracts subsequent to December 18, 1893. Sp performances of such contracts as Specific performances of such contracts as these have not assumed the obligations therein by any word or act of their own, because, as was well said by Mr. Justice Brewer, 'A specific performance by the receiver would be a ferm of satisfaction or payment which he cannot be required to make. As well might it be decreed to satisfy the appellant's demands by money as by service

lant's demands by money as by service sought to be enforced.

"The result is that the receivers were not bound by the covenants and obligations of the Pacific company contained in these contracts, by virtue of the order appointing them. They had the option within a reasonable time after their appointment to accept these leases and assume these obli gations, or to renounce the former and re-fuse to be bound by the latter. They exer cised this option within a reasonable time and wisely renounced the contracts."

Then followed a citation of cases in sup-port of the principles laid down.

RESCINDED AN IMPORTANT ORDER. Continuing, Judge Sanborn said: cordance with these views the order directing the receivers to operate the Julesburg branch will be rescinded and the receivers of both companies will agree upon fair and just traffic arrangements, carefully ering the wants and interests of the public, as well as the parties they represent, and

they will be at once settled. far as the claim of the Gulf company or its receivers to the amount of interest which accrued on its bonds prior to the appointment of the receivers of the Pacific mpany is concerned, we are aware of ne inciple of law or of equitable consideration that will take this claim out of the category of the simple contract liabilities of the Pacific company of like date and character, or relieve from the effect of any valid offsets or counter claims the Pacific company may have against the Gulf com-pany. This claim must be considered in general accounting between these corpora

"But the receiver of the Gulf company insists that by operating the raifroad of that company from October 13 to December 18, 1893, and by various acts and state-ments during that time the receivers of the company accepted the benefits and assumed the liabilities of these contracts for that period, and that they ought to be directed to pay at once and in preference t all other claims, the interest on the bonds of the Gulf company that accrued during that time. The authorities to which we have referred leave no doubt of the following propositions:

"First. The appointment of receivers did ipso facto, make them liable to pay this interest according to these contracts. "Second. The fact that they took possession of and operated the railroad of Gulf company for sixty-five days would not of itself establish an assumption by them of the Pacific company's liabilities u right to operate the road for a reasonable time to ascertain if it was to the interest of all the parties for whom they held the Pa-cific company's property that they should assume their liabilities, and sixty-five days was not an unreasonable time to use in de-

termining this question. "Third. The burden of proof is on e receiver of the Gulf company the receiver of the Gulf company to establish the proposition that these recivers did assume this Hability. The re-civers strenuously deny that they did so This issue is squarely made by the peticounsel. As we understand it, it involves the disposition of some \$200,000. No tes-timony has been taken, no witnesses ex-amined on this question, but it is submitted to us and was, as we are informed, to the courts on earlier hearings, on allegations and denials and extracts from affidavits and statements of individual receivers and others found in files of the courts and generally made with no reference to this issue, bu with special reference to questions entirely foreign to it. This evidence is fragmentary and entirely unsatisfactory that these receivers ever did or intended to pay the inerest of the Gulf bonds for these sixty-ive days. This may be estimated by subequent proof and opportunity will be given 'Nor are we willing to say at this time

and in the face of the very unsatisfactory condition of the evidence relative to the financial condition and to the accruing lia-bilities of the Pacific company, that it would be just and equitable to the parties in interest to pay to the receivers of the Gulf company now a full amount of this interst as compensation for the use of the railroad during these sixty-five gardless of their assumption of their lia POWERS OF SPECIAL MASTER.

"It is too early in the administration of this vast trust to tell to what extent the obligations of the Pacific company can be met its earnings and the earnings of its con stituent or allied companies. We cannot yet learn how many of the latter companies may present claims for preference in payment like that before us. The payment of the receiver of the Gulf company as a preferred reditor now at the contract rate fixed by the traffic contract for the sixty-five days the receivers of the Pacific company operated that road might deprive creditors of the same or a higher rank of any payment at all. For these reasons we think it is unwise at this time to require the receivers to pay for the use or operation of any of the constituent lines any larger amount than the amount those lines have actually earned. Accordingly the orders made in the Colorado district on February 12 and February 14, 1894, and the like orders made in the Wyoming district will be rescinded. A special master will be appointed in this cause. the claims of the Gulf company against the Pacific company prior to October 1892 and all the claims of the Pacific pany against the Gulf company accruing prior to that date will be referred to him; all the claims of the Gulf company and its receiver against the Pacific company or its ceivers which have accrued subsequent to October 13, 1893, and all the claims of the receivers of the Pacific com-pany against the Gulf company or its claims receiver which have accrued subsequent to that date will likewise be referred to him; he will be directed to determine the law and the facis in these controversies and directed to report the general balance due from the Gulf company to the Pacific com-pany or from the Pacific company to the Gulf company, as the case may be, on ac-count of the claims of the respective parties accruing prior to October 13, 1893. He will also be directed to report the general bal-ance due from the receivers of the Pacific company to the Gulf company or its receiver, or from the Gulf company or its receiver to the receivers of the Pacific company, as the case may be, on account o their respective claims accruing subsequent to October 13, 1893, and to find and to report to this court what amount, if any, of the balance so found to be due should be treated as a preferred claim by the re-ceivers of the Pacific company in the ad-ministration of the trust imposed upon

"It is unnecessary to discuss or decide here whether the circuit court sitting in Colorado or Wyoming is a court of auxiliary jurisdiction in the matter of this receiver-These receivers were first appointed in this court, sitting in Nebraska. So far as the general management of the trust imposed upon them, the general opera-tion of the railroad system in their charge in this circuit and their general accounting is concerned, they must report to and be governed by this court sitting in Nebraska. "The impracticability of properly admin istering this great trust under any other practice and the intolerable confusion which would result from contradictory orders re-garding these subjects made in the different districts in the circuit will commend this rul of practice to every judge within the jurisdiction and prevent any interference or modification of orders issued in these matters by the circuit court for the district of Ne-

JURISDICTION OF COURTS.

if they are unable so to agree they will brasks, except by appeal or upon rehearing; submit their differences to this court and but the circuit courts in the districts of Color but the circuit courts in the districts of Colorado and Wyoming have jurisdiction to hear and determine the claims of the citizens of those districts against the insolvent corporation and the receivers of it, and their determination of those matters will be equally respected by the court sitting in Nebraska; citizens of one district will not be required to go to another district to assert their claims against receivers appointed by the courts of both districts."

GARDNER AND VAN HEEST TO A DRAW.

Omaha Kid Gives Danny Day's Conquerer a Hard Run for Fifty-One Rounds. MINNEAPOLIS, March 29.-(Special Telegram to The Bee.)-John Van Heest and Oscar Gardner, the "Omaha Kid," hammered away at each other for forty-one councis before the Twin City Athletic club here tonight. The referee, Hank Sceley, gave a decision of no contest, and bets were The men each weighed in at a trifle under

122, and were in good condition. The fight started off briskly, and the little men were lead in earnest. It was give and take for wenty rounds, first one and then the other naving the advantage. The "Kid" was the more clover and quicker, but Van Heest cook punishment like a glutton, and made hings about even. took punishment like a glutton, and made things about even.

In the sixth round the "Kid" seemed to have Van Heest almost landed, and also in the twentieth, but Van Heest each time rounded to and came up smiling the next time. In the twenty-fourth round both men agreed to a draw, but the club wanted a decision, and the referee ordered them to continue. Both men were so weak that they could not do effective work, and when the forty-first round was finished many of the spectators had left and the referee decided

Burglary Thwarted.

ctators had left and the referee decided

Watchman James Fisher about midnight ast night discovered a man trying to raise window in the rear of Parmalee's gun store, 1314 Douglas street. The man heard Fisher's footsteps and ran, and on refusing to stop the watchman fired, but the

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