CUBA'S CAPITAL IN WAR TIME

Picturesque Features of Life in Havana Sketched by a Traveler.

WONDERS OF CLIMATE AND COUNTRY

Characteristics of the Natives and the Ruling Classes - Poverty, High Prices and Crowded Hospitals the Chief Signs of War.

A little before dusk we waved adleu to our refugee Cuban friends from the deck of a Plant steamer bound for Havana: Night falls quickly in those latitudes, and goon the somnolent little city of Key Westthe most southern town of the United States, the home of thousands of Cubans, who talk excited patriotism if they do not act itmelted into the purple gloaming. By the aid of its scarchlight the steamer picked its way through the shallow channel between keys and coral reefs, and in a little while was on a broad expanse of clear, deep water. The night was one of such matchless splendor that it is difficult to speak of it calmly. The gulf was as quiet as a lazy river; the air warm, soft caresaing. Later the huge southern moon rose and the very blackness snemed to turn blue. We felt the won-frous witchery of that tropic world whose verge we were nearing. It was very late when we retired, but we were up early enough to witness the marvelous confiagration tropic sunrise at sea. No fear of exaggerated language now. Day comes with appailing suddenness. There is no morning twilight. A vast rose blush, then flaming violences of yellow, orange, vermilion, which fade in a great flood of light as the blinding, tropic sun lifts itself into a sky blue as turquoiso. Over our bows, out of a sapphire sea, rose the indice outline of the Openior Sea, rose the indigo outline of the Queen of the Antilles. No vessels are allowed to enter the harbor of Havana until sunrise. Only Spanish shipping may at any time tie to the docks. We passed under the guns of that grim, ill-formed pile, Moro castle, and those Punta battery, and lay at anchor in one MOST BEAUTIFUL HARBORS IN THE

WORLD.

The view one gets of the city itself from the decks of vessels entering or leaving its port, is incomparably picturesque. It is the oldest part of the town, that lies clustered around the harbor's edges. You look out on the flat, red-tiled roofs and the severe lines of old Spanish architecture, on heavy square turrets, on facades with gracefu Moorish curves, all yellow-walled and glim mering under a brilliant sky. Here and there drowsy palms lift their heads. Behind you across the harbor, frowns the old fortress across the harbor, frowns the old fortress from its heights. There was a very thorough official inspection before we were allowed to go ashore. How quaint and foreign everything seemed. Many of the low, crumbling, yellow stuccoed, thick-walled buildings, have been burned by two centuries of fierce tropic sun. Everything seems of another age and another civilization. Cevantes would feel at home walking these streets. The mellow-toned walls of tion. Cevantes would feel at home walks of these streets. The mellow-toned walls of the structures about you are cracked and wrinkled. Many of the facades of buildings are addressed with Iron galleries or balconies of fanciful antique design. The streets are narrow; in some of the oldest, the sidewalks are sourcely twelve inches wide; people canpot pass on them. The paying stones are large, uneven and worn, and the narrowness of the streets leading from the harbor to the newer part of the city make it the custom for carriages to use certain of them going in one direction and parallel streets when re-You drive north on O'Reilly stree and south on Obisbo street, both leading re tail streets. The two leading hotels, the Pasaje and the Ingleterra, are situated on a broad and beautiful street on the edge of the newer part of the town. Both are reasonably good and fairly clean. The Ingleterra seems to be the favorite of the American ican newspaper correspondents. It is the abiding place of many of them, and if you chance to have the good fortune to know one or two of them well, you may learn some thing a little reliable about the war. Every-body knows how false the news given out through official sources is. In fact, minor officials know nothing about the real state of things, but in spite of the strict esplonage the little knot of newspaper men from the United States, which assembles at the Ingleterra, gathers occasional

BITS OF REAL INFORMATION. Probably with the exception of a half-dozen men highest in power their judgment is the best to be had in the island. I only venture to say that while as a rule they do not take so rosy a view of the early success of the insurgent cause as one could wish, they are on the other hand united in think ing that Weyler will accomplish nothing this meason. The end, they say, is far off and only misery is the immediate lot of poor Cuba. More than one correspondent has crossed the famous trocha without permis-sion, and all seem to entertain a contempt it and an undisguised sympathy with

We put up at the Pasaje and were entertained in a manner that admitted of no com plaint. Our large, stone-paved room on the second floor looked out on an arcaded court. and was cool, quiet and comfortable. There was an absence of many of the things one is accustomed to find in a hotel of equal reputation in America, but their lack was more than made up for by much that is unique and exotic. If one is careful of his talk and exocutions he may spend a decidence of the control of the cont talk and associations, he may spend a de-lightful week in Havana even in war time. In plain English, if he minds his own business, nobody will molest him. He gets fre-quent sight of men in uniform, undersized soldiers in poor canvas suits, and gorgeously arrayed officers, but war, or rumors of war-will not in the least disturb him. Havana is very individual. The "glube trotter" may find new things here. West Indian creoles of condition usually breakfast at about 11, dine at about 5. A hearty meal on rising is not possible habitually in the tropics. One is content with a cup of coffee immediately on leaving bed, and if after your coffee, you go for a little stroll about the quaint streets you may enjoy pleasant experiences. If early, you may occasionally hear a military band in the Plaza del Isabella. Flower girls with baskets which perfume the air, offer you magnificent

ROSES IN MID WINTER for a pittance; drivers of the numberless one horse victorias solicit patronage and you find you may be driven anywhere, in a comfortable conveyance, at the rate of 40 cents an hour; venders of various tickets escort you. The language of the street is the soft-rolling Spanish, so full of mellow o's spoken by low rich voices of the south. You are mingling with a population motley if women are met. Negroes, in some quar-ters, outnumber the whites and are of every shade and caste. Some complexions a deep negative black, occasional ones a beautiful golden chocolate that seems almost lucent and is certainly handsome. On the business streets there is a most cosmopolitan throng. The pure Spaniards, tail, thing-featured sustere: the dark Habanero, often of fine appearance; the wretched montero, with wicked eyes and servile air; a uprinkling of Europeans and Americans. Everything about these old streets wears that peculiar charm that belongs to whatever is unique and foreign. The quaint architecture, the motley throng, the picturesque dress, the bright little shops with their gemonstrative and courteous attendants, the inner dispatched to the picture of the pi position to be pleasantly surprised which one somehow always has in a foreign land, will make your morning walk a delight. And if your ramble, always so enchanting as to be prolonged, suddenly brings to you a relich for breakfast and if you are curious to know how the native Cuban cats, you may always find near at hand, a cafe. You will find it unlike your American cafe, and will find it unlike your American cafe, and you may be guided to it by the scent of garlic in the air. It will prove to be a sort of public club, gossiping center, restaurant, gambling house and drinking saloon com-bined. Here, if you know a little Spanish, you may catch some talk of the war and you will notice that the insurgents will always be called negroes or banditti or some opprobrious name. So only is it safe to talk, no matter where one's sympathies are. Wonderful dishes and more wonderful drinks, with strange Spanish names, may be had, but you will care to only taste most

GARLIC IS THE GENERAL FLAVOR oil the invariable accompaniEverything is hot with pepThe soups are thick enough

to bite; the coffee black as night. Meat is carce and high since the war and fresh meat never good. Indeed, in a country never good. Indeed, in a sit is sold by the yard and boiled, you expect nothing else. But there is always good fresh fish and rice and sweet posstoes, and tinned goods and fruit, and you need not leave the cafe hungry. If you would breakfast a la Habanero, light a cigarette, puff vigorously between each mouth-ful and consume from two to six. An amusing pastime may be found in shopping. The stores do not bear the owner's name above their doors, but are grandly named in general terms, as for instance, "El Victor," "El Grande;" and little signs sometimes assure you that "Englaise is spoke here." but they generally are as untruthful as they are ungrammati-cal. The absence of English, however, only

adds to the sport of trading. In common with all Latin races the Cubans are real artists in the field of gesture. Nothing is so subtle that he cannot convey its meaning to you by facial and bodily expression. Gesture is a language, literally, in his hands. A lady informs me that an animated Cuban clerk gave her so perfect an idea of a hat. trimming and all, by rapid, marvelous finger motions that when she came to see it it tallied exactly with her expectations. your side you have only to acquire two Spanish words—"quanta vala"—and you may trade anywhere. Some things are surprisingly cheap even now. Many things are very dear. In spite of war and destroyed tobacco crops fine cigars may be had yet at prices that would shame the steward of your club. Cuban paper money is so depreciated that the amount you get from the money changer for your American five dollar bill makes you feel indeed rich. Particularly notable things to see are the bull ring (there were no fights while we were in the city), the magnificent tropical gardens (much neglected now), the governor general's palace (carefully guarded these daya-you cannot go in), the mole (rich in historical sugnet statement and the second sec gestions), the Tacon theater and the old cathedral. The bones of the great discoverer are said to lie under the floor of this last venerable pile. Seville, Spain, also claims them, I believe. Let us hope Cuba's claim is just, for the sake of the stanza:

Havana, thy cathedral keeps
The centuries' watch above its nave
Where, through thy long oppression, steeps
The great Columbus in his grave.
A tyrant flag remains unfuried
O'er him who gave the free a world.

A BEAUTIFUL VIEW. From heights west of the Cabanas, you may obtain a most beautiful view. The magnificent silver-dimpled harbor lies between you and the quaint, somnolent parti colored city. To the south, railing hills, bearing groves of graceful palms, sweep away into the blue distance; away to the north, the limitless indigo sea. Above you arches a sky blue as old china. Standing there, looking across the fairest of lands where is summer eternal to the brightest of seas. nder the kindest of skies, a tear for poor Cuba's misery is not difficult.

If one choose to enjoy an inexpensive ride he should take one of the single horse vic-torias, which he will find awaiting patronage at the door of his hotel. When winter winds are sweeping through the streets of When wintery his northern home and the crisp air tingles with the music of sleigh-bells, he may be driven through shimmering streets, full of lazily moving people, slightly clad in summer raiment. It is apparently June. Let him turn down the Prado, a wide and really handsome bouleyard, where there is a promeande under double rows of shade trees, with a driveway on either side. You pass groups of idle people; laziness is always reputable in the tropics. Many of these Cubans are handsome fellows, with regular features, fine dark eyes and black beards, closely trimmed to a point. Most of them who are well-todo, seem fond of fashionable dress. You pass heavy loads drawn by diminutive horses or, in the suburbs, by oxen, which are not yoked with wooden collars, but by lashing wooden bar to the head, at the base of the horns. The town houses are never above two stories high, most of them are sticcoed and painted and built around an open court. For coolness, windows are cut to the floors and, not infrequently, are without glass and are guarded by wire bars, like a prison and heavy wooden shutters. Very few women are heavy wooden shutters. Very few women are seen on the streets and very seldom are they walking. In the outskirts of the city, however, you may meet finely-formed, lithe, half-breed girls, walking with the air of pueens, the grace of Diana, and carrying ourdens of every sort on their heads. The bright kerchiefs they wear of red or canary yellow, set off to advantage their light

chocolate skins. SOME ARE REALLY HANDSOME. into the sea road, after a short ride, you may get a glimpse of the country. There are no pleasant fields. The topography in the direction where the drive leads you to the aristocratic suburbs of Vadado is com-mouplace. But you have the endless de-light of the vast blue dream of tropic sea. and the low hills are dotted with graceful feminine palms. You will be shaken over way full of ruts and stones, but you will see uncommon sights: Pack mules aden to the last limit, huge, rickety carts on two great wheels, savage-looking beggars, and perhaps a milk tender returning with his herd of four or five mournful-looking cows. It is the custom here for the milk peddler to drive his cattle into town and milk before the door of his customer. Vadado, which you reach after an hour's drive with a very lazy horse, is really a charming village overlooking the turquoise sea, where breakers seem always tirelessly ossing their white heads. It must be cool even in summer. Here many of the rich have their homes. There are stone and marble houses of architectural pretention, standing dreamily in gardens of furiously blossoming tropical plants. We saw the interior of one of these luxurious homes, the residence of a wealthy tobacco planter and cigar manufacturer. Frescoed ceilings, marble floors and a court with ountains and statuary suggested dreams

You may pass through one of the poores quarters of the city in returning to your hotel if you like, and so have a glimpse of the other extreme of Havana life. You will care for only a glimpse. The filthy, narrow streets are rough and ill-smelling. Decaying heaps of refuse lie in the ditches. Families live in single rooms of old, half-wrecked tenements. Blacks and whites seem mingled without distinction. All the population are semi-nude and many children entirely without clothing. But if your aesthetic sense is not altogether deadened by every evidence of want, you may often observe examples of unconscious grace in dark-eyed young girls and see wonderful unstudied harmonies of grouping. An artist in search of a type of sensuous beauty might, I believe, find his model among the young girls in the "slums" of Havana.

EVENING SCENES. In the evening you may rest yourself in the plaza and enjoy a fine cigar that cost you a cents. Havana has some of its old sparkle left for the evenings, even of these ill days. Its people are frivolous and pleasure-loving. and it is naturally a gay city. By some un written law the poorer classes keep to the outer circle of the plaza. Groups of the well-to-do are fond of sauntering there at night. to-do are fond of sauntering there at night. You may possibly have a furtive glance of what you have heard so much about and seen so little of—the beautiful senorita of the high class. She is never seen walking the streets. If she shops she rides in her carriage, accompanied by her duenna. She seldom enters the stores; the wares are brought to her carriage and there she trades. She is a woman, often a wife, at 14, and the days of her dark, bewitching beauty are few. She is ant to grow stout, a little coarse; to lose her apt to grow stout, a little coarse; to lose her exquisite, sculptural, symmetry of figure at 23. She is rigorously chaperoned in girlhood and young womanhood. With marriage comes some social liberty. It is said she makes the best of wives, judged by European standards; is faithful and affectionate, deferring always, as a matter without question, to her husband. An American consul told husband. An American consul told me that marriages between Americans and Cuban women seemed generally happy, but he added that he had had much official expence of conjugal infelicities in families where Cubans had married American women. where Cubans had married American women. The average Cubani is not an ideal husband, judged by American standards. It is only fair for a tourist to estimate a country's beauty by the best examples he sees, because he is not likely to possess advantages which allow him to see the best there is. So estimating Cuban beauty, I should say that the highest types of it must be almost matchless as models of glorious, dark, feminine witchery, with their sweet oval faces, their well-rounded figures, their wealth of billowy, blue black hair and those large, languishing eyes, dark as night, soft as vel-

ments, it is but fair to suppose the lack is largely climatic. Protracted mental effort is impossible in the tropics even to trained

Americans who have lived long in Cuba do not give the average Cuban gentleman the highest of characters. He is apt, they say, to be vain and selfish, idle and a gambler, unfaithful in marriage relations and not of the strictest integrity in any social relations. His pleasures are rarely intellectual and sometimes unspeakable. There are, of course, multitudes of examples of the exemplary gentleman among them, as all foreigners basten to testify. As the transient visitor meets the men of Havana, who are Cuban born, receives a flattering impression. He finds them courteous and hospitable. Superficially, at least, they are agreeable gentlemen. But the generality of town-bred Cubans are confessedly not self-sacrificing patriots. In this, too, lofty exceptions are to be found. But, as a rule, his service to the cause consists in talking, when he may with safety, of "Cuba Libre," with elegant gentlement and a fluent flow of with eloquent gestures and a fluent flow of words. It is his brothers of the country and the mountains who furnish the sinews of

AND WHAT OF THE WAR? Well, Havana is, of all places in the world, the poorest place to gather impartial in-formation. Though there is great and in-creasing business depression there, though Cubans of quality are living in an atmos-phere of suspicion and dread, though uni-formed mer, are constantly seen, and the hospitals are full of sick and wounded soldiers, still no evidence of war and its ter-rors are obtruded on the tourist. Unless he ought the atmosphere of rumor, he might not know what a cruel war was raging. Such official information as is given out is always favorable to Spain. But one unacquainted with the Spanish tongue may spend a week in the dreamy, fascinating old city of Havana, if he wish, roaming its picturesque streets, studying its quaint architec ure and strange customs, without a thought of armies and battles. Cause enough for inurrection always existed in every Spanish rovince, but one thing is not easy to under stand—the hatred that seems always to exist between the Spanish born and the na-tive born Cubans, even where Cubans are or pretend to be inimical to the revolt. The Spanlard, haughty, cruel, avaricious, con-siders it a stigma to have been born in Cuba. He is in most cases either an official who means to make what fortune he can by what means he must, or an adventurer who possesses all the traits of his sixteenth cen-tury antecedents. In either case, he regards he Cuban as his legitimate victim. Spain has always governed this island as she gov-erned her South American provinces, without a thought of anything but profit and apoils. The standard of political morality has been resultingly low. Official peculation has always been undisguised. It is charged that the home treasury never received more than half of the enormous reverses were from poor Call. It is no available. nue wrung from poor Cuba. It is no wonder that the native Cuban, without rights or justice, robbed by indiscriminate taxation, has so often surrendered ambition and be come unplacable, deceitful, cunning. Spair ias done nothing to better the condition of the island beyond what she has had to do. She has been as faithless to promises as she ias been cruel. Every measure that would yield reverue was resorted to without thought of the future. The island's magnifi-cent forest of valuable woods was ruthlessly cent forest of valuable woods was ruthlessly cut down, ruinous privileges sold to favored persons, foreign trade except with Spain practically forbidden, every obstacle put in the way of advance. Though Cuba at one time furnished over half of the revenue of the Spanish crown, it was left without schools for its children or any creditable public institutions. The lot of the poorer Havanero is sad enough; that of the illiterate countryman—il montero—wholly deplorable. He dwalls in a much but plows with a foreign man—ii montero—wholly deplorable. He dwells in a mud hut, plows with a forked ree or a wooden beam, and lives as prim ively as the peasantry of the middle ages ived. A venturesome man may today see in interlor Cuba such sights as the Cid beheld among the serfs of Spain, when he rode forth from Valencia to give battle to the Moor.

A SQUEEZED LEMON. But Spain's tyranny ceased to be profita-ole long ago. She squeezed the island dry in the decades gone. Sugar is no longer king. The abolition of negro slavery and the competition of heet sugar took a substan-tial monopoly from the West Indias. The necessity of large military forces in Cuba, even before the revolt, and the stupendous official peculations have left little revenue for Spain since the rebellion put down in 1868. That revolt cost Spain \$600,000,000 and 160,-000 men and of these last less than 6,000 were killed by insurgent bullets, so poorly cared for were the royal troops and so severe to the unacclimated are military maneuvers under a tropic sun. It is said that 80 All are picturesque and would make per cent of the Spanish troops in Cuba die tempting studies for artists. By turning during their service of ten years. Castellar has called the island "The cemetery of Spain." That Weyler will accomplish anything decisive before the rainy season sets in is very doubtful. The majority of newspaper men in Havana think he will not. But neither is there likely to be any decisive victory for the insurgents. For poor, agonized Cuba only increasing misery can be foretold. She has thousands of acres of soll richer than the richest soil of America and a sulubrious climate of endless summer: she is directly in the ocean path of wo continents; she grows the finest sugar and the finest tobacco in the world; every ropical product luxuriates in her valley and many temperate products thrive on her upland slopes. And Spanish rule has all but desolated her. What a smiling para lise she might be under a just and peaceable rule, it is pleasant to fancy. An American gentleman, long resident there, has asserted to me his belief that if Cuba, even now, were annexed to the United States in a quarter century she would be one of the wealthlest states of the union. Though that happy event is not likely to occur soon, if ever, our hearts cannot but go out in all sympathy to a brave people, who, poorly equipped and against tremendous odds, are fighting with sume success against Spain's merciles LYNN TEW SPRAGUE. tyranny.

SUPREME COURT SYLLABI.

State ex rel Woodruff-Dunlap against Bartley. Mandamus. Writ denied. Opin on by Commissioner Irvine. A writ of mandamus will only be allowed

A writ of mandamus will only be allowed when the relator clearly establishes his right. Nothing essential to that right will be taken by intendment.

The statute providing that no bid for state printing shall be considered unless accompanied by a bond conditioned to give bond for the performance of the contract should it be awarded, a bidder, though otherwise entitled to the contract, cannot have the aid of a writ of mandamus to compel the awarding of the contract to him when he does not show that his bid was accompanied by the bond so required. Smith against Long. Appeal from Cuming county. Reversed. Opinion by Chief Justice Post.

The fraudulent release of a mortgage by the mortgagee after the indorsement without recourse of the bond and coupons, thereby secured, in favor of a third party having notice of the rights of the holder, does not of itself render the former l'able in an action ex contractu for the amount of such debt.

Oberne against Burke. Error from Douglas county. Affirmed. Opinion by Chief

Oberne against Burke. Error from Douglas county. Affirmed. Opinion by Chief Justice Post.

A ratification by a principal of the unau-

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thorized act of his agent may be inferred from the conduct of the former inconsistent with any intention other than a purpose to adopt such act as his own.

2. Held, from an examination of the evidence (1). That the contract, sued on pledging defendant's credit, is within the scope of the authority of their agent by whom it was executed; (2) granting such contract to have been unauthorized and void when executed, the jury was warranted in finding that if has been subsequently ratified by the defendants.

Gilmore against Whitman. Error from Dawson county. Reversed. Opinion by Chief Justice Post.

Where to an action upon the first of a series of notes given for the same consideration, the defendant alleges fraud and breach of warranty for the purpose of avoiding the contract in question, a verdict and judgment for the plantiff may be pleaded as a bar to the same defense when interposed to an action upon a second note of the same series.

Roberts against Samson. Appeal from Cuming county. Affirmed. Opinion by Chief Justice Post.

An objection in the nature of a general demurrer will not its to a pleading sufficient in substance, but wanting in form or completeness.

2. It is not a sufficient objection to a

cent in substance, but wanting in form or completeness.

2. It is not a sufficient objection to a pleading when assailed by a general demurrer that it lacks definiteness of expression, or that the facts are therein stated is an argumentative form; but it will be held to charge what can by reasonable and fair intendment be implied from the statements thereof.

2. Answer examined and held to charge

held to charge what can by reasonable and fair intendment be implied from the statements thereof.

3. Answer examined and held to charge a satisfaction of the mortgage debt which, not being put in issue by the reply, must be taken as true.

Council Bluffs Savings Bank against Griswold. Error from Douglas county. Reversed. Opinion by Chief Justice Post. It is in case of joint obligations only, that all persons liable thereon must be joined as parties defendant. An action may be prosecuted to judgment against any one or more of several persons jointly and severally bound without joining others liable for the same indebtedness.

2. A plea of another suit pending is not sustained by proof of an order dismissing without prejudice a former suit on the same cause of action, and the filing by the plaintiff of a motion for a new trial upon which, so far as the record discloses, no action has been taken by the trial court.

3. The laws of sister states will, as a rule, in the absence of proof, be presumed to be the same as our own. There are, however, to that rule recognized exceptions, among which is that courts of general jurisdiction of other states will, unless there is proof to the contrary, be presumed to possess the authority they assume to exercise and that the methods of procedure pursued by them, although differing from the established practice of this state, are authorized by the laws of the state in which they act.

4. Where to an action upon a joint and several obligation all parties liable thereon are made defendants, the fact that the judgment therein rendered is void as to one of such defendants, the fact that the judgment therein rendered is void as to one of such defendants, the voluntary appearance in his name being unauthorized, does not render said judgment void as to all.

5. A judgment defendant cannot as a motter of right unaffented by equitable

5. A judgment defendant cannot as 5. A judgment defendant cannot as a matter of right unaffected by equitable considerations insist upon the preservation of the judgment lien upon particular property of his co-defendants, nor will the release by the plaintiff of specific property of one of several judgment defendants from the lien of the judgment, of itself, operate to discharge the other defendants from liability therefor. ability therefor. McKinley-Lanning Loan and Trust com

McKinley-Lanning Loan and Trust com-pany against Aldrich et al. Appeal from Frontier county. Reversed and remanded. Opinion by Judge Harrison.

To constitute a plea of usury, facts must be stated which disclose a contract be-tween the parties thereto, by which there is received or reserved a rate of interest in excess of the maximum allowed by law. Robinson against Kilpatrick. Error from Puffalo county. Reversed and remanded. Opinion by Judge Harrison.

A chattel mortgage creates a lien on the

Orlinion by Judge Harrison.

A chattel mortgage creates a lien on the property described therein, but does not pass the legal title thereto.

2. A party will be allowed to amend his petition in error to cover a point which, so far as the record discloses, was presented in the trial court.

3. The introduction in evidence of a chattel mortgage in which is described proposed.

a. The introduction the valence of a Char-tel mortgage in which is described prop-erty the subject of an allegation of gen-eral ownership and right of possession in the plaintiff in an affidavit and petition in a replevin action is not proof of such alle-ration.

gation.

Hopewell against McGrew, Error from Burt county, Reversed and remanded Opinion by Judge Harrison.

That the party answers over after his record deputy to a patition.

That the party answers over after his general demurrer to a petition is overruled is not a waiver of the defect that the petition fails to state a cause of action. Cox against Peorla Manufacturing company, 42 Neb., 660.

2. The liability of a surety is measured by and will not be extended beyond the strict terms of his contract.

3. The obligation of a surety in an undertaking in attachment is to pay the obligees thereof the damages sustained by reason of the attachment, "if the order be wrongfully obtained."

4. The petition disclosed that the action was brought by the assignee of a party a stranger to those described in the attachment to those described in the attach-

4. The petition disclosed that the action was brought by the assignee of a party a stranger to those described in the attachment bond and was one for damages which he claimed to have sustained by reason of the seizure under the writ of attachment of property of which he was in possession as such assignee. Held: Not to state a cause of action on the bond.

City of Omaha against Richards, Error from Dougias county. Affirmed. Opinion by Judge Norval.

The former decision in this case (49 Neb., 244, 68 N. W. Rep., 528) adhered to.

Thompson against Missouri Pacific Railroad Company. Error from Cass county Motion for rehearing denied. Opinion by Judge Norval.

A motion to quash a bill of exceptions which has been duly allowed by the trial judge and properly authenticated, made more than a year after the filing of the same and the transcript in this court and after the service of briefs on the merits, comes too late.

Creighton against Keith. Appeal from Lancaster county. Reversed and dismissed. Opinion by Judge Norval.

While a supersedeas bond is not essential to obtain a review of a decree in an equity cause, such bond is indispensable to a stay of the enforcement of such decree pending the review.

2. A judgment or decree in full force is binding upon the parties thereto and their privies, as to the issues adjudicated.

Western White Bronze Company against Portrey. Error from Richardson county. Reversed and remanded. Opin; by Judge Norval.

Norval, A collecting agent cannot extinguish a

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debt due his principal by setting off against said firm and said trustee by one of its

debt due his principal by setting off against it his own debt, unless authorized to do so by his principal. McHonnick against Keith 8 Neb., 142.

2. There can be nevation of a debt in the absence of an unqualified discharge of the original delater by the creditor.

South Omaha against Powell. Error from Douglas county. Affirmed. Opinion by Judge Norval.

An exception to all of the instructions is unavailing if any one of them is correct.

2. Where several distinct requests to charge are dealed, an exception to the refusal of all of them is insufficient unless it appears that each should have been given.

3. An assignment in a motion for a new trial that a group of instructions is erroneous is bad if any one of them was properly given.

trial that a group of instructions is erroneous is bad if any one of them was properly given.

4. A refusal of an instruction already substantially given is not error.

5. A city is required to exercise a reasonable care and diligence in keeping its streets in a safe condition for travel, even though the street may not be one frequently used by the public.

5. Evidence examined and held that the judgment is not excessive.

Stuart against Burcham. Appeal from Lancaster county. Affirmed. Opinion by Commissioner Ryan.

In the absence of a bill of exceptional issues of fact cannot be considered in this court on appeal, even though the transcript of the pleadings and proceedings recites that the cause was originally determined on an agreed statement of facts copied in such transcript. Following State Insurance Company against Buckstaff Bros. Manufacturing Company, 47 Neb. L.

Koopman against Carroll. Error from Adams county. Affirmed. Opinion by Commissioner Ryan.

The averments of an answer attacked by general demurrer considered and held sufficiently to show the existence and probate of a will through which defendant claimed little.

2. The holding of this court with reference

of a will through which defendant claimed title.

2. The holding of this court with reference to the power of an administrator, with the will annexed to convey real property in accordance with powers given by such will, stated in Schroeder against Wilcox, 39 Neb., 139, adhered to.

Farmers' and Merchants' Insurance Company against Graham. Error from Lancaster county. Reversed. Opinion by Commissioner Ryan.

A mere agreement of a soliciting agent to precure to be issued a policy of insurance does not create a present liability against the insurance company his principal.

2 Proof that an insurance agent has so-

2. Froof that an insurance agent has so-licites, and forwarded risks and collected premiums is not such evidence as will justify an inference against positive un-contradicted evidence, that the powers of such agent were in excess of those above dicated.
3. The petition examined and held not to

3. The petition examined and held not to state a cause of articn. The evidence considered and found insufficient to sustain an action, even if a good cause of action nod been stated in the petition. Oliver against Lansing Appeal from Lancaster county. Affirmed Opinion by Commissioner Ryan.

Where a case is fairly within the law authorizing a partition the right to partition is imperative and absolutely binding upon courts of equity. In such a case the right of partition is a matter of right and not of mere grace.

right of partition is a matter of right and not of mere grace.

2. The mere fact that inconvenience or difficulty of making distribution, or even if probable loss is involved in making partition, in nowise affects the absolute partition have partition.

3. Where real property leased for a term of years is owned by several persons as tenants in common both of the rents and the reversion, partition upon the petition of one of the tenants in common may be had, and, in case of a sale being thereby rendered necessary, the lessee will become a tenant of the purchaser of the rents and tenant of the purchaser of the rents and

reversion.

Raymond against Leinberger. Appeal from Laneaster county. Affirmed. Opinion by Commissioner Ryan.

One who has taken the title of an insolvent partnership firm to real property for the purpose of disposing of such real property and paying to a creditor of said insolvent firm a part of the proceeds of the sale and to the firm itself the balance of such proceeds may properly be held in of such proceeds may properly be held in an equitable proceeding instituted against

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such creditor.

Seaver against Hall. Error from Douglas county. Reversed and temanded Opinion by Commissioner Irvine.

When two or more persons have contracted to convey land to a third person, the vendors cannot by contract or conveyance among themselves release any of them from the obligation to respond to the vendee for damages arising from a breach of the contract.

2. Where a vendor of land cannot make title, the vendee may at his election recover payments of purchase money with interest, or damages for the loss of his bargain.

argain.

Z. Where time is not of the essence of the 2. Where time is not of the essence of the contract, a vendor who is unable to make title at the time he should convey, may have specific performance by tendering good title at any time before decree, provided he has acted in good faith and specific performance can be enforced without injustice to the vendee.

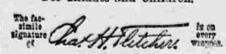
4. In such case an awarding of rents to the vendee, together with costs, in the absence of special circumstances, adjusts the equities. equities.

5. The record as to the time a finding was made prevails as against an objection based on the hypothesis that the finding was eariller made, in the absence of some showing of record in support of the objec-

Portrait of Mrs. M'Kinley, Sr. The members of the Woman's club of Canton are justly proud of the handsome portrait of Mrs. McKinley, sr., which they are presenting to the president-elect. It is pronounced one of the finest ever painted by Puletto of Cleveland and shows Mrs. Mc-Kinley, simply attired, yet elegant in ap-pearance with all. The bible which has been her guide through life rests upon her knee. The portrait is surely going to the white

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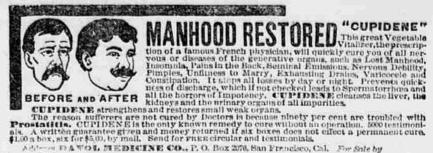


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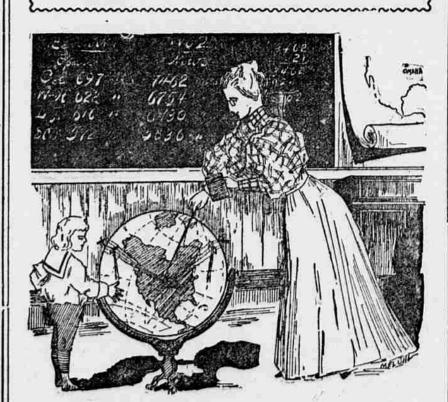


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LESSONS IN NEWSPAPER MAKING.



LESSON NO. 3.

Do you not see Omaha on the globe? Do you not also notice the telegraph wires leading away into distant lands? These carry the news from all parts of the globe direct to the Bee Building. We have already shown you how The Bee surpasses all competitors in amount of news published and now we will have a lesson on

Taking four days-February 14, 15, 16 and 17-being the Sunday, Monday, Tuesday and Wednesday editions, this is the result:

| Sun. | Mon. | Tues. | Wed. | Total |Feb. 14|Feb. 15|Feb. 16|Feb. 17| 70 290 53½ 167¾ 26 192 36¼ 162¾

Here again THE BEE is ahead of all competitorsfor a comparison of Sunday and the following three week

THE BEE printed 200 inches. The World-Herald printed 167% inches. The Lincoln Journal printed 192 inches. The Sioux City Journal printed 162% inches.

That gives THE OMAHA BEE for the same period: 1224 inches (about 6 colums) more than the World-Herald. 98 inches (about 5 columns) more than the Lincoln Journal. 127 inches (about 7 columns) more than the Sloux City Journal.

YOU CAN'T READ IT ALL UNLESS YOU

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