

PRISON DOORS YAWN

Jails Needed for Two More Inmates at the State Penitentiary.

EZRA WHITNEY SENTENCED TO DO TIME

Supreme Court Gets After Another Defaulting Ex-Treasurer.

BENJAMIN D. MILLS GOES WITH HIM

Decision Not Made Public Till the Men Were in Custody.

RULING OF THE LOWER COURT SUSTAINED

Man Who Borrows Money of an Official, Knowing It to be Public Funds, is Also Guilty of Embezzlement.

LINCOLN, Jan. 7.—(Special Telegram.)

The supreme court has affirmed the judgment and sentence of the lower court in the case of Ezra Whitney, defaulting ex-treasurer of Harlan county, and Benjamin D. Mills, who participated in the embezzlement and received part of the money. The decisions are made public today, only after word had been received that both Mills and Whitney were safely in custody. Whitney is at Orleans and Mills is in the custody of officers here.

SYLLABUS OF THE OPINION.

The opinion is by Justice Harrison and the syllabus is as follows:

- 1. In a prosecution by information the complaint and information must charge the same offense, but it is sufficient if the charge in the information is substantially the same as that alleged in the complaint; if this is so a plea of no preliminary examination on the ground of a variance between the complaint and information is without force. Cowan against State, 22 Neb., 519; Hedenberger against State, 49 Neb., 706.
- 2. If the identity of the offense charged is preserved the statement of it in the information or counts thereof may be varied from that of the complaint to meet a possible state of the proof.
- 3. The word "and" includes within its import the conversion to his own use as alleged in an information against one accused of embezzlement, and it does not constitute an information fatally defective for uncertainty as to the persons who are joined by the copulative "and." The same is also true of the first and any other word or set of words used to express the manner of the commission of the crime.
- 4. In an allegation of an information of the crime of embezzlement it was stated that the embezzlement was of the sum of \$6,000 in money; held to be a sufficient expression of the nature of the offense, and that it was lawful money.
- 5. By section 124 of the Criminal Code any person who advises, aids or participates in the embezzlement of public money by the officer or person entrusted with the care, receipt, safekeeping, transfer or disbursement of such money is himself guilty of embezzlement. The words "any person" refer to all and every person, whether a partner, agent, officer or officer in some manner entrusted with the collection, handling or care of public money.
- 6. An instruction which consisted of quotation of the material portions of section 124 of the Criminal Code under which the prosecution was instituted; held not improper or misleading.
- 7. An instruction in this case in regard to conversion of the money, and that it was proper and when construed with the other instructions not misleading.
- 8. Instructions to the jury are not to be considered together, and construed as a whole, and if so construed and construed they are correct, it is sufficient.
- 9. Certain instructions examined and held applicable to the evidence herein and proper.
- 10. More nondescript does not furnish sufficient reason for reversal unless proper instructions have been requested and refused. Hill against State, 42 Neb., 503; Burton against State, 4 Neb., 294.
- 11. Objections to the evidence examined and held properly overruled.
- 12. To entitle a party to a new trial on the ground of newly discovered evidence it must appear that the applicant for the new trial could not "by the exercise of reasonable diligence have discovered and produced such evidence at the trial." Sections 490 and 492, Criminal Code.
- 13. Evidence held sufficient to sustain the verdict.

JUDGE HARRISON'S VIEWS.

In opening the discussion of the points involved in the case, Judge Harrison says: "The prosecution was instituted for an alleged violation of the provisions of section 124 of the Criminal Code, which to the extent we need notice it, is as follows: 'If any officer or other person charged with the collection, receipt, safekeeping, transfer or disbursement of public money, or any other funds, property, bonds, securities, assets or effects of any kind, received, controlled or held by him for safekeeping, transfer or disbursement, or in any other way, or for any other purpose, or if any person shall advise, aid, or in any manner participate in such act, every such act shall be deemed and held in law to be an embezzlement of so much of said money

THEODORE DURRANT HANGED

Murder of Blanche Lamont Explains His Crime on the Gallows.

PROTESTS HIS INNOCENCE TO THE END

Received into the Catholic Faith Just Before the March to the Gallows Was Commenced.

SAN QUENTIN, Cal., Jan. 7.—

When William Henry Theodore Durrant died on the gallows this morning for the murder of Blanche Lamont, he gave such an exhibition of coolness and nerve as has seldom been seen under similar circumstances. He held out to the very last minute that something or someone would intervene to save him, and made his little speech protesting his innocence as calmly as if he had been addressing an assembly of friends upon some ordinary topic of the day. His face was pale, and his eyes were red, but his voice was firm, and he stood as solid as a rock while he proclaimed his innocence and professed forgiveness to those who, he said, had hounded him to death.

NO RELIEF FROM SUPREME COURT.

Declines to Interfere with Execution of Death Sentence.

WASHINGTON, Jan. 7.—The United States court at three minutes past 1 o'clock today rendered its final decision in the case of Theodore Durrant, refusing to interfere. The matter was before the court on an application made by Attorney L. P. Boardman for leave to file a petition for a writ of habeas corpus in Durrant's behalf. This application was only made by Mr. Boardman after he had exhausted all other resources in the shape of appeals to individual members of the court. After seeing Justices Brewer and Harlan last night, he called upon Justice Shiras before the convening of court, but met with the same denial which he had received at the hands of the other justices.

GOES BACK TO THE BAPTISTS.

Consistent to the last, Durrant died professing religion. But he died, according to the last moment, the comforts of the Catholic church, instead of those of the Baptist faith, in which he was reared. Rev. Mr. Rader, a Protestant minister, had arranged to ascend the scaffold with Durrant, but the minister would not say the right Durrant, and the accused and the condemned man declined to accept his services unless Mr. Rader professed belief in his innocence. Then it was that the once ardent Baptist turned to the Catholic church for consolation, and called upon Father Logan, a priest who had frequently visited him in prison, to attend him. Father Logan responded promptly and performed the solemn rites of the church. Durrant remained in close consultation with the priest, and seemed to be deeply interested in the impressive ceremony.

PROFESSES HIS INNOCENCE.

Permission was given and the doomed murderer spoke as follows: "I desire to say that although I am an innocent man, innocent of every crime that has been charged against me, I bear no animosity toward those that have persecuted me, not even the press of San Francisco, which hounded me to the grave. If any man thinks I am going to spring a sensation, I am not, except it is a sensation that I am an innocent man brought to the grave by my persecutors. But I forgive them all. They will get their justice from the great God who is master of all and there I also expect to get justice—that is, the justice of the living God. Whether or not the perpetrators of the crime of which I am charged are discovered, it will make no difference to me now, but I say this day will be a shame to the great state of California. I forgive everybody who has persecuted me, an innocent man, whose hands have never been stained with blood, and I go to meet my God with forgiveness for all men."

WILL HAVE NEEDED WATER

Exposition Directory Discusses the Vexed Question Fully.

PEACEABLY OR FORCEFULLY, IT MUST COME

Committee Appointed to Get the Water Company's Proposal, After Which the Course of Action Will Be Adopted.

The Board of Directors of the exposition took a turn at the water question at its regular meeting yesterday afternoon and appointed a committee to wait on the officials of the water company and learn what they will do toward supplying the exposition with the water which is absolutely necessary to its success. This committee will report to an adjourned meeting of the board to be held for that purpose at 4 o'clock Tuesday afternoon. According to several vigorous expressions of opinion at the meeting of yesterday prompt and decisive action to compel the water company to supply the necessary water will be taken in case the mission of the special committee is unsuccessful.

THE BEE BULLETIN.

- Weather Forecast for Nebraska—Fair; Colder; Westery.
- Two Nebraska Embroiders Sentenced.
- Theodore Durrant is Executed.
- Decision in Looman Case Today.
- Business Men Banquet Stillwell.
- Cuttings from the Pension List.
- Cuban Relief Commission Named.
- Scheme to Handle Exposition Freight.
- Affairs at South Omaha.
- Editorial and Comment.
- Continuation of the City's Funds.
- Manufacturing at the Exposition.
- Hitchcock Apologizes in Open Court.
- Council Bluffs Local Matters.
- Iowa Republican House Caucus.
- Business Review of the Week.
- Doings of the Ohio Politicians.
- Decision in Looman Case Today.
- Program for Jacksonian Day.
- Pacific Express Company Affairs.
- Attack on the Stock Exchange.
- Hits of Famine Gossp.
- Commercial and Financial News.
- "The Escape," by Cutcliffe Hyne.

TEMPERATURE AT OMAHA.

Table with columns: Hour, Deg., Hour, Deg. Data points for various hours and temperatures.

JUDGE McHUGH OF OMAHA TELLS THE STORY OF THE GATE CITY'S STRUGGLE AND THE FREEDOM NOW OPEN.

The reception and dinner given by the Commercial club to the officers of the Port Arthur route at the Commercial club rooms last night was one of the most successful of the many affairs undertaken by that organization. The visitors arrived early in the evening and were met at the depot by the committee appointed for the purpose, Messrs. J. H. Dumont and W. R. Bennett.

WATER QUESTION TAKEN UP.

The meeting waited nearly an hour for Manager Kirkendall to make a report on the water works question, but as he did not appear, it was suggested that a matter of such importance should be taken up without ceremony and discussed by the board.

REPORTS FROM MANAGERS.

Reports from the various departments were called for and Manager Lindsey of the Department of Ways and Means began his report by saying that he had been granted further time in which to publish the names of delinquent subscribers to exposition stock, as he was not ready to make the publication. The time was extended to February 15.

WHAT WEBSTER SAID.

Mr. Kilpatrick asked Mr. Webster to repeat the statements he had made to the meeting of the city hall regarding the purchase of the plant of the water company. He believed that the only logical solution of the question is the securing of water from the water company. There are many reasons why it is not advisable to procure water from any other source that seems available, as the charge might be made that the water is impure and unfit for use.

WHAT THE COMPANY CAN DO.

Mr. Montgomery said he is satisfied that the company has all the capacity required to furnish the exposition, but he is in doubt whether the city should buy the plant when the franchise expires or five years from that time. He denied the charge that he prepared the ordinance now pending in the council, but says he is not sure but that he favors it. He charges that the water company is simply taking advantage of the situation and trying to secure concessions and declares that steps should be taken to compel the water company to supply the exposition.

THEODORE DURRANT HANGED

As soon as the drop fell the spectators were hurried out of the room, and nobody remained except the physicians and the newspaper men. Durrant, sr., went to his wife, who was waiting in one of the guard rooms, and together they accented the body of their son to San Francisco.

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OMAHA'S NEW OUTLET

Glories of the North and South Line Eloquently Extolled.

BANQUET TO PORT ARTHUR ROUTE MEN

Officials of the Line the Guests of the Commercial Club.

PRESIDENT STILLWELL'S GREAT PROMISE

Emancipation of Commercial Interests from Invidious Discrimination.

VALUE OF THE LINE TO COMMERCE

Judge McHugh of Omaha Tells the Story of the Gate City's Struggle and the Freedom Now Open.

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They were escorted to the Commercial club, where a number of the members had gathered and a reception was held until about 7 o'clock, when the march to the dining room was taken up. Three long tables extended the full length of the large room and shorter tables extended across the room at the ends. These tables were prettily decorated with cut flowers and potted plants.

The guests of the evening were seated at the west end of the room, President Stillwell occupying the seat of honor at the right of President Dumont of the Commercial club and at either hand were Robert Gillham, general manager of the Port Arthur route; H. C. Orr, general passenger agent; C. E. Grannis, treasurer of the Port Arthur & Mexican Gulf Steamship company; D. J. Hoff, vice president of the same company; H. G. Donald, manager of European steamship connecting lines; C. A. Braley, member of the legal department of the Port Arthur route, and Edgar Mayer, private secretary of President Stillwell. The speakers of the evening occupied seats at this table. The other tables were occupied by fully 200 prominent professional and business men, all lines of trade being represented.

OPENS THE TOASTING.

After the cigars were passed President Dumont of the Commercial club rapped for order. He complimented the members of the club for the large turnout and said it augured well for the future of the club. The president, he said, was an unusual occasion, as it is not often the club has the opportunity to welcome such distinguished guests. He then complimented the management of the Port Arthur route for their foresight in wiping out the old route and replacing it with the new one. He said that the route had been a failure and that the new route had been a success. He said that the route had been a failure and that the new route had been a success.

President Dumont introduced the toastmaster of the evening, John C. Cowling, who was warmly received. He thanked the assembly for the honor conferred upon him and said he would not attempt to make a speech, but he referred briefly to the importance of railroads to the commerce and life of a nation and the necessity of fair and impartial treatment to all localities. He said he knew he expressed the wishes of all present when he thanked the guests of the evening for the great favor they had conferred upon his locality. He announced that owing to the absence of W. F. Gurley the address of welcome would be omitted, but he said the welcome would be just as cordial.

General Cowling then announced the toast, "Port Arthur Route and the West," and President A. E. Stillwell, in response, introduced the toastmaster of the evening, John C. Cowling, who was warmly received. He thanked the assembly for the honor conferred upon him and said he would not attempt to make a speech, but he referred briefly to the importance of railroads to the commerce and life of a nation and the necessity of fair and impartial treatment to all localities. He said he knew he expressed the wishes of all present when he thanked the guests of the evening for the great favor they had conferred upon his locality. He announced that owing to the absence of W. F. Gurley the address of welcome would be omitted, but he said the welcome would be just as cordial.

PRESIDENT STILLWELL'S RESPONSE.

Mr. Stillwell expressed his appreciation of the reception which had been accorded his associates and himself, and said the Port Arthur route had been built by western men and for the west. He referred to the difficulties which had surrounded the building of western railroads he said had been caused by the fact that the officers of these roads had lived in the east and had little knowledge of the west, but the officers of the Port Arthur route all lived in the west and had their interests here, and were prepared to meet the conditions constantly arising.

The speaker then sketched briefly the nature of the country through which the Port Arthur route passes. In this connection he referred to the coal fields of which Pittsburg, Kan., is the center, and remarked that a great deal of this coal now comes to Omaha and is shipped to the east. He said that as soon as a short line now under construction is completed, he referred briefly to the principal districts along the route and the resources of these districts.

The route, he said, ended at Port Arthur, which he said was destined to be the greatest seaport in the south. To illustrate the faith of the people interested in the route the speaker said he had issued a call in November for \$5,000,000 to build docks at Port Arthur and in December the books were closed with subscriptions amounting to \$5,623,000. He said the canal from Port Arthur to deep water will be completed July 1 of this year, and this will finish a canal the same width and depth as the Suez canal.

He offered to furnish cars and take all present to Port Arthur some time next month to show them whether what he said is true. This offer was greeted with enthusiastic applause and expressions of approval.

The speaker then outlined the several steamship lines which are already arranged for from Port Arthur to a large number of ports in Mexico, Central and South America and European ports. The line to Mexico will be in operation next month and a large outlet will be afforded via Port Arthur to the commerce of the west.

In closing, President Stillwell thanked his hosts for the entertainment afforded and said he would feel much more thankful if they would all accept his invitation to visit Port Arthur.

DIGGES MIGHTY ON OMAHA.

After the plans had subsided the toastmaster called on W. D. McHugh to respond to the toast "Omaha as a Shipping Center." In opening Judge McHugh paid a high