# NEWS OF INTEREST FROM IOWA.

## COUNCIL BLUFFS.

### MINOR MENTION.

Davis sells drugs.
Stockert sells carpets and rugs.
Metz beer at Neumayer's hotel.
Gas fixtures and globes. Bixby & Son.
Wollman, scientific optician, 409 Broadway.
Perry pictures for sale. C. E. Alexander & Co., 333 Broadway.
Dell C. Morgan, the druggist, 142 Broadway, sells the best paints.
Missouri oak body wood, $5.50 cord. Wm. Welch, 23 N. Main st. Tel. 128.
Miss Jessie P. Hastings of Missouri Valley is guest of Miss Pile of the city schools.
Miss Emma Thomas of Pigeon, Ia., is guest of Miss Dora Spare of South Eighth street.
Misses Kitty Bullard and Bessie Griswold are home from a three months' visit in California.
Radiant Home stove, guaranteed not to crack. Sold by Petersen & Schoening, Merriam block.
The Associated Charities will meet Wednesday afternoon in the Broadway Methodist church.
Mrs. H. A. Messmore of Fourth street is entertaining her mother, Mrs. C. B. Davidson of Madrid, Ia.
Mrs. N. Hunt of North Sixth street is home from a month's visit with relatives and friends in Moberly, Mo.
Postmaster and Mrs. I. M. Treynor are home from Boston, where Mr. Treynor attended the national meeting of the Royal Arcanum.
Petersen & Schoening, Merriam block, have the most complete line of Hot Blast stoves in the city and at prices that will surprise you.
Chambers' dancing academy, Royal Arcanum hall. Tuesdays and Fridays, adults, 7:30 p. m.; children, 4 p. m. Assemblies for adults Fridays, 8:30 p. m.
Miss Mary Wallace, who has been visiting her mother, Mrs. Wallace of Mill street, returned yesterday to Hamburg to resume her duties as teacher in the High school.
F. E. Cox has gone to New York to attend the wedding of Mrs. Cox's sister Wednesday. He will be joined in Chicago by Mrs. Cox, who has been visiting friends.
S. M. Dawness of Portsmouth, Ia., who was brought to the Woman's Christian association hospital Saturday, underwent a severe operation yesterday. His condition last evening was reported favorable.
Carl Pryor is suffering from a broken arm caused by stumbling Thursday night over a bench which had been placed across a sidewalk as a Hallowe'en joke by some boys. Mr. Pryor has been suffering from a severe injury to his knee several months and only recently discarded crutches.

N. Y. Plumbing Co., telephone 250.

### DEATHS IN COUNCIL BLUFFS

**William J. Jameson and Condgon A. Reed Both Victims of Bright's Disease.**

William J. Jameson died last night at his home, 729 First avenue, of Bright's disease. He leaves a wife, two sons and two daughters.

Congdon A. Reed, assistant cashier at the Union Pacific transfer depot, died of Bright's disease last night at his home, 522 South Seventh street.

Three nice unfurnished rooms for light housekeeping. Apply to Mrs. C. A. Cooke, 109 Scott street.

**Shellhorn Dies from His Wound.**

Ernest Shellhorn, the young man who suffered the amputation of his left arm at the Woman's Christian Association hospital as the result of a shooting accident while hunting at Lake Manawa Thursday afternoon, failed to rally from the operation and died yesterday morning at 10 o'clock. The operation was resorted to as a last resource, but the young man's weakened condition from the great loss of blood before medical assistance could reach him at the lake rendered his surviving doubtful. He was 19 years of age, son of George A. Shellhorn, 1512 Sixth avenue, a fireman in the employ of the Union Pacific railroad.

**City Council Tonight.**

The monthly session of the city council is slated for tonight, but it being the eve of election it is doubtful if the aldermen will transact any business beyond passing on the salary rolls and the bills for the previous month.

THERE'S A FEAST FOR THE EYE on every table decked out with chaste and daintily designed silver and other ware obtainable at Leffert's. Everything that art or mechanical ingenuity can devise and manufacture in knives, forks, spoons, etc., in solid silver or solid quadruple plate, lasting for years, is here in pleasing variety. We sell the celebrated "1847" brand of plated ware and guarantee its durability and excellence.

HERMAN M. LEFFERT
Optician, Jeweler and Engraver,
238 Broadway, Opposite Glen Avenue,
Council Bluffs, Iowa.

Made for those who know what's good
Woodward's Ganymede Chocolates and Opera Bon Bons
Made By
John G. Woodward & Co.
"The Candy Men."
Council Bluffs - - Iowa.

LEWIS CUTLER
Funeral Director
(successor to W. C. Estep)
28 PEARL STREET. 'Phone 97.

FARM LOANS 5 PER CENT
Negotiated in Eastern Nebraska and Iowa. James N. Casaday, Jr., 136 Main St., Council Bluffs.

FOR UPHO'STERING Repairing, Mattresses Made and Feather Renovating or Ostmoor Felt Mattresses go to MORGAN & KLEIN'S, 122 SOUTH MAIN STREET.

Iowa Steam Dye Works
304 Broadway, Council Bluffs.
Make your old clothes look like new. CLEANING, DYEING and REPAIRING. Phone A621.


## SURE OF POTTAWATTAMIE

**Chairman Wright Figures Handsome Plurality for Republicans.**

**REGISTRATION INDICATES A LARGE VOTE**

**Democrats Base Their Hopes on Professor Sawyer, Their Candidate for County Superintendent of Schools.**

"Everything looks bright for a sweeping republican victory and the election of the republican county ticket from top to bottom in Pottawattamie county Tuesday," was the statement made yesterday by George S. Wright, chairman of the republican county central committee. He said he based this statement on a careful poll of the county and the reports of the precinct committeemen. Harry M. Brown, chairman of the republican city central committee, said the entire republican ticket in the city would receive a handsome plurality.

The campaign this year has been an unusual one and except for the two meetings in the opera house here, at which Speaker Henderson and Hon. A. B. Cummins spoke, there has been practically nothing to indicate that a political campaign was in progress. It is conceded to have been the quietest campaign on record, but despite this a full vote is expected tomorrow. While there has been a noticeable absence of anything approaching excitement in the campaign, the candidates on the two tickets have not been idle. Their work has chiefly been on the still hunt order. If anything, the candidates on the democratic ticket have been the more aggressive. This is accounted for by the fact that most of the nominees on the republican ticket are at present incumbents of the offices to which they seek to be elected, and the duties of their several positions have prevented them from giving the time to campaigning that the democratic candidates have.

**Poor Year for Ward Politicians.**

This campaign has proved a poor harvest for the ward or precinct politician, who usually controls, according to his own statements, a number of votes. The candidates have not been spending money, hence the ward heelers have not had as good a time as usual. That this is the case was fully emphasized a few days ago, when one of their number, who was bewailing his lot, asked Chief of Police Albro if he had all the candidates in jail. "By jove," he said, "you must either have them in jail, or else they must have taken to the woods, as up to date I have not 'seen' a single candidate." The man laid special stress on the 'seen.'

The campaign has been clean on both sides and no dirt slinging has been resorted to by either party. The fight, such as has been made, has been conducted on purely political grounds and objectionable personalities have been strictly avoided.

Chairman Wright of the republican county central committee estimates that the county ticket will be elected by 500 to 600 in the county and by 500 to 800 in the city. The vote, judging from the registration of new voters, will be, in his opinion, as large as last year. The state ticket, he estimates, will be carried by 1,200 to 1,300 plurality in the county and he figures Mr. Cummins will receive the largest vote in Pottawattamie county ever given a candidate for governor.

**Majorities a Year Ago.**

Last year Pottawattamie county gave President McKinley 6,525 votes, as against 5,373 for Bryan, making McKinley's plurality 1,152. In 1900 Shaw's vote for governor was 5,247, as against White's 4,378. Shaw's plurality in Pottawattamie thus was 869, but as it is expected that the vote will be as large as last year there appears to be nothing to prevent Mr. Cummins from obtaining as big a plurality as McKinley did.

Brooks Reed, chairman of the democratic county central committee, claims to be sanguine of the victory of his party's county ticket and even goes so far as to estimate that it will carry by 500 to 600 in the city and 400 to 600 in the county. Prof. Sawyer, democratic candidate for county superintendent, seems to be the one on whom the party is building its hope. Chairman Reed said yesterday it would not surprise him at all if Sawyer was elected by 1,000 over O. J. McManus, the republican nominee. Prof. Sawyer has spent the last two months campaigning in the county.

Alderman Billy Boyer, chairman of the democratic city central committee, is not as sanguine as Chairman Reed, although he says he looks for a democratic victory Tuesday. He places his figures somewhat lower than Reed and says the democratic ticket will be elected in the city by 150 and in the county by about the same number. Chairman Boyer figures that Judge Aylesworth has practically a walkaway for re-election as judge of the superior court and will win out with 300 votes to spare. Four years ago Judge Aylesworth defeated N. M. Pusey, republican candidate, by 360 votes. The vote on judge of the superior court is confined to Kane township, which includes Council Bluffs.

Davis sells glass.

### BEGINS PAVING THIS MORNING

**Contractor Wickham Says He Will Follow Instructions of City Council.**

Contractor Wickham said yesterday that in compliance with the orders of the city council he would begin work on the Harrison street paving this morning and that a force of men would be put at work tearing up the old cedar blocks. Mr. Wickham would not commit himself as to whether there was a sufficient supply of home-made brick on hand to pave this street with. He said: "It will be paved, whether I have to get material elsewhere or not."

Now that the bad weather has set in the prospects for any paving in the Fourth ward this year are slight. Fifth avenue and Eighth street between Broadway and First avenue are nearly a foot deep in water from curb to curb and even if Wickham had a supply of Galesburg brick here, which he has not, he would not be able to do any paving. The residents on the streets ordered paved in this ward have about made up their minds that for the winter they will be compelled to put up with the mudholes in front of their property.

On North Seventh street, which is to be paved with Des Moines brick for top course and Council Bluffs bottom tier, the city is laying a sewer from Broadway to the Indian creek bridge and until this ditch settles there can be no paving laid on this portion of the street.

It is generally conceded that there will be little more paving done this year. Alderman McDonald is said to be in receipt of a letter from the Purington Brick company of Galesburg regarding its delay in furnishing the material for the paving in the Fourth ward. The letter is said to corroborate Wickham's statement that the plant has been forced to shut down on account of lack of water.

If the weather does not interfere Wickham expects to complete the paving of Glen avenue this week, the work on which has been delayed for want of brick.

Gravel roofing. A. H. Read, 541 Broadway.

### GREAT WESTERN WANTS TO BUY

**Would Take Possession of Union Depot Site and Driving Park Property.**

The Great Western has offered the company of business men who own three blocks on Ninth steret, originally bought for a union depot, $18,000 for the property. A majority of the company is willing to accept this price, but two of the members are holding out for $20,000 and say if the railroad does not meet this figure within a short time they will decline to accept anything less than $25,000. At $18,000 the members of the company would not get back the amount originally invested by them twelve or more years ago.

While the local stockholders have not been officially informed of the Great Western's making an offer to purchase the Driving park property, it is understood on this side of the river that negotiations have been entered into by the railroad with Senator Millard and other stockholders in Omaha. The Driving park for a number of years has not been a paying investment and the company would be willing to sell it if it can get anything like a reasonable price. This is the statement made by one of the stockholders in this city.

Davis sells paint.

**Reception of Woman's Club.**

The general reception of the Council Bluffs Woman's club for November will be Friday afternoon at the home of Mrs. R. H. Bloomer, 717 South Eighth street. The members of the art department will be hostesses.

The board meeting of the club will be Friday afternoon, having been postponed from last week on account of the Southwestern Iowa Teachers' association meeting.

The art department of the club will meet tonight at 7:45 in the club rooms, with Mrs. J. P. Davis as leader. Rubens will be the painter discussed.

The best bargains in the paper are on the want ad page. Don't miss them.

**Wedding of Miss Tholl.**

A cablegram received by her parents, Mr. and Mrs. Peter Tholl, announces the marriage of Miss Elizabeth Tholl at Shanghai, China, to John W. Nolan, formerly of this city. The groom went to the Orient with Major Gallagher in the government commissary department, but recently entered the employ of a large mining company in China. Miss Tholl left Council Bluffs in October and the wedding took place on her arrival in China. Mr. and Mrs. Nolan will make their home in Shanghai.

**Snowdrifts at Webster City.**

WEBSTER CITY, Ia., Nov. 3.—(Special Telegram.)—The first snowstorm of the season visited this section of Iowa early this morning. All Saturday night the wind blew in blizzard style. Three inches of snow fell and drifted. Farmers are ill prepared and hope winter has not yet set in.

**Frank Matthews Dies of Shooting.**

SIOUX CITY, Ia., Nov. 3.—Frank Matthews, who was shot Tuesday night, died today. Matthews' death adds to the mystery which surrounds the shooting. One man is under arrest charged with the crime.

### WHIMS OF A LOCOMOTIVE.

**Story of One that Bucked and Escaped the Scrap Pile.**

"A man who follows our hazardous calling," said the fat engineer to a New York Sun man, "never knows what the future has in store for him and some hard and obnoxious task which is set for him by his superiors may be the means of saving his life.

"Charley Bryant and I started running a locomotive on this line about the same time, and, naturally, there was considerable friendly rivalry between us. One night, in the latter part of December, 1896, I was called to take out a special meat express and Bryant was marked for the pickup, a slow, tedious job. I chaffed him about this and he replied that although he did have the pickup, the pilot of his engine would trail my caboose all the way in.

"After No. 12 went out, we dusted right out, and then my troubles began. The 196 wouldn't steam worth a continental, and we were laying that meat train out in fine style. I began to haul the fireman over, but he shut me up with the remark that he didn't sign any papers to keep a fire under the Hudson river when he hired out with the company. The brakeman then discovered it was up to him to come on the engine and give us points on how to handle things.

"'Why, say,' said one of them, 'the water is comin' out of the stack like a regular cloudburst. What do you think this is you're runnin', a water motor?'

"'If it only was a hot air motor now,' I got back at h'm, 'you would furnish enough of that article to take us in to Jersey with belts on.'

"At this he left the cab in indignation and went out on top.

"All this time we weren't doing a thing with the fresh meat for the New Yorkers' breakfasts and Charley Bryant, true to his boast, was keeping his cowcatcher pretty close to our caboose and every once and awhile would give two impatient blasts on his whistle as a signal for me to hurry my stumps and get out of his way.

"Finally the train dispatcher took matters in his hands and when we pulled up at Cheechunk water tank there was a message for me which contained the pleasant information that I with engine 196 was to take the pickup and that Charley Bryant was to succeed me on the meat train with his engine.

"Well, maybe Charley didn't give me the laugh when he came along. I gave him the frosty stare and with much clatter and bang I backed the 196 onto the pickup. Then, as if she had accomplished her purpose in taking a few notches out of my conceit, the old hog began to work like a charm. But it was too late, the mischief was done, and, looking ahead, two miles down the track I could see the tail light of the meat express, dancing merrily onward, with Charley Bryant on the front end, not I.

"We got all sorts of a hard deal on the pick up that night, and finally about daylight pulled on a siding to lay about four hours and let a whole bunch of the commuters' express trains pass us. I thought I would go down into the telegraph office there and pass away a few minutes talking with the operator and find out what kind of a hustle Charley was putting up with the meat train. Pretty soon my fireman opened the door and walked in. Glancing wearily at his watch, he remarked:

"'If it hadn't been for that darned sulkiness of the old 196, you and I would have been pounding our ear in our bunks in Jersey by this time.'

"But he had barely finished speaking when the telegraph operator, holding up a warning hand for us to keep silent, began reading from the wire. 'There's been a bad accident,' he said. 'Second section No 76, meat express, engine 210, Charles Bryant engineer, ran off a broken rail south of Miller's Siding. Engineer Bryant and his fireman instantly killed; buried beneath their engine.'

"I have had things affect me, but nothing ever quite equaled the sensation caused by the operator's announcement. If we had continued the trip with the meat train my fireman and I, instead of sleeping in our bunks in Jersey, would have been dead."

## PARALLEL RAILROAD ROUTE

**Two or More Companies Engaged in Surveying Madison County.**

**RIVAL TO DES MOINES & SOUTHERN**

**Burlington May Be Making Extension—Congregational Preacher Joins Another Church—Prizes for Stock Judgment.**

(From a Staff Correspondent.)

DES MOINES, Ia., Nov. 3.—(Special.)—The success of the promoters of the Des Moines & Southern railroad in Madison and Adair counties in securing right-of-way and tax aid has started up a revival of interest in other extensions of railroads into the same territory. It is well known that the Des Moines & Southern has made arrangements with the Chicago Great Western for operating when completed. Its plan is to run from a point on the Great Western in Warren county west to Winterset and Greenfield. Tax aid has been voted in Winterset, Greenfield and a number of other townships.

The promoters have been busy and have been successful in all they have asked for, as the people of the two counties feel that they have been neglected too long. But the last week a large party of surveyors started out from Norwalk, in Warren county, on the line of the Keokuk & Western railroad, and are engaged in running a new line westward into Madison county. The new line follows the North river and will practically parallel the line surveyed for the Des Moines & Southern.

Whether it is a project of the Burlington to build into the same territory and make a connection with its lines in Adair county, or a project of the Des Moines Interurban Electric system is not known. The line starts but a few miles from the new army post south of Des Moines, to which the Des Moines electric lines will be built next summer. The company has recently borrowed a large sum of money with which to make extensions into surrounding territory.

**Changes His Creed.**

An interesting ceremony was performed in the Central Christian church in Des Moines, being the the baptism of Rev. E. H. H. Holman of Stuart and his wife. Rev. Mr. Holman has been a clergyman of the Congregational church for about ten years and for four years was in charge of a good congregation in Sioux City. Later he engaged in lecturing and paid particular attention to labor problems, becoming a favorite with labor unions. He had been in charge of a Congregational church at Stuart for several years, but recently resigned, closed up his pastorate and asked to unite with another denomination and was immersed in Des Moines by the pastor, Rev. Dr. Breeden. He is now seeking a church. In the meantime Rev. Mr. Holman is engaged in writing a book on the labor problem. He is regarded as a man of great force in Iowa church circles.

**Fish Planting Nearly Completed.**

State Fish Commissioner Lincoln has nearly completed the annual fall distribution of fish to interior Iowa streams. He has placed carload lots of fish seined from the Mississippi bayous in the rivers at Ottumwa, Perry, Corning, Wall Lake, Storm Lake, Clear Lake and Elkader. The fish are mainly young ones, but among them are many that are several years old and able to care for themselves. In all he will place about twenty carload lots, which will be the best stocking of the Iowa streams ever attempted.

**Doctor Will Be Army Captain.**

Friends in Iowa have received information that Dr. Harry J. Watson, formerly a resident of Ottumwa, who is now a surgeon in the United States army serving in the Philippines, has been recommended for a captaincy in the regular army and will be given a company of well-drilled soldiers. He has written that he will accept the position and that he desires to remain in the Philippines.

**Going After Prizes.**

Students of the Iowa Agricultural college are preparing to engage in the annual stock judging contest at the international live stock exposition in Chicago in December. The students of the animal husbandry department entered the competition last year, but made a poor showing. The Illinois students carried off most of the prizes, including the Spoor trophy, valued at $700, Rosa Bonheur's model of an ox. The competition is open to students of the various agricultural colleges in the midland region, and aside from the trophy mentioned there are a number of cash prizes. Iowa students are confident of securing some of these prizes this year, as the class at Ames is considered superior to any of other years.

**Workmen Must Pay Policy.**

The grand lodge, Ancient Order of United Workmen of Iowa, has been engaged in important litigation at Dubuque involving the rights of the order and rules regarding the occupation of persons insured. It is a rule of the order that no person engaged in the liquor business shall be a member or have any benefits from membership. Henry Hilderand applied for admission in one of the lodges and was rejected because he was a bartender. He then applied for admission in another lodge of the same city and was accepted, giving his occupation as a clerk. On his death the grand lodge refused to pay the insurance policy, but a jury rendered a verdict against the grand lodge, holding that inasmuch as he had been accepted by the Workmen his policy could not be contested. The grand lodge will appeal the case.

### SUPREME COURT SYLLABI.

No. 9815. South Omaha Waterworks Company against Vocasek. Error from Douglas. Affirmed. Commissioner's opinion. Department No. 1. Hastings, C. Reported.

1. Evidence that deceased, a lad of 17 years, knew that a guywire of an electric light post carried an electric current and that he voluntarily laid his hands upon it after being told by a younger companion to watch out and get away does not conclusively establish contributory negligence, where it also appears that the current had been running over this guywire for several days, with notice to defendant, and that the wire had been handled, pulled and shaken frequently by various parties during that time and a few minutes previously to the fatal occurrence by deceased and by others in his presence without harm.

2. Instructions to the effect that if such a lad, knowing such a guywire was carrying an electric current, voluntarily took the wire in his hands, his doing so was such negligence as precluded any recovery for his death from the act. Held, properly refused.

3. Where there was proof tending to show that the next-of-kin, the father, was receiving from him pecuniary assistance in supporting the mother and brothers and sisters of deceased, not error to admit proof of the existence of such relatives.

No. 10039. Union State Bank against Hatton. Error from Clay. Affirmed. Sullivan, J. Reported.

1. The jury is bound to give its verdict in obedience to the instructions of the court.

2. An instruction which is neither complained of in the motion for a new trial, nor assigned for error in this court, is the law of the case.

3. In order to estop a party by mere silence it must appear that the person claiming the benefit of the estoppel was ignorant of the rights of the party against whom the estoppel is alleged.

No. 10096. Plummer against Park. Appeal from Burt. Reversed and remanded. Sullivan, J. Reported.

1. Where there are no creditors of an estate and the heirs are competent to, and do, consent to the transfer by the administrator of a mortgage belonging to the estate, to one of the heirs in part satisfaction of his share of the estate, and such transfer is afterward ratified by the court in which the estate is being administered, such ratification relates back to the transfer and is equivalent to a prior authorization; and such heir, or his assignee, may sue in his own name to foreclose the mortgage.

2. In a suit to foreclose a real estate mortgage the allegation that no action at law has been brought to recover the mortgage debt must be proved if it is not admitted.

3. A stipulation in a mortgage authorizing the mortgagee to accelerate the maturity of the mortgage debt if the taxes on the mortgaged premises are not paid at or before the time they become delinquent, is not forbidden by statute, nor contrary to public policy and may be enforced.

4. And the payment of such delinquent taxes after the commencement of an action to foreclose the mortgage does not deprive the mortgagee of the right secured by the exercise of his option.

5. The rendition of two decrees in a case at the same term, but not on the same day, is not reversible error if the rights of the litigants have been correctely determined.

No. 10187. Rasek against First National Bank of North Bend. Error from Saunders. Affirmed. Sullivan, J. Reported.

1. Under section 17, chapter xxxii, Compiled Statutes of 1899, conveyances and assignments made to defraud creditors are not void generally, but only as against persons defrauded.

2. A subsequent creditor cannot successfully assail a fraudulent transfer of property without showing that he has been actually defrauded thereby.

3. All transfers of property made in trust for the use of the person making the same are void as against existing and subsequent creditors of the transferrer.

4. The release of a homestead right is a sufficient consideration to support a contract made between husband and wife for an equal division of the money derived from a sale of the family homestead.

5. An intervenor who claims a fund in dispute between the plaintiff and defendant, must, if his claim is adverse to both the original parties, establish his right by a preponderence of the evidence.

10206. Stevens et al against Burnham et al. Appeal from Custer. Reversed and remanded. Sullivan, J. Reported.

1. A tenant cannot, without the authority or consent of his landlord, charge the leased premises with a lien for material used in the construction of a building thereon.

2. In the absence of evidence showing that such building was not permanently annexed to the soil, or that it was intended as a mere agricultural fixture, it cannot be treated as the tenant's property and subjected to a lien in favor of the person furnishing the material used in its construction.

3. The right of a tenant or of those claiming through or under him to remove a trade or agricultural fixture from the leased premises expires with the tenancy.

10269. Marseilles Manufacturing company against Perry. Error from Clay. Affirmed. Sedgwick, C. Reported.

1. A mortgagor of chattels can waive the benefit of the provisions of the statute relating to foreclosures.

2. The provisions of a chattel mortgage that the mortgagor may, upon default, take the property and sell the same at public or private sale are valid, but under such provisions the mortgagee has no right to the possession of the property, except for the purpose of foreclosure, and if he takes the property and holds the same longer than is reasonably necessary for that purpose he will be held to have elected to take the property, so far as its value will go, in satisfaction of his claim, and if the value is greater than the amount of his claim, he holds the surplus for the mortgagor.

9765. Woodmen Accident association against Pratt. Error from Saline. Affirmed. Holcomb, J. Reported.

1. Forfeiture are not favored and in contracts of insurance a construction resulting in a loss of the indemnity for which the insured has contracted will be adopted except to give effect to the obvious intention of the parties. Phenix Insurance company against Holcomb, 57 Neb., 623.

2. In construing conditions in a policy of insurance, to be complied with subsequent to an event resulting in loss or injury for which indemnity is claimed, with respect to the giving of notice of the loss or injury and preliminary proofs thereof, a more liberal construction will be given in favor of the beneficiary than when the conditions are to be complied with prior to loss or injury for the purpose of continuing the policy in force and effect.

3. Provisions as to time in which the notice is required to be given of a loss or injury for which indemnity is claimed are not necessarily and in every instance to be literally complied within order to prevent a forfeiture of the policy.

4. A reasonable and natural construction will be given such provisions in order to carry out the evident intention and manifest purpose of the parties to the contract and the object to be accomplished thereby.

5. When a time is fixed in a policy of accident insurance for the giving of the notice of an accident and injury resulting therefrom for which indemnity is claimed, with the particulars thereof, which is reasonable in its character, this will ordinarily be regarded as a condition precedent to be complied with before a recovery can be had.

6. But when because of circumstances and conditions surrounding the transaction, obstacles or causes exist preventing and rendering impossible the performance of the act within the time stipulated the act may be performed thereafter and the beneficiary will be excused for the failure, if done within a reasonable time or within the time stipulated after the obstacle or cause preventing prior compliance ceases to exist. The question of whether the excuse offered and the reasonableness of the time in which the act is performed to be determined according to the nature and circumstances of each individual case, the beneficiary in all cases being required to act with diligence and without laches on his part.

7. Where a person suffered a fall by accident resulting in a concussion of the brain, which deranged and crazed his mind so that he could not intelligently give the notice and required information regarding the accident and injury within the time stipulated, this fact excuses him in law from compliance with the conditions of the policy in that regard, during the time of the existence of the disability.

8. Evidence examined and found sufficient to support the finding of the jury.

10283. Mullally against Dingman. Error from Harlan. Affirmed. Holcomb, J. Reported.

1. Questions of fact determined upon fairly conflicting evidence by a jury will not be examined in error proceedings in the supreme court. Lydick et al against Gill et al, 57 Neb., 89.

2. When money is due and withheld by unreasonable delay of payment interest may be allowed at the rate of 7 per cent per annum. Sec. 4, Chap. 44, Comp. Stat. of 1901.

3. It is not error, as to a defendant, in a suit for wages alleged to be due and unpaid, to charge the jury that plaintiff could recover interest on whatever sum was found due him at the rate of 7 per cent per annum six months from the time the amount has been withheld to the time of the trial.

4. When payment is pleaded which is disputed, the burden is on the party pleading payment to prove the same by a preponderance of the evidence and if he fails to do so or if the evidence on that issue is evenly balanced proof of payment is insufficient and it is not error to so instruct the jury.

10232. Booth against Kessler. Appeal from Thayer. Affirmed. Holcomb, J. Reported.

1. When the evidence is fairly conflicting or where the case as made by the evidence is such that reasonable minds might fairly differ as to the correct and proper conclusions to be drawn therefrom, a finding of fact made by the trial court will not be disturbed on appeal.

2. Findings on questions of fact by a trial court are entitled to the same weight and same presumption of correctness as a verdict of a jury and the rule is the same whether the case is brought to this court on error or appeal and applies to all classes of actions. Burlington against Warner, 19 Neb., 493.

3. Evidence examined and held sufficient to support the finding and decree of the trial court.

**The Unready Seeker.**

Atlanta Constitution: A Georgia darky went out to an old field to "seek and pray."

It was dusk, and he knelt down and put up a long petition that the angels would come and minister unto him.

Presently he heard a flapping as of wings behind him and in a second he was making racehorse time on the home road, where he jumped into bed and covered his head from sight.

Suddenly there was a loud knocking at the door and his startled wife cried:

"John, git up dar, fer de Lawd sake! De angels you been seekin' is come fer you!"

"Le'm stay dar," was the trembling answer. "Tell 'em thoo' de keyhole dat I ain't got no wing ter fly wid, en I too heavy ter tote!"

## LONG FIGHT TILL HELP COMES

**British Offer Desperate Defense Until the Arrival of Relief.**

**BENSON IS STRICKEN EARLY IN THE FRAY**

**Survivors Take Position Only Hundred Yards from Enemy—Boers Retreat Before Reinforcements.**

PRETORIA, Nov. 3.—Further details have been received regarding the attack by the Boers under Commandant General Louis Botha last week upon Colonel Benson's column near Brakenlaagte, Eastern Transvaal. It appears that General Botha, who had been joined by another big commando, aggregating 1,000 men, attacked Colonel Benson's rear guard on the march and captured two guns, but was unable to retain them.

Colonel Benson fell mortally wounded early in the fight. Major Wols-Sampson took command, collected the convoy and took up a position for defense about 100 yards from entrenchments prepared by the Boers. The captured guns were so situated that neither side could touch them.

The Boers made desperate efforts to overwhelm the whole British force, charging repeatedly right up to the British lines and being driven back each time with heavy loss. The defense was stubbornly and successfully maintained through the whole of the day and the succeeding night, until Colonel Barter, who had marched all night from Bushman's kop, brought relief on the morning of November 1.

The Boers then retired. Their losses are estimated at 400. Colonel Benson did not long survive. Not only did General Botha direct the attack as already cabled, but he personally shared in the fighting.

**Attack in Rainstorm.**

LONDON, Nov. 4.—The special dispatches from South Africa reveal practically nothing further about the disaster to Colonel Benson's column. It appears that the first attack was made in a blinding rainstorm. The heaviest casualties occurred while Major Sampson, who is a Johannesburg reformer and an officer in one of the colonial levies, was gathering the convoy under the brow of a hill, a most difficult task. It is assumed in London that the two fifteen-pounders remained in the possession of the British, but the telegrams are not clear on this point.

Edgar Wallace, a correspondent of the Daily Mail, writing from Pretoria under date of October 12, again protests against official optimism and declares that the war will not be ended for another year. He urges the immediate dispatch of large reinforcements of both men and horses.

"Even when all that is possible has been done in this direction," he says, "it will be necessary to wait grimly and not to expect any quick results."

**Mob in Ugly Humor.**

A riotous scene occurred yesterday afternoon in Peckham, a suburb of London, where a small gathering of the local branch of the Democratic league undertook to hold a meeting to protest against the war in South Africa. This manifestation started in procession for the place of meeting, but was hooted and hissed and dispersed. There were many ugly rushes and the police were barely able to protect the struggling pro-Boer party from the fury of the mob. The pro-Boers were finally removed under police protection. The victorious crowd then held a jingo meeting and sang "Rule Britannia."

Dispatches from Warsaw say that a contract had been entered into for the supply of 20,000 horses for the British cavalry in South Africa.

Queen Alexandra is sending Christmas gifts to the troops in South Africa. For this purpose she has ordered thousands of briar pipes, each silver mounted and bearing the stamp of the crown and her majesty's monogram.

### THEY LIVE BY CRIME.

**Half a Million Honest People Supported by Offenses Against Law.**

Not less than 100,000 of the good citizens of this broad land live by crimes which they do not commit, reports the Chicago Tribune. Although among the law-abiding and often most respected citizens of their several communities, they are supported entirely by offences against the law and against right. Their living depends on the energies of 250,000 other persons who commit the offences. Were these 250,000 suddenly to become upright citizens and cease to break the laws, not only the 100,000, but four times as many more who depend upon them would be thrown out of their livelihood and must depend upon charity for support until some other occupation should be found for them.

If it be true that there is honesty among thieves this time cannot be as far distant as might be supposed, for by the national census it appears that the country is rapidly approaching a time when all the inhabitants shall be malefactors, and therefore according to the proverb, being honest among themselves, will no longer require supervision. In 1850 but one out of every 3,412 inhabitants was a criminal. In 1870 thieves and other evil doers had increased so that one out of every 1,171 inhabitants served a term in jail. In 1890 one out of every 786.5 was incarcerated, and the proportion has steadily increased, so that now it probably approximates one out of every 500.

To look after these evil doers the United States maintains a police force estimated at 78,000 men, costing annually more than $50,000,000 for their support. In fifty-two of the chief cities of the land there are over 15,000 police, whose maintenance costs over $13,000,000. In addition to these police is a great army of men who are employed in the machinery of trying and punishing criminals. There are police magistrates, trial judges, clerks, bailiffs, jailers and penitentiary guards in all amounting to several thousand more. On an average one guard is required for every ten prisoners in jail. On June 1 this year there were upward of 85,000 prisoners in jail in this country. This is taken as a fair daily average, so that there must have been 8,500 guards caring for them.

This army of 100,000 men engaged in catching, trying, guarding and watching thieves and other evil doers, reckoning at the usual rate for this country of one to a family of five, is the support of 500,000 persons. The cost to the nation in wages, court expenses and support of these men, not counting the civil courts, is not less than $125,000,000. All this expense is brought upon the nation through the desire of many people to break laws. The expense is even greater than this for there are the criminals in jail to be fed and housed, which, if the average cost is but little more than $100 per criminal, amounts to $10,000,000.

If "Bill Sykes," as the English term the malefactor, should therefore suddenly reform he would save the nation an expense of $135,000,000 annually, in addition to what he steals and the damage he does. But what a calamity he would plunge into. Of the criminals out of jail probably 20,000 have no other occupation. Add these to the 85,000 who would be released, and these again to the 100,000 honest folk thrown out of employment and the nation would be left in some such plight as it was at the close of the rebellion, with 200,000 men out of employment to be absorbed into various lines of trade, and these same persons with all dependent upon them to be pensioned and supported until they could be cared for. The expense of the pensioning and the pension bureau would probably equal the present policing expense for a time, but the problem of caring for all the people and finding them employment would be great.

**Siberian Road Completed.**

LONDON, Nov. 4.—The last rails of the line connecting Moscow with Vladivostock, according to a dispatch from St. Petersburg to the Daily Mail, will be laid today.


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