PASSING OF THE ICARIANS

End of a Long-Lived and Once Famous Communistic Experiment.

STORY OF HALF A CENTURY'S EFFORT

Individualism Finally Destroys the Organization Founded by Etienne Cabet—Wound Up by the Courts.

The most long-lived and undoubtedly the most nearly successful of all the experiments ever made in the western hemisphere with pure communism, relates the Globe-Democrat, came to an end when, on the 28th ult., Judge H. M. Towner, in the district court, at Corning, Ia., entered an order discharging the receiver of the New Icarian community and formally declaring the community and all its affairs ended.

Etienne Cabet, scholar, historian, sociologist and philanthropist, who two generations ago was stirring all France with his socialistic and communistic writings, and who contributed much toward inciting the revolution of 1848, of which he was afterward the historian; Etienne Cabet, contemporary and co-worker of Proudhon in behalf of the poor and oppressed of France—agitator, essayist, historian, scientist and, finally, exile from his native country—was founder of the community, which, after an existence of almost half a century, came to an end. In its palmy days, twenty years ago, American students of sociology used to come many hundreds of miles to study the workings of what was said to be the most successful communistic community in the world.

Cabet tried to found his first experimental colony in France, but the government of Louis Philippe was bitterly opposed to such experiments, and its opposition forced the Icarians, as the adherents of the new communistic doctrines were called, to go to the New World. The movement had become almost a national one in France; Cabet's "Icaria" and Proudhon's "Bank of the People" had set all France by the ears, and the established order of things was in serious danger of being overturned. Driven from their own country for their first experiment in communism, the Icarians went first to Texas, where they were offered an area as large as a good-sized French department for their experiment. Their emissaries, after looking over the country, decided against it, and went to New Orleans. Here they were joined by others, and at last, when the Mormons left their seat at Nauvoo, Ill., the Icarians, who had brought considerable money, bought the old Mormon holdings in Illinois and secured from the legislature of Illinois a charter granting them certain special privileges and immunities. About 2,000 French enthusiasts joined them here, Cabet at their head. He was practically dictator to the community; for years no question was raised as to his absolute authority in all things relating to the conduct of the community, and so long as he was left in charge all went well. The community grew and prospered, and there was peace and plenty.

Yankee Influence.

But the country round about settled up by people who saw no charm in the communistic idea; shrewd Yankees, who, instead of believing that the community ought to own everything, considered themselves called to secure individual control of the largest possible part of the community, pressed about the little settlement of communists. The new generation of Icarians was brought up constantly confronted by the striking contrast between their own simple, plain, frugal living and the comparative luxury and independence of the better classes of people around them. Of course, they always made the comparison with the more well-to-do of their neighbors; human nature could not have been expected to be more discriminating; and their conclusion was too often to the disadvantage of their own style of living. Dissensions arose. Cabet had given up his dictatorial powers and granted a charter under which the community, by ballot, chose annually a sort of directorate. After experience with this plan he found it a failure; individualism was everywhere creeping in. He demanded that the elected directorate be abolished and that he be vested with power to appoint directors. But he was defeated; the rising tide of individualistic ideas beat ever harder and more fiercely upon the little islet of communism; every year the instincts of human selfishness more and more overcame the sentiment of devotion to pure principle that had characterized the patriarchs of Icaria. At last a schism came; Cabet and his minority of followers withdrew and established another colony at Cheltenham, Mo., a few miles from St. Louis. It lasted only a few years and dissolved.

The Move to Iowa.

Two or three years before this schism Cabet, realizing that his social order could never be maintained in the midst of a great community, inspired by what he considered the selfishness of individualism, had concluded that he must transplant his communistic seed to some new region far beyond the confines of civilization, and fondly believing that civilization would not penetrate far beyond the Mississippi for generations to come, he sent agents to western Iowa seeking a location. They came to Adams county, and three miles east of what is now the town of Corning found the ideal tract, 4,000 acres of rich land in a country almost utterly uninhabited. Cabet came out, examined the situation and ordered the land preempted and purchased. This was in 1853. The first case on the court docket of Adams county is a record of matters concerning this community, made in 1853. The new community grew fast and prospered; after the division of the Nauvoo community it grew still more rapidly. But the troubles of the Nauvoo society involved the Iowa branch. A mortgage was given on the 4,000 acres in Adams county to William Shepherd of St. Louis. In time it was foreclosed. Shepherd was friendly to the colony and suffered it to occupy his land. In 1859 an arrangement was made whereby the community bought back 2,000 acres from him. Before doing this there had been a strong movement in favor of removal to California. The wise old men viewed with despair the advance of American civilization with its distracting individualistic notions, and foresaw that the experience of Nauvoo would be repeated. They wanted to remove to the heart of the unknown west, as the Mormons had done. But already the younger element was in control. By a majority of one vote in the great council of the colony the proposition to remove to California was rejected. The community enjoyed several years of comparative prosperity and growth after this decision. The people were devoted to agriculture. They introduced the French methods of grape culture, and the wonderful success in grape growing in southwestern Iowa to this day is traced in large part to their influence. They lived in true communistic style; like the Spartans of old, they dined from a common table; the community was charged to a large extent with the proper raising and education of the children. All property was owned by the community and partitioned in accordance with the requirements of the individual, the community always reserving a store for the common safety. At this period in its history the colony seemed destined to success; indeed, it may be fairly said that it was a success, if not in a material way, at least in the respect of promoting the happiness of its people, safeguarding them against poverty, assuring fair education to the young, and removing much of the temptation of selfishness and injustice. "Do unto others as ye would that others should do unto you"; the golden rule of the Savior was the fundament of Etienne Cabet's theory of life, and he applied it so far as possible in the rule of his communities.

The Final Division.

But once more the delicate plant that must draw its nourishment from such intangible sources as a belief in the abstraction of human equality or a deep-seated conviction that one's neighbor is as good as one's self found its roots crowded and starved in the soil of selfishness and ambition and individualism. The younger Icarians looked around them and saw that while they had but an indefinite and indivisible stake in their community, there were men among their neighbors who, with seemingly less work and toil and effort than they were required to put forth, in a few years came to own lands as extensive as all the estate of Icaria. They longed for the freedom of competition and individual effort and individual merit. Each was jealous of the other, for each felt that he was contributing a larger share of labor than was compensated by the proportion of the whole product which came to him. And so, in 1886, there was another division; the lands were divided and the community partitioned off. After this there was the Old Icarian community and the New Icarian community. The members of the new community had desired to admit all who might apply to the advantages of membership in the community. Failing to carry their point, they brought action at law to set aside and invalidate the charter of the settlement. In this they succeeded, and then came the division. The new community did not incorporate, for the experiences with charters had not been satisfactory. After a year or two the old community disbanded and divided the property among the surviving members; the New Icaria flourished for a number of years yet. But it could not withstand the disintegrating influences from without. Troubles arose, disagreements which could not be settled; the younger and more capable members withdrew, and at last, on February 16, 1895, application was made for the appointment of a receiver. Eugene F. Bettannier was named, and to him was turned over about 1,000 acres of land and other property, aggregating about $36,000 in value.

Since that time Mr. Bettannier has disposed of the property, dividing the proceeds in accordance with the orders of the court, and, finally, a month ago, filed his statement showing the disposition of everything. Mr. Bettannier was himself a member of the community. Still a comparatively young man, he remembers seeing Etienne Cabet, and still regards him with a sentiment of reverential affection. "It was not a failure," declares Mr. Bettannier; "it is right in principle, and it will be recognized some day as the only right social order."

THIRTEEN POPES CALLED LEO.

Nine of Them Lived Before the Normans Conquered Britain.

Thirteen have been the number of Leos that have filled the chair of Peter and of these several have been popes of eminence, says the London Sketch. The first of the name early obtained the appellation of "great," leaving less honored titles for those who might succeed. His pontificate, in the middle of the fifth century, lasted over twenty years, and a fine early printed edition of his sermons, with a magnificent illuminated initial letter, lies before me as I write. Leo II, who lived toward the end of the seventh century, had but a short reign; Leo III, in his twenty years of rule, had the honor of crowning the greatest of the mediaeval Caesars, Charlemagne; the fourth Leo was an exemplary pontiff, if nothing more; the fifth, sixth and seventh were but transient figures early in the tenth century, and the eighth was one of the antipopes. Leo IX, one of the house of Hapzburg, toward the middle of the eleventh century, illuminated the world with his learning and was canonized.

Four hundred and sixty years elapsed before we come to another Leo, the tenth of the name, Giovanni de Medici, illustrious for his fostering of the renaissance, and celebrated in a different manner for his inability to check the Lutheran heresies. Had he been less a patron of letters and a courtier and more of an anchorite the Reformation might have been stayed, if not actually effected within the limits of the church itself. Another Medici, though not of the then reigning house of Tuscany, occupied the holy seat for a few weeks in 1605 as Leo XI. Again a gap—of more than 200 years—before we arrive at Leo XII, elected during the thirty years' peace, when Europe was slumbering between the Napoleonic wars and the days of '48. Last of all comes the benign and venerable Leo XIII, who is passing his closing years as occupant of the vatican and as mediator between the sons of men. It is curious, indeed, that nine out of the thirteen lived before the Normans conquered "this little isle set in the silver sea."

Whaling Vessel Lands Big Prize.

SAN FRANCISCO, Nov. 9.—The whaling steamer Thrasher has arrived in port from the Arctic with a big cargo. It has had the luck that has followed most of the recently arrived whalers and has stored away in its hold 15,000 pounds of whalebone. Its cargo is valued at over $50,000.

Illinois Soldiers Get Home.

NEW YORK, Nov. 9.—The United States transport Roumania, from Ponce, with the Third Illinois regiment on board, arrived in quarantine at 6:20 a. m.

SHARPERS WORK THE LINERS

How the Gamblers Do Business on th Atlantic Steamships.

ALWAYS FIND PLENTY OF VICTIMS

Smoothest of Card Sharps Separate the Fool and His Money—Concerted Effort to Stop the Business.

The big ocean steamship companies whose liners terminate the western passage at the port of New York have decided to make a concerted effort to squelch the professional gamblers who make a business of working the steamers. The officials of the companies realize that they have a difficult task on their hands, but they are going to set about it with considerable unanimity and determination, for the evil has become very great. The first gun in the anti-gambler campaign, relates the Washington Star, was fired in August last, when one of the largest of the steamship companies declined to furnish transportation on a liner in its service to a well known professional card player, who is alleged to have been working the gullibles on the steamers for more than two decades, and who is said to possess close onto $500,000 worth of real estate in New York City. When this man applied, in the latter part of August, for a cabin at the main office of the company, he was politely informed by the agent of th eline that he had taken his final ride on any of the steamers of the company.

"Why?" asked the gambler.

"Because," replied the agent, with all of the courtesy in the world, "you have long been known to us as a professional manipulator of cards; because for the last twenty years or so you are known to have waxed fat on the profits you have picked up at cards on our line and on other lines; because this company has finally wearied of perpetual complaints respecting the accommodation it affords to men of your ilk—the facilities it extends to you for bleeding fool young men and weaklings not so young; and because we're going to wipe out your tribe, so far as travel on our line is concerned, if it costs us a cool million to do it. That's lucid talk, isn't it?"

"How do you know I'm a gambler?" asked the applicant for passage. "How are you going to prove it? No man that I ever won a dollar from is going to squeal, you know."

A Smooth Talker.

"I'll admit that you have a bit of an edge on us in that respect," responded the agent, amiably. "However, if you want to make an issue of it, we're willing to undertake to furnish proof that you're a sharper. I'll go further and say that it affords me peculiar pleasure on this occasion to decline to sell you a ticket for a ride on one of our boats."

"You're defamatory," said the gambler. "I'll sue you. You can't legally refuse to furnish me with transportation. I'll sue and let the courts decide the matter. You'll have a sizable case on your hands, and I promise you that I'll beat you."

"Go ahead and sue," replied the agent, cheerfully. "That is what we want you to do. If we don't lick you, it won't be because we haven't tried."

The gambler was as good as his word. He entered suit against the company for refusing to furnish him with transportation on one of its steamers "without good and sufficient cause," and he put in another suit against the agent for defamation of character. The cases have not yet been called, and there is a lot of speculation here as to what the outcome is likely to be. A good deal of this speculation congeals on the point as to whether the steam ship company will be able to produce as witnesses against the gamblelr men who have been bitten by him on ocean voyages. The steam ship company, the action of whose agent was applauded by the agents of all the other transatlantic lines, and which has received the assurances of the other companies that they will back it up in every possible way, is confident of beating the gambler in the court's decision.

Efforts to Call a Halt.

Many feeble efforts have hitherto been made by the steamship companies to efface the professional card players from their lines, but never before did any of these efforts contemplate the refusal to furnish transportation to men known to be gamblers. The companies had always been afraid of that method. A method generally employed by the steamship companies in recent years to "knock," as it were, the operations of the card sharks on the liners has been to instruct the higher officers of the steamers, including the captains, pursers and first and second officers, to quietly pass the word around among th emale passengers when a known professional gambler's name appears on the passenger list of a vessel. This scheme was the source of a considerable reduction in the earnings of the gamblers, but it was never fully successful, for the "liner workers" frequently changed their routes and lines of boats, and, moreover, the gamblers, becoming aware of this plan, evolved the idea of making frequent runs across the Atlantic without ever once going near the card rooms, thus throwing the steamship officers off the scent and inducing them to believe that they had abandoned card playing for legitimate business requiring a deal of transatlantic voyaging. Again, while some of the old-timers among the steamship gamblers occasionally dropped out, new men of their tribe constantly recruited their ranks, and it took a considerable period of watchfulness on the part of the steamship officers of the different lines to get one of these newcomers down so pat as to be able to label him in their lists as a regular professional.

Thus that class of foolish male sea travelers who permit themselves to be inveigled into card games with men they don't know have been getting "done" right along by the well-groomed sharpers. Of course, the victims themselves rarely "squeal," but their non-card playing friends and fellow voyagers do the squealing for them. Most of the steamship companies have on file violent letters from the wives of men who have been financially shattered by the professional gamblers on ocean voyages. After a man has been picked clean in the course of an ocean trip by a man with whom he has had no shore acquaintanceship and who appears to be unknown by all the rest of the passengers he is liable to conclude, toward the end of the voyage, that he has been "had" by a professional card player, and he is also pretty likely to tell his wife of this, in order to palliate his purse-flabby condition. While he himself always feels too small after arriving at the determination that he has been done by a sharp either to denounce the gambler or to complain to the steamship company, his wife, if she be of the proper militant sort, probably has no such hesitancy, and it is from wives of this character that the steamship companies receive complaints of the gamblers.

Large Sum Lost.

Large sums of money have been lost to the professional gamblers on the liners within very recent years without the knowledge of the losings ever becoming public property. Since the profligate son of a wealthy piano manufacturer lost his reason on account of extraordinary dissipations about a year ago a number of well known New York men who happened to be aboard the some Southampton steamship with the swift youth about three years ago have been telling how he lost nearly $60,000 to one of the sharpers in the course of the six-day cruise. The young man, up to the time his mind went back on him, had not, on his own admission, been quite sober for a matter of nearly eight years. At the beginning of this costly voyage he met in the smoking room a thoroughly well groomed, clever and even brilliant man of 35 or thereabouts, for whom he conceived a great liking. This man had not long been operating on the steamers and he had switched ships on every cruise he made for profit, so that he was not known to any of the steamship officers. It afterward came out that he had been the head clerk of one of the most famous of the Chicago hotels and that he had lost his position owing to his penchant for seducing foreign tourists into seances at the great American game of draw, at which he fleeced many famous men who came from Europe to see the World's Fair and who put up at the hostelry of which he was the head clerk. One of the men, by the way, out of whom he screwed a large sum in introducing him to the noble game of poker, was an English capitalist, who wrote a book about this country on his return to England, the book failing to specify, however, the amount in sovereigns the writer of it had dropped to the Chicago hotel clerk. When merry with wine, this ex-hotel clerk and card sharp was once known to boast that he had drilled more than $50,000 in all out of the guests of the hotel by which he was employed.

A Fool and His Money.

The dissolute son of the millionaire piano manufacturer met this hard proposition in the shape of a finished sharp on the steamer the first day out, and was fascinated by him. They were at poker within two hours after the meeting, and at first—for nearly half of the voyage, in fact—the gambler was content to pose in the card room as a heavy loser, which, in fact, he was. He condescendingly allowed the rapid young man at the other side of the table—it was a two-handed game throughout—to win from him nearly $12,000, most of it in cash and the remainder in drafts. As the young man had been a steady and prodigious loser at every game of chance, including horse racing, in which he had become involved ever since his majority, he was naturally flushed with victory over his winnings, and the men who saw it all say that his bragadocio was something painful to hear and witness in view of what came later. On the fourth day out he began to lose all of his winnings back. On the fifth day he was $55,000 in the hole, for which he gave perfectly collectible drafts on his father. He was traveling alone, but a number of his fellow voyagers who knew his father got at him and tried to induce him to quit the game. The sharper, also, feeling that he had won enough for one cruise, advised the young man to abandon the game.

"I can't of course, throw up the cards, now that I am such a heavy winner," remarked the gambler, with every appearance of generosity, "but I'd advise you to quit now. I am astonished that I should have permitted myself to get into this so deeply. It is contrary to my custom, I assure you."

"We'll play on until we sight the Lizard," replied the reckless young chap, doggedly.

"Do you know the man you're playing with?" inquired some of the passengers who tried to pound sense into his brandy-inflamed head when they got him aside.

"No; neither do I know you," was his invariable reply. "I don't care a d—n whether he's all right or not. He can't play any better poker than I can. I'd take it kindly if you'd all mind your own business."

A Heavy Loser.

There was nothing, of course, to be done with a man who talked in this fashion, and so he was permitted to go his foolish way without any further expostulation on the part of the men who knew his father.

The young man quit the game only when the steamer had hauled into the harbor of Southampton and the lighters were alongside. He was $59,500 loser, all but $2,500 of which was in drafts upon his father in New York. When the passengers were about to go over the side—the profligate told this end of the story himself—the gambler called him into a corner and said to him:

"You are to understand that these winnings I have made from you irk me a good deal. I would rather surrender half of them to you, for I am informed that you have lately been at odds with your father for drawing very heavy sums upon him. At your word I'll divide with you."

"You wait until I do the baby act before you cut in with any proposition like that,' was the reply the gambler, who no doubt had the cashableness of the drafts more at heart than the interests of the youth he had "skinned," received from his victim. "The drafts are as good as Bank of England notes. I'll go along with you to see that you get them honored."

This the young man did when they got up to London, and the gambler walked out of the Little Old Lady of Threadneedle street with every stiver the drafts called for. He had performed one of the biggest gambling coups ever accomplished on an Atlantic steamer, and he has not been seen on the Atlantic since. He is said to be now operating on the China steamers that depart from San Francisco.

Big Fish.

No less a man than Chauncey M. Depew fell into the hands of one of the most noted of the transatlantic card sharps on a voyage which he made to England about seven years ago. Mr. Depew smiles beatifically even yet when he reflects upon how he won £100 from Tom McGarrahan, who died in affluence three years ago, after having "followed the steamers" for many years. McGarrahan was introduced to Mr. Depew by one of the latter's intimate chums and fellow voyagers. The latter, who was an still is one of the elderly wags of New York, knew all about McGarrahan, and so did a lot of other friends of Mr. Depew on board. These friends of the great Chauncey, who knew about McGarrahan and his record, got together and made a pool that they would get the gambler and the great nominator together at a game of baccarat. Some of them bet that the thing couldn't be done, while others laid their money the opposite way. The gambler McGarrahan wasn't informed of the scheme, but he was simply introduced to Mr. Depew and given an opportunity to follow his natural bent. McGarrahan was a polished, middle-aged Irishman, a University of Dublin honor man, as he took occasion to prove several times for the benefit of doubters, and he charmed the eloquent Chauncey by his wit and wealth of information in no time. McGarrahan did business with a number of gullibles during the first part of the voyage, but he manifested no disposition to engage his new friend, Depew, in a game of cards, and the men who had bet that he would were worried. On the third day out, however, the gambler, finding business a bit dull, finally invited Mr. Depew to join him in a little game of baccarat. Mr. Depew hesitated and consulted with his conscience for a moment, but the Irishman was persuasive.

"I have not hitherto played cards quite so publicly," said Mr. Depew, "but as I don't suppose I am any better than my neighbors—well, just a hand or two."

Quit a Winner.

The two men sat down at one of the tables and all of Mr. Depew's friends who were "in" on the scheme gathered round to see how he made out. Mr. Depew won $'00 from the Irish gambler within two hours. Then one of the stewards informed him that his ward, who was taking the voyage with him, was ill in her state room and Mr. Depew hastily withdrew with his winnings and was in attendance upon the young woman for the remainder of the voyage.

"Depew," said one of his friends who had been in the scheme to get the orator at a card table with a professional gambler, "do you know who that man was from whom you won a nice little bundle of five-pound notes a few days ago?"

"A Mr. McGarrahan—a very clever Irishman," was the reply.

Mr. Depew was informed who "Mr. McGarrahan" was.

"Bless my heart, is that so?" exclaimed the voluble Chauncey. "I'll devote the winnings to a fund for the purchase of poison for the hopelessly seasick."

SUPREME COURT SYLLABI

838. Smith against Myers. Appeal from Lancaster county. Affirmed. Norval, J.

1. A finding of fact on conflicting evidence will not be disturbed on appeal.

2. Evidence held sufficient to establish that plaintiff was induced to make an exchange of lands by false representations.

3. Where a grantor remains in possession of real estate after the execution of the deed therefor, one purchasing is charged with notice of the right, title or interest of such occupant in the property.

839. Hoyesen against Heidelbrecht. Error from Jefferson county. Reversed. Irvine, C.

A verdict rendered in plain disregard of instructions is contrary to law and will ordinarily be set aside, whether or not the instructions were correct.

833. Pease Piano Company against Cameron. Error from Douglas county. Affirmed. Irvine, C.

An exception to all of the court's instructions, without distributive words, is unavailing if any portion of the charge be correct.

2. It is not error to refuse an instruction where the only evidence offered to which the instruction would be applicable was rejected. In such case the error, if any, is in rejecting the evidence.

3. Although a question is so framed as to apparently call for matters within the knowledge of a witness, or to call his attention to a writing merely to refresh his memory, it is proper to exclude the answer when from what has preceded it is clear that the answer would be not as a matter of personal knowledge but in the nature of secondary evidence as to the contents of the writing.

837. Kyd against Exchange Bank, Cortland. Error from Lancaster county. Reversed. Irvine, C.

A sheriff holding an execution against a bank levied the same on a cash tray. He afterwards released the tray on payment to him of a sufficient amount to satisfy the execution, with an agreement on his part to refund the money if the bank should within a time fixed assure him that the judgment, on which the execution was issued, had been superseded. The bank sued the sheriff for money had and received, relying on the agreement. Held, that the action was one against a public officer for an act done by him in virtue of or under color of his office, and must be brought in the county where the cause of action or some part thereof arose.

2. The officer's liability in such case is wholly as such officer, and not under the contract. If it were his official duty to return the money the contract added nothing thereto; if it were not his duty, the contract was illegal and void.

3. A waiver of jurisdiction of the person of the defendant not appearing from the summons, the return or the petition, may be pleaded by answer.

4. Whether the statute requiring suits against public officers for acts done under color of office to be brought in the county where the cause of action or some part thereof arose, relates to jurisdiction of the person of the defendant, or subject matter of the action quaere.

5. If in such case the defect be one of jurisdiction of the person, it is not waived by demurring to the original petition generally, if such demurrer is sustained for the reason stated in the order that the court is without jurisdiction, and where the plaintiff waives any error in that order by amending his petition.

838. Smith against Bond. Error from Lancaster county. Affirmed. Sullivan, J.

1. In an action against a married woman on a note executed by her as surety for another, coverture is a complete defense unless it be shown that such note was made with the intention on her part of binding her separate estate for its payment.

2. Evidence examined and held sufficient to sustain the finding of the trial court that the note in suit was not made with reference to, nor upon the credit of, defendants' individual property.

837. Holmes against Crooks. Appeal from Lancaster county. Reversed. Harrison, C. J.

1. A sheriff to whom an order of sale has been issued and who has commenced the execution of the same during his term of office may complete the service after the expiration of such time.

2. A purported affidavit of proof of publication of notice of sale of land under an order of sale is not sufficiently authenticated if it lacks the signature of an officer to the jurat.

10221. Chezem against State. Error from Adams county. Affirmed. Norval, J.

1. An averment in an information that the accused from the person of the prosecuting witness unlawfully and feloniously did steal, take and carry away certain property belonging to such witness sufficiently charges that the taking was against the will of the owner.

2. To sustain a conviction for a crime the corpus delicti must be proven beyond a reasonable doubt. Rule applied.

3. Evidence examined and held to sustain a conviction of the crime of larceny from the person.

4. When the offense charged in an information has been fully established by competent evidence the free and voluntary statements and confessions of the accused may be proven for the purpose of connecting him with the crime.

5. It is not error to instruct a jury that it must alone determine the credibility of witnesses, and that in doing so it is proper to consider the interest, if any, of a witness in the result of the suit and his demeanor upon the stand.

6. A jury is not bound to accept as true everything testified to by a witness, though unimpeached.

7. It is not error to refuse an instruction which has the effect to withdraw from the consideration of the jury competent material evidence in the case.

8. Error cannot be predicated upon the refusal of an insruction which is not applicable to the evidence.

9. A party cannot usually be heard to complain of the failure of the court to instruct upon a particular feature of the case where he has not requested a proper instruction upon the subject.

8352. Bates Smith Investment Co. against Scott. Error from Douglas county. Affirmed. Harrison, C. J.

1. All parties to a joint judgment must be joined in error proceedings therefrom and a non-joiner is a fatal defect in the proceedings; but if the objection is delayed until the final submission of the cause on its merits, the defect is waived.

2. Where a judgment in terms is inclusive of and against two parties in an action in which a several judgment might have been proper, and of one party so embraced by the judgment the court had no jurisdiction, such judgment may be affirmed as to the one defendant of whom there was jurisdiction.

3. Exclusion of testimony during cross-examination, examined and adjudged not erroneous.

4. It is not error to refuse an instruction, the subject matter of which is fully covered by one given.

8317. Specht against Beindorff. Error from Douglas county. Affirmed. Ragan, C.

1. A condition or memorandum written in or endorsed on a promissory note by the maker prior to its delivery is a substantive part of such note.

2. A contract for the payment of money to be negotiable must, amongst other things, be payable at some time or other, though it may be uncertain when that time will arrive.

3. A promissory note which reads: "Six months after date if elected county commissioner I promise to pay," etc., is not a negotiable instrument.

4. Such a note is a contract of wager on the result of an election; its enforcement would tend to the detriment of the public good, and on grounds of public policy it is held to be absolutely void.

8369. American Fire Insurance Company against Landfore. Error from Douglas county. Affirmed. Norval, J.

1. A petition, when assailed for the first time after judgment, will be sustained, if the averments therein constitute a cause of action, even though informally or indefinitely stated.

2. Policy of fire insurance is prima facie on admission by the insurer of the title of ownership of the insured to the property covered by the policy.

3. The introduction in evidence of a recorded deed by the grantee mentioned therein, in support of his claim of title to the property, is sufficient to establish his acceptance of such deed.

4. One is not bound to know at his peril all that is contained in a newspaper to which he is a subscriber. He is chargeable with knowledge of all matters contained in such publication which he has seen or read, as well as all matters of advertisements published in such newspaper in obedience to some statute or legal order, and which the law has made conclusive of his rights, whether he ever knew it or not.

5. Proof of the publication in a newspaper as an item of news of the giving of a mortgage upon certain real estate, is alone sufficient to establish that a particular subscriber had actual knowledge of the existence of such mortgage.

6. Error cannot be predicated upon the admission of evidence to establish a particular issue, where such issue is subsequently withdrawn from the consideration of the jury by the court in its instructions.

7. A party cannot complain of the giving of an instruction in harmony with one which he requested.

8. One who tenders an instruction which is given, which assumes the existence of evidence to establish an issuable fact in the case, cannot afterward be heard to assert that there was no evidence received tending to prove such fact.

9. A general exception to instructions is sufficient. Where a charge consists of several paragraphs there must be an exception to each instruction claimed to be erroneous.

10. An assignment in a motion for a new trial that a group of instructions is erroneous, is insufficient if one of them is without error and was properly given.

11. Error in entering a judgment for a stated sum upon an insurance policy in favor of two joint plaintiffs, the insured and the owner of a mortgage on the insured premises, where the latter alone was entitled to recover the full amount of the loss is harmless, since it is immaterial to the defendant whether it pays the sum to one or both, and the payment of the judgment would be a complete bar to any subsequent action brought by either plaintiff upon the same policy.

12. It is within the discretion of the trial court to submit or withhold questions for special findings of the jury, and its ruling in that regard will not be molested unless an abuse of discretion clearly appears.

13. A motion in the lower court to relax costs is unnecessary to review a judgment awarding an attorney's fee in an action on an insurance policy.

14. On rendering judgment on a policy of insurance on real property a reasonable attorney's fee may be allowed plaintiff and taxed as costs without regard to the date the risk was written.

Bottom and Top.

Detroit Journal: "I scorn thee from the bottom of my heart!" exclaimed the proud beauty.

"But is there not always room at the top?" faltered the distracted youth, becoming confused at this point.

For the precepts learned at a mother's knee, or from copybooks, ever and anon come rushing back upon us with resistless force.