Robbie P Not Speedy Enough to Push the Gallant Little Mare.

FOUR VERY FAST HEATS WERE DRIVEN

Fyle's Stallion Won the First One, but Jones Couldn't Let the Others Go that Way-Smooth Work by Two Swift Trotters.

Between 4,000 and 5,000 people assembled at Union park yesterday afternoon to witness the matched race between Allx and Robbie P, but before the end of the last heat nearly half of the spectators had left the grounds. The track was very heavy and slower than usual. The 2:50 pasing race did not take place at all, while the 2:40 trot seemed to be a contest between dray horses. There were four entries in this race and it was a procession in single file each heat. Brilliant Chief won the first race because he couldn't help it. Summary: Brilliant Chief, s. h., by Nutwood

Jack Shepard Carrie W. Time: 2:47/4, 2:47, 2:39/4.

When Alix and Robbie P appeared on the track they were accorded a hearty welcome. They were sent off on the second trial, but owing to the soft condition of the course Alix broke badly and did not recover herself until Robbie P was at the quarter post coing like a brown streak. Alix was fifty yards behind when she settled down to busi-bess, and the speedy little mare began closng up the gap between herself and Robbie P at a splendid rate of speed. She closed up so fast at the turn that she made her lowly, and at the three-quarters was only length behind. The pair came down the the game little mare could not head the stallion, who went under the wire a half ength in the lead in 2:17. The time by quarters was: Quarter, 0:35; half, 1:10;

three-quarters, 1:44; mile, 2:17.

Robbie P was in the lead when they started for the second heat, and they passed the quarter in 0:33, and went the half in 1:60. Robbie broke and Alix went to the front by six lengths. At the stretch Alix was coming easy and Robbie P was sailing along like a whirlwind to make up for lost time. Alix won the heat, but the heat was too fast for the stallion and he broke under the wire, a half length behind Alix.

The third heat was a horse race to the half mile post, which was passed in 1:05, and after a neck and neck journey into the they came down like a pole until the fifteen-sixteenths was until and Pyle's horse broke, letting

Alix win by two lengths.

At the end of the third heat the owner of Alix, Morris Jones, claimed the race, as it was a special event, and he was of the opinion that it was the best two in three heats. Ed Pyle contended that the race should be governed by association rules and make it the best three in five. The judges concurred with Pyle, and Jones threatened to withdraw his mare, as the track was in condition and his animal was not in condition for hard racing. He was finally per-suaded to go another heat, and it was seen that both horses would be sent along to win the heat if possible, but Alix took the lead and won in 2:15. Summary:

SPORT REFUSED TO FINISH.

St. Michael's Chief Competitor Lays Down

Half Way at Sheepshead. SHEEPSHEAD BAY, July 4.—Racing at Brighton Beach and Flushing drew many people away from Sheepshead Bay today. The weather was cool and pleasant and the betting brisk. The first race today was at a mile and a half on the turf, instead of the regulat on sprint. St. Michael and Sport were the choices, the former being the favorite. Sport ran about six furlongs and then concluded he had carried his load of then concluded he had carried his load of lead long enough. His feet stuck to the turf, and he did not understand the game. He stopped, and when Legget sought to persuade him to go he tried to go through the fence. Legget then turned the colt and trotted bact to the stable. Caesarion, a hot favorite in the second race, won with commanding ease. He was in front soon after the start, and Dogget took no chances. Mr. Jingle ease. He was in front soon after the start, and Dogget took no chances. Mr. Jingle and Nahma rather surprised the talent in the third. They had their race from the start, and finished heads apart. Results: First race, mile and a half on turf: St. Michael (8 to 5) won, Long Beach (5 to 1) second, Chief Justice (10 to 1) third. Time: 236 1-5.

Second, Chief Justice (10 to 1) third. Time: 2:36 1-5.

Second race, five furlongs: Caesarion (3 to 5) won, Silvie (3 to 1) second, Jessie Taral (10 to 1) third. Time: 1:03.

Third race, mile and an eighth: Mr. Jingle (40 to 1) won, Nahma (6 to 1) second, Peacemaker (7 to 1) third. Time: 1:45 3-5.

Fourth race, mile and a fourth: Sir Walter (9 to 5) won, Banquet (9 to 5) second, Roche (9 to 5) third. Time: 2:07 4-5.

Fifth race, Futurity course: Waltseer (8 to 5) won, Connoisseur (3 to 1) second, Monaco (15 to 1) third. Time: 1:15.

Sixth race, one mile: Tom Skidmore (2 to 1) won, Dally America (4)% to 1) second, Chattanooga (15 to 1) third. Time: 1:39 3-5.

Seventh race, two miles and a half: St. John (5 to 1) won, Westmoreland (10 to 1) second, Glenfallon (8 to 1) third. No time.

REY EL SANTA ANITA PROVES HIMSELE Wins the Sheridan Stakes Easily From

Good Field at Washington Park. WASHINGTON PARK, July 4.-A big holiday crowd attended the races today and saw several excellent contests. Rey el Santa Anita proved that his winning Derby was not an accident by easily capturing the Sheridan stakes at a mile and a quarter. He was a 3 to 5 favorite, and a quarter. He was a 3 to 5 favorite, and after trailing his field for a mile he came away and won without being fully extended. In the first race Rasper beat Esunup in a furious drive by a nose. Yo Tambien only galloped to win the second. Gunwad was an easy winner in the third. Pat, backed down from 10 to 6 to 1, landed the fifth for the Scoggan stables. Egbart, the favorite, won the sixth, and the last event went to the speedy old Geraldine. Results:

First race five-eighths of a mile: Rasper

Results:
First race, five-eighths of a mile: Rasper (3 to 1) won, Sunup (3 to 1) second, Overella (8 to 1) third. Time: 1:02
Second race, mile and an eighth: Yo Tambien (1 to 5) won, Gloaming (5 to 1) second, Lake Spear (40 to 1) third. Time: 1:5214.

second, Lake Spear (40 to 1) third. Tim 15524.
Third race, one mile: Gunwad (3 to won, Tippecanoe (20 to 1) second, Litt Walter (3 to 1) third. Time: 1424. Fourth race, mile and a quarter: Rey Santa Anita (3 to 5) won, Prince Carl to 1) second, Peytonia (50 to 1) third. Tin 1:084. Fifth race, three-quarters of a mile: Pat

Fifth race, three-quarters of a mile: Pat (8 to 1) won, Promenade (4 to 1) second, Uncle Luke (20 to 1) third. Time: 1:15.

Sixth race, one mile: Egbart (7 to 5) won, The Kitten (10 to 1) second, Mariel (12 to 1) third. Time: 1:424.

Seventh race, three-quarters of a mile: Geraidine (5 to 1) won, Lulu T (10 to 1) second, Pedestrian (3 to 1) third. Time: 1:14½.

LAMPLIGHTER'S FRIENDS DUMPED.

Sir Knight at 5 to 1 Wins the Independence Handleap at Brighton Beach. NEW YORK, July 4.-At Brighton Beach today the weather was delightful and the big holiday crowd was in good humor. About forty bookmakers weighed in and were kept unusually busy taking money from the many anxious depositors. The

from the many anxious depositors. The card was not particularly brilliant, but in several instances the finishes served to create a little enthusiasm. The feature of the day was the defeat of the favorite. Lamplighter, mostly caused by the bad sections of Lowiander, who spoiled several starts and finally was the cause of a bad start for the favorite. Results:

\*\*Print race, five-eighths of a mile: Nick to it won Walcott & to it second, Robin Bood & to it the favorite in the first time: 1:02.

\*\*Second race, one mile: Joe Ripley (4 to it won, Major General (10 to it second, Forestate (even) third. Time: 1:44.

\*\*Thank race, steepischase, short course: setting (even) third. Time: 1:44.

The face steeplechase, short course:

\* face (5), to 1) won, Duffer (6 to 1)

ord stover (4 to 1) third. Time: 3:0815.

ord face five eighths of a mile: Pont

\* (6) to 1) won, Tinge (2), to 1) second,

\* (cold (8 to 1) third. Time: 1:0315.

The face one mile: Sir Knight (5 to 1)

\* disclingham (25 to 1) second, Vesti
\* (6 to 1) third. Time: 1:42.

\* face, mile and an eighth: Tiny

\* (8 to 1) won, W B (20 to 1) second,

\* factor (8 to 1) third. Time: 1:57.

\* reseate race, one mile: Ferrier (6 to 1)

ALIX WON IT IN GOOD TIME | Won, Anna Bishop (10 to 1) second, Charade

RACING AT INDIANOLA.

Independence Day Observed with a Nice Program of Speed Events. INDIANOLA, Neb., July 4.—(Special Tele-gram to The Bee.)—The best racing ever seen in southwestern Nebraska was nessed today by a crowd of 1,000 people.

Two-year-old trot and pace, one-half mile heats, purse \$100: Norton Girl, s. m., by Diamond
Kittle Wright 2 1 0
Kittle Wright 2 1 0
Mays 2 3 3
Time: 1:25, 1:21, 1:19, 1:19, 1:25, 1:20,
2:10 trot, purse \$150:
Ben Johnston 2 1 2:50 pace, purse \$150; harlie Barr 230 pace, parse \$100 Charlie Bair 2 1 1 Cruiser 1 4 2 Leo Wilkes 4 2 4 Pretty H 2 3 3 Time: 2:33, 2:37, 2:31½, 2:38½ 2:30 trot, purse \$150; 3ob Swickert

Bob Swickert
Anna Pixley Guy L 3 3 Time: 2:43, 2:34, 2:32. One-half mile and repeat, running, purse Jack Rogers
Bob Austin

Five-eighths of a mile dash, running, purse \$75: Day Time won, Moonlight second, Jack Rogers third. Time: 1:054. Bob Austin and Billy the Kid also won. AFRO-AMERICAN FAIR.

Special Attraction Yesterday Was the Races

-Program for Today. Two thousand persons attended the Afro American state fair yesterday. The chief attraction was the racing in the afternoon, the results of which were: Gentleman's roadster race, one-half mile,

best two in three: Won by C. H. Bryant's "Frank Allen," A. Copeland's "Katie" sec-ond, A. W. Parker's "Safety" third. Time: 1:51.
Foot race, 100 yards: Sumner Plummer first, W. J. McAllister second, C. Banks

Foot race, 100 yards; Sumher Flammer, first, W. J. McAllister second, C. Banks third. Time: 0:10.

Bicycle race, one mile: Ed Jackson first, W. W. Mosely second, F. Wiggington third. Time: 3:45.

Half mile dash: Bryant's "Dixie" first, Giles" "Chief" second. Time: 0:52\(\frac{1}{2}\).

Pony race, one-half mile: Shaffroth's "Andy A" first, Elligan's "Johnnie E" second. Time: 1:06.

"Andy A" first, Elligan's "Johnnie E" second. Time: 1:96.
Fancy saddle race: Mrs. A. D. White first, C. H. Bryant second. Time: 1:30.
Special races today will be the exhibition races of the California stable, with several trotters under 2:25. Kinney Bros.' "Red Light" will run in the running race.
Sumner Plummer, winner of the 109-yard foot race, will attempt to beat ten seconds.

PREPARING FOR A FIGHT.

China and Japan About Ready to Go to War Over Corea.

VICTORIA, B. C., July 4 .- The Empress of China, eleven days from Yokohama, has arrived. She reports that Japan is continuing active war preparations and the strained relations between Japan and China are as much a feature of Asiatic trouble as the Corean rebellion. Corea, alarmed at the movements of her neighbors, pleads that both withdraw their troops from her shores and warships from her harbors. The plans of Japan are secret, and as fast as native papers make any announcements about the war they are suppressed. Her navy is at its best, the coasts being secured for service and everything breathes a spirit of trouble A cable received from Yokohama announces that on June 13 the government army defeated the Tagakito, recovering Senshu. The commander of the government troops was captured by the rebels, but his life so far has been spared.

The Japanese warships at present in Corean waters are the Matsushima, the coast defense flagship Yaoshino, Yamato, Misashi, Takao, Chyda and the Tsukishi, cruisers; Agaki and Chokakan, gunboats, and Vaeyeamakan, dis-patch boat. The Japanese army, which landed at Juenchan June 12, was divided into two divisions, one being left at Juenchan to protect Japanese there, while the other division of 1,200 men went to Secul on the 14th to protect the legation and Japanese When later news reached Pekin, an urgent telegram was sent to the viceroy from Minaverayun. The vicercy inspected all the troops under him and ordered them to pre-

pare for duty.

A telegram of the 19th at Tokio, from Shanghai, reads: "There is a rumor that registration of the vessels of the China Merchant Navigation company will be trans-ferred to Germany." When war with France became inevitable in 1882 all the steamers of the Chinese Merchant Navigation company were registered to the United States and Messrs. Russell & Co. were made their agents. It is usual for China to place her merchant vessels under the protection of foreign power and they think it a very clever expedient, as China knows in case of war she cannot protect them. If the rumor is true and the vessels have been transferred to the registration of other powers, it may be concluded that China has taken the step toward military preparation.
On June 17 the village of Honmura, ad-

joining Yokohamo, was destroyed by fire, upwards of 1,000 houses having been consumed, and three days afterwards heaviest earthquake experienced in Yoko hama and Tokio since 1880 occurred. In both places there has been loss of lives and great destruction of property. The fire started in a restaurant and for three hours spread with great rapidity. A desperate fight was made to stop it and was made successful through aid of men from H. M. S. Century. The loss amounts to hundreds of thousands of dollars and several thousand people are homeless and destitute. The loss people are nomeress and desitute. The loss of life by the earthquake is severe, twenty persons having been killed and many wounded, the number of the latter not being known. Casualties to property of one kind or another are numerous and might, if it were possible for the press to ascertain and record them, be given in hundreds. The destruction has been very serious, as may naturally be expected, and several tens of thousands of yen kien will have to be disbursed on repairs and renewals in Tokio, Yokohama and wherever the shocks were violent enough to cause disaster. Fortunately, the catastrophe took place by instead of night, or fire would have added horrors, as usually is the case when a severe earthquake takes place. It has always been thought that there is some sort of relation between volcances and seismic phenomena and the greater violence which Asamayala has manifested within the past few weeks

may be inductive of this mystery.

The following are returns of principal damages caused by the earthquake: Deaths, nine men, eleven women; wounded, 128 men, 108 women; inhabited houses demolished eleven; innapited noures demoitshed, eleven; vacant, twenty-eight; houses par-lially demolished, fifty-four; houses dam-aged, 3,511; godowns damaged, 264. In ad-dition to the above the ground is cracked and sunken in eighty-six places, 172 chimneys have been thrown down and 505 stone lantern tombs have fallen.

The officers of the Empress say when they left Yokchama the plague was decreasing. Although the ship touched at all Chinese ports, she brought no Chinese passengers as a matter of precaution. When at Hong Kong thousands of coolles were leaving there daily for Canton and other ports. The city daily for Canton and other ports. The city is in a measure deserted and looked deserted. Foreigners there are atill free from disease. The official report from Hong Kong for one day, June 11, says: Deaths since the outbreak, the 5th of May, up to the 11th of June, noon, 1,461; grand total, 1,547. From noon until 5 p. m. today at the Tung Wah branches (glass works and slaughter house), new cases 18, of which one death was on arrival and ten since.

was on arrival and ten since. The drouth in Japan continues and the rice crop is threatened.

One word describes it, "perfection." We refer to De Witt's Witch Hazel Salve, cures

Two Little Fires. Fire broke out in some of the brick yard buildings on South Thirteenth street last evening. The blaze was soon extinguished. About 9 o'clock in the evening a lamp exploded in Mrs. Stoney's house on Eighteenth street, between Webster and California. The flames damaged two rooms and contents to

the extent of \$200. DeWitt's Witch Hazel salve cures piles.

Citizens of Cleveland Dedicate a Soldiers' and Sailors' Monument.

BEAUTIFUL CREATION IN GRANITE

Governor McKinley and Ex-Governor Foraker Present-Description of the Shaft, Which Rises in the Most Conspicu-

ous Place in the City.

CLEVELAND, July 4.-The Cuyahoga soldiers' and sailors' monument, a typical American structure, an unconventional work of art, with an infinite variety of details which breathe the atmosphere of war and betoken the most painstaking research, was dedicated today amidst the plaudits of thousands of enthusiastic people. The presence of Governor McKinley as president of the day and of ex-Governor Joseph B. Foraker and Hon. V. I. Klein as orators made the occasion memorable. The monument is located in Monumental square and cost about \$300,000. It is strictly American in design. commemorative of American deeds and triumphs in the war of the rebellion. It overlooks the tremendous grand stand where the ceremonles of the day took place. Thousands of the pure, sweet voices of children united in spatriotic songs, and bands of music played martial and inspiring airs. Following the dedicatory ceremonies a monster parade of military and civic organizations took place.

The monument will occupy the most con-

spicuous place in the city, the southeast corner of the public square. The tall shaft of polished granite and the majestic figure of Liberty which crowns it are clearly visible far up Euclid avenue. The crest of the statue is 162 feet above the Superior street level. In general design the monument is departure from classic models. The four large bronze panels represent American soldiers fighting in American uniforms and show in high relief the well known figures of some of the greatest commanders of the war. The shaft is cylindrical and surmounts a memorial tablet room forty feet square and twenty feet high, which stands esplanade ninety-five feet square and five

feet above the ground.

The decoration of the stone tablet room is military throughout, and is open to criti-cism as being excessive. Miniature representations of cannon, cannon balls, etc., are averywhere. The panels surrounding the main shaft are twelve by fifteen feet and represent notable historic scenes. Lincoln unshackling a slave and putting a musket in his hands, with Chase, John Sherman, Wade and Giddings in the background; the beginning of the war, with life-size figures of Governors Todd, Dennison and Brough, and Generals McClellan, Cox, Garfield, Rose-crans, Hayes and Gilmore, and on the left a recruiting station; a scene at City Point, representing the close of the war, the final council of war between Lincoln, Grant, Meade, Sheridan and Sherman; the sanitary commission and hospitable service, with leading Cleveland women in the group, comprise the four subjects.

On the esplanade about the tablet room stand four bold groups in bronze, representing the four arms of the service. The infantry group exhibits a wounded color sergeant, waving his unfurled flag, while supported by a group of color corporals; the cavalry shows the advance guard, with color bearer shot and a boy striving to rescue the flag from the enemy; a mortar gun and crew stand for the navy, and a typical short-range scene represents the artillery. All are spirited groups and add

much to the beauty of the monument.

The interior of the tablet room contains the names of every one of the 10,000 soldiers and sailors who enlisted from Cuyahoga county and the ladies who worked on the sanitary commission and in the hospital service. The record is chiseled on the white marble interior walls. The tablet oom is to be heated and lighted by elec-ricity. Beautiful beds of flowers will surround the broad esplanade.

WORDS WORTH REMEMBERING.

GREENSBORO, N. C., July 4.-Vice Presdent Stevenson was the attraction at the Fourth of July celebration today on the historic battlefield of Guilford court house. The vice president was received enthusiastically and made a speech, in which he said in part: "We are not strangers. The history and traditions of the old north state are as dear to me as to yourselves. The blood that courses through my veins is that of the men who, with your brave sires, a little more than a century ago, first gave to the world a declaration of American idependence, the

men who have for all time linked the name of Charlotte with that of Runymede and made Mecklenburg immortal. In the great struggle for independence North Carolina played no mean part; her sons stood in the front ranks of those who first braved the hostility and resentment of the British crown. Her sons were the first to realize the necessity for separation and the estab-lishment of American independence. It must not be forgotten that the love of liberty and the hatred of tyranny, which found expres-sion in the Mecklenburg declaration of May 20, 1775, touched a responsive chord in the breasts of the ancestors of many of those I now address. In pledging their lives and fortunes to resisting British oppression, they sounded the keynote of the national Declaration of Independence, which, 118 years ago this day, was proclaimed by the contiiental congress at Philadelphia. To North Carolina, then, belongs the imperishable honor of having taken the first step toward securing to the American colonies independ-

nce of the British crown. "But what of the future? What will be the verdict of history as to the achievements of the present generation? In all that make state truly great is North Carolina to lag ehind or to keep even pace with her sister commonwealths in the century upon which we are soon to enter? With an area of more than 50,000 square miles, stretching from the seaboard 500 miles to the western border, with a breadth of 200 miles from north to south; with a soil happily adapted to the supplying of all wants; with a climate unsurpassed on the continent; traversed from north to south, from pine forest to mountain fastness, by railways, her mountains overflowing with every variety of mineral wealth. In a word, so abundantly blessed with nature's cholcest gifts, North Carolina, I am per-

suaded, is just entering upon a career of wonderful material prosperity. "This is, Mr. President, the fitting hour and place for this great assemblage. Today, the Fourth of July, there are no state lines or sections, but whether our abiding place is on the banks of the St. John or on the Columbia, whether it is on the seaboard or not, or upon the banks of the great Father of Waters, we are all Americans. Thank God, we are all citizens of a common country, with one flag, a common history and a common destiny. Standing upon this his-toric spot, consecrated by the blood of heroes, we lift up our hearts in gratitude to God that he has been pleased to vouchsafe to our fathers such a country. Under this flag we have in the largest degree liberty—not the license of the anarchist—but liberty regulated by law. The sons of the heroes of King's Mountain and Guilford can never forget that this flag is the symbol of con-stitutional liberty; the eternal symbol of 'an undivisible union of indestructible states." "You should never forget all your hopes and aspirations are bound up in the constitution of our fathers. Guard this constitu-tion as the very ark of the covenant. At whatever cost, the federal union—this grand union of people and states bequeathed to us by our fathers—must be the heritage of the future generations of our countrymen. him be accounted the common enemy who,

tions of our common country in fraternal The unrivalled bouquet that Cook's Extra Dry Imperial has, has made it a favorite with all good judges.

whatever the pretext, would weaken the

cords that bind together all states and sec

McGrath-Faley. At the Holy Family church yesterday norning Rev. Father Hillman united in marriage Mr. Martin J. McGrath and Miss Aggie

Faley, Joseph McGrath setting as groomsman and Miss Ella Donohue as bridesmaid. Mr. and Mrs. McGrath left for Kansas City in

SUPREME COURT SYLLABL.

handed down by the court at its last sitting:
Pearson against Dayls, Appeal from Gage county. Affirmed. Opinion by Mr. Chief Justice Norval.

1. The evidence examined and considered and held sufficient upon which to base a finding that the lots in controversy were sold and conveyed in December, 1884, and that the grantor in Fébruary following executed and delivered to the same grantee another conveyance of the lots for the purpose of correcting an irregularity in the execution of the first deed.

pose of correcting an irregularity in the execution of the first deed.

2. A deed to real estate, executed, acknowledged and delivered by the grantor, is valid as between the parties thereto and those having knowledge of its existence, although the conveyance be not witnessed.

3. It is the established doctrine in this state that the lien of a judgment attaches merely to the actual interest of the judgment debtor in the land, and such lien is subordinate to every equity existing against the debtor at the time the same attached. Rule applied.

Wanzer against state. Error from Dixon ounty. Affirmed. Opinion by Mr. Chief Justice Norval.

1. Held, upon the examination of the record in this case, that the evidence is sufficient to sustain the conviction of the crime of assault.

2. It is only when there is a total failure of proof in a criminal case to support a

crime of assault.

2. It is only when there is a total failure of proof in a criminal case to support a material allegation in the information, or where the testimony adduced is of so weak or doubtful a character that a conviction based thereon could not be sustained, that the trial court will be justified in directing a verdict of not guilty.

3. Objections to instructions not raised in the court below by the motion for a new trial will not be reviewed by this court.

4. Held, that the instructions were based upon the evidence in the case.

5. An assignment in a petition in error of "error of law occurring at the trial" is insufficient to present for review the rulings of the trial court on the admission or exclusion of testimony.

Appelget against McWhinney. Error from Johnson county. Affirmed. Opinion by Mr. Chief Justice Norval.

1. When no motion for a new trial is made in an equity case the sufficiency of the evidence to sustain the finding will not be reviewed on petition in error.

2. This court will not consider an assignment in a petition in error that the verdict of the jury or the finding of the court is not supported by the evidence unless the evidence is before the court by a proper bill of exceptions.

Gillillan against Rollins. Error from Lan-

of exceptions.

Gillilan against Rollins. Error from Lancaster county. Affirmed. Opinion by Mr.

Gilillan against Rollins. Error from Lancaster county. Affirmed. Opinion by Mr.
Commissioner Ragan.

1. When parties to a contract stipulate
that in case of a violation thereof the party
making default shall pay to the other a
stipulated sum, the courts will take the
sum so fixed as the innocent party's measure of damages only when it appears that
to do so will no more than compensate his
losses.

losses.

2. But in such case if the taking as the measure of damages the sum fixed in the contract to be paid for its breach will more than compensate the mnocent party the court will regard such sum as a 3. It is not the policy of the law to punish a party for violating his contract, but to compel him to make good to others the losses they have sustained by his default.

4. The courts in descent losses they have sustained by his default.

4. The courts in determining whether a sum fixed by a contract to be paid for its violation is liquidated damages or a penalty will take into consideration the subject matter of the contract; the consideration on which it is based; the intention of the parties and the language of the contract; but these facts, nor any of them, nor all of them, will not necessarily control the courts' construction.

of them, will not necessarily control the courts' construction.

Patterson against State, Error from Custer county. Reversed and remanded. Opinion by Mr. Commissioner, Ragan.

1. Where a person acquised of crime introduces evidence of his good character or reputation it is not competent for the prosecution to put in evidence specific facts tending to prove it to be bad. Olive against State, Il Neb. 1, followed.

Shellenberger against Ransom. Error from Otoe county. Affirmed. Opinion by Commissioner Ryan.

1. Statutes should be so construed as to give effect to the intention of the legislature, and if a statute is plain and unambiguous there is no room for construction or interpretation.

2. Our statute of descent is plain and unurts' construction

or interpretation.

2. Our statute of descent is plain and unambiguous, and by its own operation, and solely in accordance with its own terms, wests in the heir such estate as he is thereby entitled to ac instanti upon the death of the intestate from whom the inheritance comes. death of the measure of the state experience comes.

3. The former opinion in this case, reported in 31 Neb., 61, disapproved.

State ex rel First National Bank Stanton against Owen, Mandamus, Writ denied, Opinion by Commissioner Ryan.

1. Under the provisions of chapter 50, Sestimation of the provisions of the provi sion Laws of 1891, it is the duty of the county board to act on the propositions of each bank to become a depository of current funds of the county, as well as to approve the bond incident to that relation.

2. The mere fact that a county treasurer has assumed to designate the bank in which he himself shall deposit current funds of the county, and to fix the penal sum of the necessary bond, confers upon the bank designated no right by mandamus to compel the county board to approve the sufficiency of the sureties on such bond.

Clarke against State, Error from Webster county. Reversed. Opinion by Commis-

county. Re sioner Ryan. Reversed. Opinion by Commisevidence in this case held not to have

The evidence in this case held not to have justified a conviction of plaintiff in error of the crime of larceny, as charged in the information against him.

Sterling Lumber company against Stinson. Error from Johnson county. Affirmed, Opinion by Commissioner Ryan.

Where the plaintiff sued on an account stated and defendant denied that an account has been stated, but admitted that there was due to plaintiff a less amount than claimed, the finding of the jury sustaining the defendant's averments will not be disturbed when, as in this case, they are sustained by competent evidence, no error of law having occurred on the trial.

Lamb against state. Error from Platte county. Affirmed, Opinion by Commissioner Ryan.

1. On the trial of this case the only questions which arose worthy of consideration was a state the sufficiency of the service to

1. On the trial of this case the only questions which arose worthy of consideration were as to the sufficiency of the proof to justify a conviction; upon full consideration of which it is found that the verdict of conviction was fully justified.

2. Ordinarily the discretion of the trial judge in overruling a motion for a new trial will not be disturbed when the sole propulation for a demicing an admission.

judge in overruling a motion for a new trial will not be disturbed when the sole grounds for said motion are admissions of a juror as to his knowledge of the character of the accused, when such admissions have no reference to the facts tried, especially when upon his voir dire examination such juror had answered that he had no blas or prejudice which would prevent impartial action on his part.

Burlington Voluntary Relief association against White. Error from Cass county. Affirmed. Opinion by Commissioner Irvine. The questions presented by this case being substantially the same as those decided in Burlington Voluntary Relief association against White, the judgment is affrmed for the same reasons.

Beatrice Gas company against Thomas, Error from Gage county. Reversed and remanded. Opinion by Commissioner Irvine. One who collects injurious or offensive matter upon his premises, which by percolation, transmission through subterranean streams or otherwise, pollutes his neighbor's well, is liable for the damages thereby sustained.

2 It is not necessary for the recovery of

streams or otherwise, pollutes his heighbor's well, is liable for the damages thereby sustained.

2. It is not necessary for the recovery of such damages that the fact of the contamination of the plaintiff's well was known by the defendant; it is sufficient that such contamination was the natural and probable consequence of defendant's acts.

3. Where an infury of such character causes permanent and irremediable damage to plaintiff's land the plaintiff should recover in one action all damages present or prospective. But if the injury was temperary in its character and capable of being avoided in the future without permanent injury to plaintiff's land, damages can only be recovered up to the commencement of the action, the lajury then being in the nature of a continuing nuisance.

4. The fact that the injury could be avoided by digging a new well would not be a bar to the action, but would be admissible in mitigation of damages by restricting the plaintiff to such recovery as woma compensate him for reasonable expenses incurred in avoiding the injury.

5. The plaintiff having introduced evidence that other wells in the peighborhood of the source of pollution complained of were likewise affected; held: That evidence on bethat other wells in the peighborhood of the source of pollution compilained of were likewise affected; held: That evidence on behalf of defendant to show that other wells situated at a great distance from such source were likewise affected was inadmissible.

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source were likewise affected was inadmissible.

Omaha & Republican Valley Railroad company against Chollette. Affirmed. Opinion by Commissioner Irvine.

Omaha & Republican Valley Railroad company against Chollette. 26 Neb., 159, and same case, 33 Neb., 143, followed and reaffirmed.

2. C. sued a railroad company on account of personal injuries sustained by his whe. The jury returned a general verdict for the plaintiff and a number of special findings. The court overruled defendant's motion for judgment on the special findings and sustained plaintiff's motion for a new trial. A second trial resulted in another verdict and a judgment for plaintiff. The defendant assigned as error the overruling by the court of its motion for judgment on the special findings at the first trial. Held: That as it was nowhere pointed out wherein the district court erred in sustaining the motion for a new trial and as there were assignments in such motion referring to matters

Following are the syffabl of decisions

not preserved in the record this court must assume that the motion for a new trial was properly sustained and therefore the motion for judgment properly overruled.

2. Among such special findings were a number of isolated facts in relation to the conduct of the plaintiff's wife and of the railroad company, upon which defendant sought to have judgment rendered; held, that the court properly refused to render judgment upon such findings because the inference as to whether such facts constituted contributory negligence was for the jury and not for the court.

4. Certain rulings upon the admission of evidence examined and held not erroneous.

5. Section 3, article li, chapter ixxii, Compiled Statutes, providing that every railroad company shall be liable for all damages inflicted upon the person of passengers while being transported over its road, except in cases where the injury done arises from the criminal negligence of the person injured, etc., is not restricted in its application to actions by the passengers to injured, but extends to actions by third persons for damages sustained in consequence of such injuries to passengers.

5. Therefore the rule of liability in this case by the husband for injuries sustained by the wife is to be determined by the statute referred to.

7. Whether a want of ordinary care or "criminal negligence" on the part of the plaintiff himself would defeat a recovery in this case is a question not examined for the reason that the defendant did not plead the plaintiff's negligence but only that of his wife.

8. Section 110 of chapter xvi, Compiled Sections negligence

wife, Section 110 of chapter xvi, Compiled 8. Section 110 of chapter xvi, Compiled Statutes, providing that in case any pussenger of a railroad shall be injured while on the platform of a car while in motion in violation of the printed regulations of the company posted up at the time, in a conspicuous place inside of its passenger cars, then in the train, said company shall not be liable for the injury, etc., being a limitation upon a recognized liability, is to be strictly construct; and in order that such statute shall be applicable the car must be in motion when the accident occurs and there must be some connection of cause and effect between the injury of the passenger and his being upon the platform, and notices required by the statute must be accident occurs.

posted in the cars of the train wherein the accident occurs.

9. The married woman's act does not deprive the husband of his right of action for the loss of services or companionship of his wife, and notwithstanding that act he may still recover to the extent that the injury sustained by his wife incapacitated her from performing the duties that reasonably devolve upon her in the marriage relation. McWhirter against Hatten, 42 Ia., 228, followed.

attion. McWnirter again. 228, followed. 10. Where a married woman is injured by 10 where a married woman is injured by the negligence of another two causes of action must arise; one for the wife for phys-ical and mental suffering, past and future loss of her earning capacity and other elenents ordinarily existing in such cases. The other for the husband for the loss of The other for the husband for the loss of his wife's services and society and for rea-sonable expenses by him incurred. State ex rel Board of Supervisors of Holt county against Hazlett. Mandamus. Writ granted. Opinion by Mr. Chief Justice Nor-

val.

1. A plaintiff cannot, as a matter of right, dismiss his action after the final submission of the case to the court or jury. State against Stout, 22 Neb, 628.

2. Where lands are selzed on execution or order of sale it is the duty of the county clerk of the county wherein such real estate is situated, on application of the sheriff in writing, to certify to the sheriff under his seal of office the amount and character of all liens existing of record against said lands which are prior to the lien of the levy, and for which certificate and the necessary search therefor the said county clerk is authorized and required to collect and enter upon his fee book and report to the county board the sum of \$2\$, even though the labor of examining the records and preparing the certificate was performed out of office hours by an employe of the office, or some person other than the county clerk or his authorized deputy.

3. A county clerk has no authority to charge for official services less than the fees prescribed by statute.

State ex rel Board of Supervisors of Holt county against Scott. Mandamus. Writ allowed. Opinion by Mr. Chief Justice Norval.

This cause is governed by the opinion filed

val.

This cause is governed by the opinion filed herewith in the State ex rel the Board of Supervisors of Holt county against Hazlett. Gordon against Little. Error from Gage county. Reversed and remanded. Opinion by Mr. Chief Justice Norval.

1. A joint assignment of error in a petition of error made by two or more persons, which is not good as to all who joined therein, will be overruled as to all.

2. A judgment without a finding to support it is not void, but is erroneous.

3. In an action of replevin, where the property has been taken under the writ and possession thereof delivered to the plaintiff, he is entitled, if successful in the suit, to have his damages assessed for the unlawful detention of the property by the defendant. If no formal assessment of damages has been made by the court or jury no judgment for damages can be properly rendered.

Hunt against Huffman. Appeal from Merrick county. Affirmed. Opinion by Mr. Chief Justice Norval.

This case presents no question of law, and the decree of the lower court being Chief Justice Norval.

This case presents no question of law, and the decree of the lower court being supported by sufficient testimony it is affirmed.

Jewett against Chamberlain. Error from Johnson county. Affirmed. Opinion by Mr. Chief Justice Norval.

1. In case a subscribing witness is absent from the county in which the suit is pending, or if he denies or does not recall the execution of the instrument to which his name is subscribed, as such witness, its execution may be established by other com-

execution may be established by other competent evidence.

2. Held, that the evidence sustains the ver-2. Held, that the evidence sustains the verdict, and that there is no error in the charge of the court.

Esterly Harvesting Machine company against Fri gle. Error from Perkins county. Reversed. Opinion by Mr. Justice Post.

Neither the promise to do nor the actual doing of that which the promiser is by law or subsisting contract bound to do is a sufficient consideration to support a promise in his favor.

Force against Stubbs et al. Appeal from Sarpy county. Affirmed. Opinion by Mr.

Sarpy county, Affirmed. Opinion by Mr. Justice Post.

1. The purpose of the act of 1873, entitled "An act to quiet title to real estate" (sections 57, 58 and 59, chapter 1xxiii, Compiled Statutes), was to abolish the fiction of constructive possession and prevent a multiplicity of suits by a determination in one action of the rights of all persons asserting title to real estate.

2. Any person claiming title to real property in this state, whether in or out of possession, may maintain an action against any person or persons claiming adversely for the purpose of determining such estate and quieting title. Holland against Challen, 110 U. S., 15.

3. The fourth proposition in the syllabus of the case of the State against the S. C. & P. R. Co., 7 Neb., 257, overruled.

4. The provisions of the revenue law by which taxes are declared to be a perpetual lien is designed for the benefit of the state and the different municipalities, which are authorized by law to provide revenue by taxation.

5. Purchasers of property at tax sales. Sarpy county. Affirmed. Opinion by Mr. Justice Post.

taxation.
5. Purchasers of property at tax sales, whether for investment or for the purpose of securing the title thereto, must look to the remedy prescribed by statute.

6. The limitations of the revenue law 6. The limitations of the revenue law with respect to the period within which an action must be brought to enforce a tax lien does not relate to the remedy merely, but to the cause of action. Alexander against Shaffer, 57 N. W., 5.

OMAHA GENERAL MARKETS. Condition of Tride and Quotations on Staple and Fancy Produce.

The volume of business transacted yesterday was very light and consisted mostly in filling small orders for the holiday trade. Prices were not materially changed. HUTTER—The market in packing stock is still notable at 10c, but some buyers are said to be weakening a little and not to be as anxious for it as they were,

EGGS—The egg market has not shown much change for the past week, 2c being the general price. Commission men complain that shippers are sending in a good many poor eggs, and that the work of camiling them out is no small item.

LIVE PGULTRY—The general poultry market is slow. Old hens are not very pienty, and ought to be in pretty good domand, but it is not safe to quote them at over 5½c. Spring chickens are quite plenty, and 19c is the outside price. The demand for geese and ducks is very light, and what few are arriving are mostly birds that have been plucked, and in consequence not very desirable. Ducks, 7c; hen turkeys, 785c; gobbiers, 506c; geese, 5½fide.

VEAL—The receipts are not very heavy, but the weather is so warm that it would be impossible for the receiver to be very independent, Choice fat and small veals are quoted at 5½f6c; cearse and large, 36f4c.

CHEENE—There is some very choice Wisconsin chiese on the market. Wisconsin, full cream, selfoc; Nebraska and Iowa, part akim, selfoc; lumburger, No. 1, 10c; Bwiss, No. 1, 13614c.

HAY—Incoclpts are much in excess of the demand, but the possibility of the railroads being field up keeps prices up. Upland hay, 850; midand, 13, lowland, 47.50; rye straw, 16. Demand fair; supply fair, Color makes the best price on hay. Light bales sell the best. Only top grades bring top prices. t as they were, EGGS—The egg market has not shown much

n orders. CUCUMBERS-On orders, 40350c per dox. GREEN PEPPERS-Texas green peppers, per old BEANS-Hand picked navy, \$11502.25; BIG PICTURE SALE.

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string, per ½ bu, basket, 50c.
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CAULIFLOWER—Choice stock, per doz., \$1.25@

CARROTS-New southern carrots, per doz. bunches, 20@40c.
PARSLEY—On orders, per dox. bunches, 25@30c.
TURNIPS—New home grown, per bu., 50c;
home grown, per doz. bunches, 25@30c. FRUITS. There was very little doing in the fruit mar-ket yesterday. There will be no auction sale today, but a car of cherries is expected in about Friday.

today, but a car of cherries is expected in about Friday.

A report has been prepared by the Farmers' Review on the conditions and prospects of fruit as follows:

In Illinois few apples will be sent to market, not more than one county in nine reporting a good crop. Feachers and pears are regarded as a complete failure; plums are a poor crop; cherries a light crop; prospects for grapes and blackberries, heavy crop.

Michigan is among the fortunate states. Her apple crop will be large and the partial failure in other states insures good prices. Peaches promise well; pears, average crop; plums, fair; cherries, good crop; blackberries, light crop; other small fruits, fair.

Indiana—Apples, poor prospects; three-fourths crop of pears; plums and cherries scarce; grapes and blackberries, large crop; other small fruits, poor prospect.

Missouri—Apple crop will be far below an oor prospect.
Missouri-Apple crop will be far below an

poor prospect.

Missouri—Apple crop will be far below an average, very few counties reporting even 76 or 80 per cent. One-fourth to one-half crop is common report, while in some localities the yield will be about nothing. The quality will be generally good. The best outlook is in the northern part of the state; peaches a failure; light crop of pears; plums, half crop; less than half crop of cherries; grapes, good, average crop; blackberries, average.

Iowa—Fair crop applies; peaches, failure; pears, light crop; plums, 70 per cent crop; cherries, 80 per cent crop; grapes, half crop; blackberries, average; other small fruits, fair.

Wisconsin—Apples, plums and cherries good; others fair to shade below average.

Minacsota—Apple prospects are poor and the yield for the state will be light; plums, poor; grapes, small crop; blackberries, average; rasperies and others, fair.

Reports frem Ohio are too meagre to permit of giving a full report, but from the information at hand the conditions as to fruit appear to be similar to those in Indiana and Illinois.

STRAWBERRIES—None reported received.

CHERRIES—California, choice stock, 51.

APPLES—California apples are becoming quite plentiful. Per 50-ib, crate, \$1,25.

APRICOTS—There are a few apricots coming every day, but they are getting scarcer and higher. Good shipping stock, \$1.50.

GOOSEBERRIES—There have been none received to amount to anything during the last two weeks or more. Quotations are nominally \$2,55gr.250.

\$2.25@2.50.

RLACKBERRIES—Good stock, \$3.

BLACK RASPBERRIES—The receipts were made up entirely of home-grown stock. Good stock, \$5.

RED RASPBERRIES—There were none reported in. PEACHES-California, peaches, good stock, \$1.50.
PEACHES The supply of peaches was light yesterday. Good stock, \$1.50.
PLUMS Only a few California plums are coming as yet, and they range in price from \$1.50\text{FD}\$2.50 per box, according to size of the fruit PRUNCH A few boxes of prunes are arriving from California, and are worth about \$2.00\tilde{2.25} per box.
FIGS A few California figs bave arrived. They are quoted at \$1.20.
PICARS—California pears, good shipping stock, \$2.00\tilde{2.25}.
TROFICAL FRUITS. TROPICAL FRUITS.

TROPICAL FRUITS.

BANANAS—As usual when herries and other fruits are on the market the demand for bananas is not very heavy. Choice stock, \$2.0072.50.
LEMONS—Fancy lemons, 300 size, \$5; fancy lemons, 300 size, \$6; fancy lemons, 300 size, \$6; fancy lemons, 300 size, \$6; fancy lemons, \$6; fa MISCELLANEOUS.

FIGS-Fancy, per lb., 1215@lic. DATES-Hallowees, 65 to 70-lb. boxes, per lb., HONEY—California, 15c; dark honsy, 10@12c.

MAPLE SYRUP—Gallon cans, per doz., \$12.

NUTS—Almonds, 15@17c; English walnuts, 10@
2c; filberts, 12c; Brazil nuts, 10c.

CIDER—Pure juice, per bbl., \$6; half bbl. CIDER-Parts

2.25.

HIDES-No. 1 green hides, 2½c; No. 1 green
alted hides, 3c; No. 2 green salted hides, 2c;
No. 1 veal calf. 8 lbs. to 15 lbs. 6c; No. 2 veal
alf. 8 lbs. to 15 lbs. 4c; No. 1 dry flint hides,
c; No. 2 dry flint hides, 3; No. 1 dry salted
aides, 4c; part cured hides, ½c per lb. less than
ally cured.

NHEEP PELTS-Green salted, each, 25q60c;
reans salted shearlings (short-wooled early skins). tied up keeps prices up. Upland hay, \$8.50, midland, \$8. lowland, \$7.50, rye straw, \$6. Demand fair; supply fair, Color makes the best price on hay. Light hales sell the best, Only top grades bring top prices.

PIGEONS—The gun clubs are not using as many since the weather become so warm. Old birds, per doz., \$1.00281.28.

POTATOES—The supply is light and the market firm at 750785.

MELONS—Good stock, \$20.00225.00.

CANTALOUPES—Cantalcupes are arriving on the market. On orders, \$1.50 per doz.

BERTS—New bests, per doz. sunches, 20025c, CUCUMBERS—On orders, \$6055c per doz.

GREEN PEPPERS—Txxas green peppers, per

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