MAY DAY STRIKES BEGIN

Men Demand Reduction of Hours, More Wages and Better Conditions.

PITTSBURG SCENE OF GREAT ACTIVITY

It is Estimated that Between Twelve and Fifteen Thousand Men in that City Alone Are Out.

PITTSBURG, May 1.—May day was ushered in with strikes in most of the building trades for reduction of hours, more wages and adjustment of trade conditions. It is estimated that between 12,000 and 15,000 men are out, the trades involved being structural iron workers, carpenters, bricklayers, sheet metal workers, slate and tile roofers, inside electric wire workers, portable and hoisting engineers and wood and metal lathers.

The plumbers' strike was averted by the master plumbers meeting last night and signing the advanced scale. The strikers will tie up work on all the large buildings in course of erection in this city.

Numbers of the leading architects of the city have stopped the receipt of estimates on new work and on some important contracts already placed they have notified the contractors of indefinite delay in making contracts. One of the architects this morning showed specifications on work aggregating $10,000,000 which is being held up by the labor trouble.

On account of the carpenters' strike, the largest planing mill operators have agreed to close their shops pending a settlement of the trouble.

Demand of Iron Workers.

The National Association of Mill Workers and Smelters of America has sent copies of a new demand to the United States Steel corporation, the Republic Iron and Steel company, the Bessemer association and the independent furnaces. The workers demand that on and after June 1 eight hours shall constitute a day's work at the same rate of pay now received for twelve hours, and that all ten-hour men shall be reduced to nine hours at the present rate of pay.

The men are now working twelve-hour turns. "Turn men" receive $2 per twelve hours, engineers and keepers $2.50, and laborers $1.50 for ten hours. If the demands of the association are granted it will mean the introduction of a third shift. This will mean the employment of additional keepers, helpers, blowing engineers and fillers, and top fillers where electricity is not used.

COPENHAGEN, Denmark, May 1.—The trades unionist workmen employed at the free port of Copenhagen have suspended work in sympathy with the dock laborers and seamen's strike against vessels belonging to the steamship owners' federation. The latter strike was further extended today to all the Danish ports excepting Esbjorg, on the coast of Jutaland, where the dock laborers refused to leave their work.

The dock laborers' strike at Copenhagen began about April 15. Four days later it was announced that more than 8,000 men were on strike at the various ports of Denmark.

TORONTO, Ont., May 1.—More than 1,000 men of various trades went on strikes today for an increase in wages. They include bricklayers, carpenters and machine workers. A number of wire, wood and metal lathers, carriage and wagon workers and jewelry workers are also out. The compositors and machine operators on the different newspapers here have decided to strike on May 8 if their demands for increased wages are refused.

CLEVELAND, O., May 1.—At the local headquarters of the Structural Iron and Steel Workers' association it was stated today that about 500 men employed by the American Bridge company at various Ohio points went on strike today.

ST. PAUL, May 1.—Three hundred carpenters went on strike here today for an eight-hour day and increased wages.

Skilled Laborers to Strike.

BUFFALO, May 1.—It is estimated that more than 2,000 skilled laborers are on strike here today. Most of these are carpenters, a few structural iron workers and the rest plumbers. The carpenters, who are receiving 30 cents an hour, demand 37½ cents; the plumbers demand $3.50 per day, an increase of 50 cents, and the iron workers ask for 50 cents an hour. Fourteen contractors, employing about 450 men, have agreed to pay their carpenters 37½ cents. Most of the contractors have conceded the demands of the structural iron workers, but a few of the smaller ones are holding out.

YOUNGSTOWN, O., May 1.—Two thousand men employed in the building trades went on strike today for an eight-hour day and increase of wages, all efforts to settle their differences with the contractors proving unavailing. Some of the smaller contractors conceded the men's demands last night, and it is said several others may sign the scale.

ROCHESTER, N. Y., May 1.—About 500 drivers of coal wagons, all members of the Drivers' union, struck today for higher wages and shorter working hours.

NEW YORK, May 1.—Machinists and bench men to the number of 1,200 in a dozen large sawmills and moulding mills in Hudson county, New Jersey, went on strike today. The men demanded a uniform rate of $2.50 for an eight-hour day, which was refused.

RENEWAL OF WAGE SCALES

Cooks, Waiters, Cooks' Helpers and Bartenders Sign for Another Year.

Yesterday all wage scales of the cooks, waiters, cooks' helpers and bartenders expired and during the week the employers will be asked to sign schedules for another year.

After preparing a scale which provided for an advance of $2 per week the waiters decided not to attempt to enforce it this year and the proprietors will be requested to sign the old agreement, to be binding for another year.

The cooks' scale will be a new one, but will make little change from conditions as they now exist, simply putting them into the form of an agreement. According to the scale the wages will vary from $100 per month for first cooks in high-class houses to $10 per week for third cooks. Cooks in ordinary restaurants are to receive from $60 to $75 per month, according to the average number of people served.

The cooks' helpers will ask for a flat rate of $6 per week. At the present time some receive $7 per week, but the majority are paid from $5 to $6.

The bartenders have adopted only a minimum scale of $50, below which no member of the union is permitted to work. They will simply ask recognition of their organization and an average of not more than twelve hours for a day's work. These conditions obtain at the present time generally, so it is believed that there will be no trouble in arranging the matter for another year.

Congressman Cummings Improved.

BALTIMORE, May 1.—Dr. Young has issued the following statement regarding the condition of Congressman Amos J. Cummings:

His temperature is 99, his pulse 84 and respiration 28. The difficulty he had in swallowing is much relieved and he is distinctly better this morning.

Corrigan Much Better.

NEW YORK, May 1.—Archbishop Corrigan was much improved today and his physician said that he was well on the way toward recovery. He slept six hours during the night and when he awoke relished a breakfast of solid food.

LOCAL BREVITIES.

Theodore Schroeder has been arrested on complaint of J. H. Endricon, who said he sent Schroeder to get a $10 bill changed and he failed to return.

Civil service examination for mechanical draftsman, ordnance department at large, at a salary of $1,200 per year, is scheduled for Omaha June 3, 4 and 5.

Harrison Talbot kicked up a fuss in a Chinese place on Chicago street between Eleventh and Twelfth, Wednesday night and was fined $10 and costs in police court for his fun.

James Hory was fined $1 and costs for dumping the dirt swept from the barber shop on North Sixteenth street in which he is employed into the waste paper boxes on the street corner.

City Treasurer Hennings reports that $25,000 worth of regular delinquent taxes were collected during the month of April, 1902, which is $4,000 better than for the corresponding month of last year.

Word was received at the office of the Board of Public Works yesterday that there is a dangerous excavation, apparently due to a washout, in the street at Twenty-seventh and Hickory streets. The street commissioner was notified.

Building permits have been granted as follows: To H. L. Whitney, to erect at 1518 South Twenty-second street, a frame dwelling to cost $4,000; to William Maier, to erect a Forty-first and Dodge streets a frame dwelling to cost $1,200; to Mark Hansen, to erect at 2747 South Tenth street a frame dwelling to cost $1,000.

The eleventh and twelfth substations of the Omaha postoffice have been located, the former at the Millard hotel and the latter at Twenty-fourth and Leavenworth streets. Next week the postmaster will visit the points where the offices have been located and make arrangements with the persons operating business at those places for the handling of the business of the department.

James Y. Craig, the landscape gardener, who was recently requested to make an estimate of the expense of beautifying the High school grounds, has reported. "The grading, sodding and gardening will cost about $1,500," said W. R. Homan, a member of the Board of Education, "and the construction of the walks, according to Mr. Craig's estimate, will cost about $1,000 additional. We shall in all probability ask Mr. Craig to draw plans for the improvement."

George Baker has been bound over to the district court by Judge Berka on two charges, one for assaulting Mrs. Katie Semit and the other, for assaulting his wife. April 20 Baker went to the home of Mrs. Semit and because his wife, who was visiting there, refused to return home he began to beat her. Mrs. Semit then shot at him nine times, two of the shots taking effect. After being shot Baker went home, where his wife had preceded him and beat her severely.

James Stanley was arrested Wednesday afternoon by Officer Edwards while attempting to pass what is believed to be a forged check on a baker at Eighteenth and Vinton streets. The check was for $7.10, made payable to Stanley and the name "Hayden Bros." was signed to it. In Stanley's pocket was another check signed in the same name for $9.45. Stanley claimed that the checks had been given him by Hayden Bros. for services.

John Hennig, charged with shooting Fred Jacobson with intent to kill, was bound over to the district court in the sum of $700 by Police Judge Berka Wednesday afternoon. Hennig and Jacobson had a quarrel April 17 on a lot belonging to the latter at Forty-eighth street and Mayberry avenue and Hennig shot at Jacobson three times, one shot taking effect in the groin. The wounded man was taken to the Clarkson hospital, where he remained until released Tuesday. He is still weak from the effects of the shot and is unable to walk alone.

Cuticura Resolvent PILLS

The New Blood and Skin Purifiers

ANOTHER TRIUMPH FOR CUTICURA

CUTICURA RESOLVENT PILLS (Chocolate Coated) are a new, tasteless, odorless, economical substitute for the celebrated liquid CUTICURA RESOLVENT, as well as for all other blood purifiers and humour cures. Each pill is equivalent to one teaspoonful of liquid RESOLVENT. Put up in screw-capped pocket vials, containing the same number of doses as a 50c. bottle of liquid RESOLVENT, price 25c. CUTICURA PILLS are alterative, antiseptic, tonic, and digestive, and beyond question the purest, sweetest, most successful and economical blood and skin purifiers, humour cures, and tonic-digestives yet compounded. Samples free by mail to all friends and patrons of CUTICURA SOAP.

Complete External and Internal Treatment for Every Humour, $1.00.

Cuticura The Set $1 Consisting of CUTICURA SOAP, 25c., to cleanse the skin of crusts and scales and soften the thickened cuticle; CUTICURA OINTMENT, 50c., to instantly allay itching, inflammation, and irritation and soothe and heal; and CUTICURA RESOLVENT PILLS, 25c., to cool and cleanse the blood. A SINGLE SET is often sufficient to cure the most torturing, disfiguring, and humiliating skin, scalp, and blood humours, with loss of hair, when all else fails. Sold throughout the world. British Depot: 27 Se, Charterhouse Sq., London. French Depot: 5 Rue de la Paix, Paris. POTTER DRUG AND CHEM. CORP., Sole Props., Boston, U. S. A.

NEW BOOKS AND MAGAZINES

"The Rustler," a Tale of Love and War in Wyoming, a New Novel.

JIM, THE HERO, IS A CATTLE PUNCHER

Harpers Publish a New Book of Poems by Alfred Austin, England's Poet Laureate—New Novel by W. Dudley Mabry.

"The Rustler" is a tale of love and war in Wyoming by Frances McElroth, who grew up from young girlhood in the country of which she writes, and hence is quite familiar with its life. It is indeed a graphic picture of western life. "Jim," the hero, is a "cattle puncher," who, while foreman of a ranch, has been jilted by Hazel, a cultivated eastern woman, who is a guest of the owner. He determines to display to the coquette his power and ability, and begins to "rustle," i. e., brand others' cattle on his own account. He gathers about him a band of outlaws engaged in the same work. In the conflict with the ranch owners (which is most graphically described by the author) he captures Hazel and takes her to the "Hole-in-the-Wall," a natural fortress held by the rustlers. Here she undergoes a change of character (the account of which proves the author a psychologist of rare insight) and becomes a regenerating influence in the camp. One by one the outlaws feel her power, and "Jim" at last succumbs to it. The "calling off" at a ranch ball is certainly a unique but truly western call for a quadrille. Published by Funk & Wagnalls.

Harpers have published a new book of poems entitled "A Tale of True Love, and Other Poems." It is by Alfred Austin, England's poet laureate. It is dedicated to President Roosevelt and has a special preface to the American people. He says that when he "had the honor, however undeserved, of being nominated as Tennyson's successor, it was in writing communicated to him, with that spontaneous graciousness of language which was one of the distinctive gifts of our late beloved and revered queen, that she was quite sure he would know when best, and how best, to give expression to national sentiment. In this spirit the honor was conferred; in this spirit it was accepted." He adds a graceful appreciation of the American people, who, he believes, pursue with his own nation the same ideal. It is his latest collection of poems, and as a whole is the most important contribution to recent poetic literature.

"When Love is King" is a story of American life by W. Dudley Mabry. It is the story of an orphan girl and the author's pictures of her running away from her cruel guardians and her mastery over difficult circumstances makes the book intensely interesting. The loving care with which her wayward mother follows her from place to place, not daring to tell who she is, yet watching her needs and struggles with a mother's love, is heart-reaching. The story shows very clearly what good, sympathetic loving hearts can do. The scope and tone are suggested by the author's brief preface, in which he says: "The book is sent forth to plead for a broader charity for those who differ from us in opinion, and for a more considerate judgment upon such as fall under reproach. If love win not the erring, nothing will win them; if love lift not up the fallen, nothing will lift them up. Love is regal; for God Himself is love, and He is King of Kings." It is published by R. F. Fenno & Co.

In "The Cost of Freedom," by Adele Marie Shaw, the witchcraft craze in early Boston is pictured very vividly. Miss Shaw has caught the spirit of the time wonderfully well. The tale follows the fortunes of Roger Verring, the son of a stern Puritan of Boston, on the Spanish main with Captain Phips, "the first self-made American." Then the scene changes to Boston. Captain Phips is now Sir William, and governor of Massachusetts bay. The Puritan spirit is revealed in its effect on two very different natures—old Nicholas Verring, unswerving in his conception of his duty, and his wife, Alison, as sweet a spirit as ever was created. The story of "The Little Maid" and her pirate captors, of her friendship with Roger, of the suspicion which fell on her in the wild frenzy of the witchcraft craze, and of her five-hour trial before the "great Mr. Mather" himself, of her release from jail and her flight with Roger, of her enemies and of her final safety and happiness—all this is most absorbing reading. Published by Doubleday, Page & Co.

"The Claybornes," a new novel by William Sage, gives a vivid picture of the civil war, throwing into high relief three of the most important events—the secession of Virginia, the "high water mark" at Vicksburg and the "last ditch" at Appomattox. It is the story of two brothers of an old and honorable Virginia family who take opposite sides in the war. Both distinguish themselves for soldierly qualities, and once they meet in hand-to-hand conflict on the field of battle. The author shows the quality of the men on both sides, taking the attitude that all were Americans, fighting the inevitable conflict. But the book is primarily a romance and not a mere chronicle of fights. It tells of the winning of a Yankee girl by a young Virginian, who, as he was educated at West Point, adheres to the union cause, although his father and brother are fighting for the south. Mr. Sage inherits much literary ability from his mother, Mrs. Abby Sage Richardson, the well known writer on American history and English literature. Published by Houghton, Mifflin & Co.

Mrs. W. K. Clifford, whose new novel, "Margaret Vincent," is just published by the Harpers, is an Englishwoman who is best known in America as the author of two clever books, "The Love Letters of a Worldly Woman" and "Mrs. Keith's Crime." Her latest novel is written more in the vein of comedy than any other of her novels. It is essentially a cheerful book, with a romantically happy ending. Gerald Vincent, because of his religious views, receives the "cold shoulder" in London and seeks a quiet place by the name of Woodside Farm—owned by a widow—near Chidhurst, where he pursues his literary work and after a year's residence marries the widow. The novel tells the adventures of his daughter, an attractive young girl who runs away from home because of a disagreeable half-sister, who becomes unbearable during her father's absence in Australia with a sick brother. She goes to London, determined to be an actress, but only follows it a short time, when she is won by the son of one of her father's school chums. The story is interesting from start to finish.

"Education and the Larger Life" is the title of a volume of essays by C. Hanford Henderson, just published by Houghton, Mifflin & Co., in which the author's purpose is "to make a large inquiry—the inquiry as to how education can be so applied in America as to further best the progress of civilization." He presents education as a human enterprise of the utmost interest and importance. He regards it as a process for realizing the social purpose, which is human wealth—a process for producing beautiful men, women and children—persons of power, accomplishment and goodness. The book is both a criticism of existing conditions and a clear indication of the way to a better order. Mr. Henderson strongly favors kindergartens, manual training schools, small classes, experimental and laboratory methods in teaching. His book is written with much vigor and conviction, and is both suggestive and informing.

The Abbey Press have published a new novel entitled "Aaron Crane." It is by Henry Tate. The characters portrayed are so real and tangible that their prototypes exist in every similar community. Aaron Crane, a man of lofty aspirations, has a decided prospective matrimonial alliance for his only son; he also is ambitious politically. His tribulations are many. The homely, philosophic "Joe Hubbell," the evasive "Squire Trimble" and unscrupulousness of the voluble "Mr. Fraude" add spice to the story. Aaron's matrimonial desires for his son brings in an interesting love tale. The work is healthy in tone, the dialogues are brisk and bright and the interpretations of the characters are true to nature. The author finishes the story with everybody happy and contented in "love, peace and prosperity."

"Gleanings from Nature" is the title of a new book by Eva M. Carter. This work deals with nature at first hand. The author spent a number of years in traveling through the mountains of western North Carolina and Virginia, drawing and studying birds, flowers, insects, etc., thus gathering the material of which she has made use in her book. It is full of the ozone of the mountains and draws the reader near to nature's heart. Miss Carter had the advantage of careful schooling both in Norfolk, Va., and in her present home at Raleigh, N. C. She thus brought to her study of nature a developed mind and a prepared intelligence. Those who are fond of out-of-door life and who delight in hearing the birds sing and seeing the flowers grow and in treading the green sward will find a feast in this book. It is published by the Abbey Press.

Mr. W. T. Stead was an intimate friend and confidant of Cecil Rhodes and for years was intrusted with the great South African's imperial secrets. Only a part of Mr. Stead's disclosures, made since the death of Rhodes, has been given to the daily press, but the whole story is told for the first time in the May number of the American Monthly Review of Reviews. There will be found the full text of the remarkable notes on world politics written by Mr. Rhodes in 1890, commenting with the greatest freedom on current American affairs and giving some suggestion of the ideas which underlay the Oxford scholarship scheme. Nowhere else has been published so complete and authoritative an estimate of this modern Colossus of the English-speaking world. Pictures of "Groote Schuur," Mr. Rhodes' home at Capetown, with excellent portraits of Mr. Rhodes himself accompany the article.

The Outlook is making a special feature of printing single-page portraits and sketches of people of immediate note. The May magazine number contains such portraits and sketches of Donald G. Mitchell ("Ik Marvel"), who has just passed his eightieth birthday; James R. Garfield, the new civil service commissioner; Frank P. Sargent, who is to be the new immigrant commissioner, and Henry Clay Evans, who has lately resigned the office of commissioner of pensions.

NEW BILLBOARD ORDINANCE

It Passes at Special Meeting of City Council with Hoye Dissenting.

At a special meeting of the city council yesterday afternoon the new billboard ordinance, which provides for a license fee of $100 per year for the privilege of posting signs, erecting billboards and distributing advertising matter, was passed, Hoye dissenting. Councilman Hoye said he opposed the measure because it was class legislation and tended to create a monopoly.

Consent was granted to the Mutual Oil Tank Line company to erect tanks, warehouses and an office building at Eleventh and Clark streets. The work, which will begin next week, contemplates the expenditure of $5,000.

Sewer contracts with James P. Connelly and J. O. Corby were approved.

THE GOLDEN POPPY.

Millions of Bright Blossoms that Greeted the California Pioneers.

Far out at sea gleaming sheets of dazzling gold arrested the gaze of the early explorers of California, says Fruits and Flowers. Blazing along the Pacific coast, embroidering the green foothills of the snow-capped Sierra Madres, transforming acres and acres of treeless plains into royal cloth of gold, millions of flowers of silky texture and color of gold fascinated the Spanish discoverers. An eminent botanist, Eschsholtz, at once classified the plant and his followers conferred his name upon this, the only native American papaver.

Dream-like in beauty, fascinating from sheer loveliness, spreading its soft undulations over the land, the California poppy bloomed above the richest views and arteries of gold the world has ever known, all unsuspected. A Circe, with powers to please, dazzle and charm by its enchantments, while it allures, lulls and mystifies, this flower of sleep seemed to draw by some occult process from the earth the elixir of gold, unfolding its blossoms of gold as beacons, proclaiming, "We are blooming above rich mines of gold."

There is never a mystery about the poppy. It is a weird flower. It is almost sentient with a life unknown to human kind. "While glory guards with solemn tread the bivouac of the dead," stealthily a sea of gore creeps over the old battlefields. Blood red, the poppies in waves and billows hold high carnival above the soil that covers the slain. Lord Macaulay says of the battlefield of Neerwinden: "The summer after the battle the soil, fertilized by 20,000 dead, broke forth into millions of blood-red poppies. The traveler from St. Troud to Tirlemont who saw that vast field of rich scarlet stretching from Landen to Neerwinden could hardly help fancying that figurative description of the Hebrew prophet was literally accomplished, that "The earth was disclosing her blood and refusing to cover her slain." Bayard Taylor in "The Lands of the Saracen" says he contemplated, with feelings he could not describe, "the old battlefields of Syria, densely covered with blood-red poppies, blooming in barbaric splendor, gloating on the gore of soldiers slain." * * *

However interesting the poppy may be to men of science and to lovers of the beautiful, it is yet more so to the people of California. This beautiful, weird, gold-colored flower of gossamer texture belongs to California alone. Nowhere else in the world has it ever made its habitat. There it is naturally so profuse that it is related as a fact that coming on a turn full face upon a blooming field of yellow poppies, dazzling in the sunshine, horses have been put to flight, as from flames of fire.

Resignation is Accepted.

SAN FRANCISCO, May 1.—The United Railroads company of this city has accepted the resignation of General Manager E. P. Vining. His successor has not been chosen.

CITY OF DACCA IS RUINED

Ancient Capital of Bengal and Adjoining Towns Devastated by a Tornado.

FOUR HUNDRED AND SIXTEEN KILLED

Crops Throughout the Entire District Are Utterly Destroyed by the Fury of the Raging Storm.

CALCUTTA, May 1.—A tornado has devastated the city of Dacca and adjoining towns.

Four hundred and sixteen persons were killed.

Crops were ruined throughout the district.

Dacca, a city in Bengal, has been a famous place in the history of British India. It is situated 150 miles east of Calcutta. In the seventeenth century it was the capital of Bengal.

In 1800 it had a population of 200,000 and was noted for its product of fine muslins, which were known as "woven wind." Growing imports of Manchester cottons ruined its industries, however, and by 1891 the population had dwindled to 82,000.

SUPREME COURT SYLLABI.

No. 11543. State ex rel Clark & Leonard Insurance Company against Scotts Bluff County. Error from Scotts Bluff. Affirmed. Duffie, C. Department No. 3.

1. Article vi of chapter lxxvii of the Compiled Statutes, making provision for the levy and collection of a tax to pay judgments entered against a county or other municipal corporations in this state, contains no special provision for disbursing the fund; hence the usual course of drawing money from the county treasury by obtaining a warrant against the fund must be pursued by the judgment creditor.

2. The Board of County Commissioners should draw a warrant in favor of the judgment creditor for the amount of any judgment tax collected when demand is made by him therefor, and when any considerable amount has been collected and is in the hands of the county treasurer applicable to the payment of the judgment, and the duty of the treasurer to pay such warrant may be enforced by mandamus.

No. 11551. Wells against Fraxier. Appeal from Custer. Affirmed. Holcomb, J.

1. An objection to an apprisal of real estate for the purpose of a judicial sale, to be available, must be made and filed before a sale thereof is had.

2. A deputy sheriff may act for and in the place of the sheriff in making an appraisal of real estate for the purpose of a judicial sale, of the parties to an action against whom the decree operates, is not invalidated because the names of the owners of the equity of redemption are not stated other than by the designation "et al" after the name of the principal defendant in the action.

No. 11572. Falstrom against Banning. Appeal from Custer. Affirmed. Per curiam.

No. 11573. Palmer against Caywood. Error from Saline. Affirmed. Holcomb, J.

1. Where a demurrer to a petition is overruled and an answer under lease given by the court is filed, the error in overruling the demurrer, if any there be, is thereby waived.

2. It is not required that an execution be issued and returned nulla bona as a condition precedent to maintaining a suit on a supersedeas undertaking executed and delivered under the provisions of section 588 of the Code of Civil Procedure.

2. Nor is it required that the judgment creditor shall on affirmance of the judgment exhaust the property of the judgment debtor before bringing suit on the bond given to operate as a supersedeas pending the review of the proceedings resulting in the judgment by the appellate court.

4. Nor, where the judgment debtor has died pending such review, can the judgment creditor be required to look to the estate of the deceased, although solvent, for satisfaction of the judgment before maintaining a suit on the supersedeas bond.

5. When the issues in an action are regularly made up the cause stands for trial and a party thereto will not be granted, as a matter of right, a postponement solely on the ground that the issues as made by the pleadings were formed sooner than he anticipated they would be.

No. 11579. Moulthan against Aking. Appeal from Fillmore. Affirmed. Holcomb, J.

1. Record examined and held confirmation of sale of real estate was regularly and properly entered; held also that evidence is sufficient to sustain the ruling of the trial court on objections to appraisal and confirmation of sale.

2. The certificates of prior incumbrances and appraisal of land for the purpose of sale in foreclosure proceedings, are not required to be stamped under the provisions of the war revenue act of 1898. Noble against Citizens Bank of Geneva followed.

3. Questions discussed in briefs which are not properly presented by the record will not be considered.

No. 11,561. Union Trust Company against Davis. Appeal from Custer. Affirmed. Per Curiam.

1. Evidence examined and held to sustain the trial court in refusing to set aside the appraisement as being too low.

2. Where a decree of foreclosure directs a sale of real estate by a sheriff, such sale is valid if made by the deputy sheriff.

No. 12,451. Rosenbloom against State. Error from Platte. Affirmed. Sullivan, C. J.

1. The law imposing a license tax upon peddlers (Secs. 152, 153 and 154, Ch. lxxii, Art. 1, Comp. St., 1901,) has for its object the raising of revenue, and its enactment was an exercise of the taxing power and not the police power.

2. It is a settled doctrine that the courts will not declare an act of the legislature unconstitutional unless it is manifestly so.

3. The provisions of section 154 of the general law, authorizing fine and imprisonment as a means of enforcing a license tax, does not trench upon the constitution and is therefore valid. State against Green, 27 Neb., 44; Magneau against Freeman, 30 Neb., 844, and Templton against Tekamah, 32 Neb., 542. Overruled.

4. An act entitled "An act to provide a system of revenue" covers the entire subject of taxation and comprehends whatever means or machinery the legislature may provide to enforce payment of taxes.

5. The provision of the constitution (Sec. 1, Art. ix,) authorizing the taxation of persons engaged in certain occupations, in such manner as the legislature shall direct by general law, uniform as to the classes upon which it operates, forbids partiality and favoritism and makes equality before the law a rule of legislative action. It does not, however, forbid reasonable classification of persons for the purpose of taxation.

6. Classification, to be valid, must be arbitrary; it must rest on some reason of public policy, some substantial difference of situation or circumstances that would naturally suggest the justice or expediency of diverse legislation with respect to the objects or individuals classified.

7. There is no such a real distinction between persons who go from house to house and place to place vending their own products and those who sell in the same way the productions of others, that the legislature, acting on considerations of general policy, may make it the basis of classification for the purpose of taxation.

8. A particular classification may be valid if the object of the statute is to raise revenue, and invalid if the object is regulation.

9. The law imposing an occupation tax upon peddlers is sufficiently certain to be capable of enforcement.

No. 12,476. Verard against State. Error from Hall. Affirmed. Sullivan, C. J.

1. The provisions of the general revenue law imposing an ocupation tax upon peddlers were enacted by the legislature in the exercise of its taxing powers and are valid.

Nos. 12,478 and 12,479. Morgan against State. Error from Otoe. Affirmed. Sullivan, C. J.

1. Under the provisions of section 46 and sub-division of section 69, chapter xiv, article i, Compound Statutes, 1901, village authorities have ample power by ordinance to license and regulate billiard and pool rooms.

2. And by this sub-division 8 of section 69 aforesaid village trustees are authorized to raise general revenue by levying and collecting a license tax on persons engaged in the business of conducting billiard and pool rooms.

3. An ordinance whose main object is to license and regulate a business or calling is not wholly void because a provision imposing a small occupation tax is not clearly expressed in its title, as required by section 19 of chapter xiv, article i, Compiled Statutes, 1901.

11182. Jenkins against Myatt et al. Error from Butler. Affirmed. Hastings, C. Division No. 1. Unreported.

Striking an answer from the files because filed out of time, where it was filed before the third Monday after fifty days from the judgment appealed from, is error without prejudice where defendant has no standing in court and no right to insist on any defense.

11279. St. Paul Fire and Marine Insurance Company against Kelley. Error from Furnas. Reversed. Day, C. Unreported.

Where a written application for insurance is made upon a blank which provides that no liability shall attach until the application has been approved by the home office, and the application, together with the premium, is delivered to the agent of the company and before the application has been approved by the home office the property insured is destroyed by the hazard insured against, held, that the insurance company is not liable for loss occurring before such approval.

11319. McCarthy against Harry. Error from Douglas. Affirmed. Oldham, C. Division No. 3. Unreported.

1. Where title is derived from a common source plaintiff in an action of ejectment need only show title from this common source to enable him to recover on the strength of his own title.

2. Instructions examined and held, properly given.

11346. City of Omaha against Doty. Error from Douglas. Affirmed. Duffie, C. Division No. 3. Unreported.

1. This court will not interfere with the verdict of a jury unless it is clearly unsupported by the evidence.

2. Allegations of the petition held to be supported by the evidence.

11353. Kingman Implement Company against Strong. Error from Johnson. Affirmed. Barnes, C. Division No. 2. Unreported.

1. In a replevin action brought to this court on error where there is a total failure of evidence to show that plaintiff had any interest in the property it will be presumed that the value of the defendant's right to the possession of the property is the same as its value found by the verdict of the jury.

2. Objections to the form of a verdict must be made when it is rendered and before the jury is discharged. Objections not made and exceptions not taken to it until a motion for a new trial is filed will be deemed to have been waived.

11424. Westervelt against Filter. Appeal from Pierce. Reversed. Oldham, C. Division No. 2. Unreported.

1. When an action is brought to set aside a fraudulent conveyance more than four years after the date of the conveyance it is incumbent on the plaintiff to show himself within the exception that gives additional time on account of the want of knowledge of the transaction, by stringent rules of pleading and evidence.

2. The same stringent rule of pleading and proof is required to toll the statute for want of capacity to bring the action as is required to toll it for want of knowledge of the fraud.

3. Evidence examined and held not sufficient to sustain the judgment.

11461. Real Estate Trust Company against Fawell. Appeal from Lancaster. Affirmed. Duffie, C. Division No. 3. Unreported.

11444. Shelleck against Feeney. Error from Douglas. Reversed, with instructions. Day, C. Division No. 1. Unreported.

1. Prior to 1901 there was in this state no valid statute authorizing an appeal from the judgment of a justice of the peace in an action for the forcible entry and detention or forcible detention only of real property.

2. The jurisdiction of the district court in such action being derivative only is not aided by consent of parties.

Ettenheimer against Wallman, 88 N. W. Rep. (Neb.), 989, followed.

11494. Connor against Rumsey. Error from Douglas. Affirmed. Hastings, C., division No. 1. Unreported.

1. Evidence examined and held sufficient to sustain finding of jury that the consideration of the note sued upon was not tainted with any indebtedness arising out of gambling transactions.

11509. Kenser against Grossman. Error from Douglas. Affirmed. Albert, C., division No. 3. Unreported.

1. In proceedings in error only such grounds as are assigned in the petition in error will be considered.

2. Where a party to a suit requests the submission of a question to the jury by the tender of an instruction which is refused he cannot complain of an instruction, given by the court on its own motion, submitting the same question.

3. It is not error to refuse to give an instruction tendered when the ground covered thereby is covered by instructions given by the court on its own motion.

11519. Lay against Honey. Appeal from Hitchcock. Reversed with instructions. Barnes, C., division No. 2. Unreported.

1. One who makes payment of a promissory note to a second person, not the owner of the note, and not in possession of it, at a place other than the place of payment designated therein, assumes the burden of proving that the party to whom payment was made was empowered to collect the money.

2. The fact that the money to pay interest coupons has been paid to such person, who sent the same to the original mortgagee at the place of payment, that it was sent to the owner of the note and mortgage, who returned the paid coupons to the mortgagee, who in turn sent them to the person to whom the money was paid, to be delivered to the mortgagor, is not sufficient ground to infer that such person has authority to collect the principal sum where the evidences of indebtedness are not, and have not been, in his possession.

3. Evidence examined and held not sufficient to show authority on the part of the person to whom the money was paid, to collect the same.

11541. Luce against Sorensen. Appeal from Douglas. Affirmed. Hastings, C., division No. 1. Unreported.

1. Evidence of attorney, in whose hands note and mortgage have been since maturity, that no proceedings at law have been had on them in county where property is situated and where defendants were served with summons, and none elsewhere to his knowledge, is sufficient in absence of all contradiction to support in this respect a decree for plaintiff.

2. An extension agreement which is not pleaded and as to which there is no definite evidence held properly disregarded.

12189. Morrison against Lincoln Savings Bank and Safe Deposit company. Appeal from Platte. Affirmed. Albert, C., division No. 3. Unreported.

An offer of compromise, made by debtors of an insolvent bank to the receiver thereof, examined and held there was no abuse of discretion on the part of the trial court in directing the receiver to accept it.

12241. Patterson against State ex rel Dusenbery. Error from Nuckolls. Reversed and remanded. Day, C., division No. 1. Unreported.

1. When an application for a writ of mandamus and the alternative writ to require the chairman of the county commissioners to sign a warrant against an "advertising" fund contain no allegation of money in the treasury or tax levied, or appropriation for such fund, they state no cause of action.

12531. State ex rel Chadron Building and Loan association against Westover. Mandamus writ denied. Pound, C., division No. 2. Unreported.

1. An ultimate right of review by error or appeal is a plain and adequate remedy within the purview of section 646, Code of Civil Procedure.

2. As an order setting aside a decree and granting a new trial made without jurisdiction may be reviewed on error or appeal as soon as it results in a new decree, a writ of mandamus will not issue to compel vacation of such order and reinstatement of the original decree.

No. 11614. Hill against McGinnis. Appeal from Lincoln. Affirmed. Holcomb, J.

1. To establish a highway by prescription there must be a continuous user by the public under a claim of right, distinctly manifested by some appropriate action on the part of the public authorities, for a period equal to that required to bar an action for the recovery of title to land. Lewis against City of Lincoln, 55 Neb., 1.

2. A prescriptive right to a strip of land as a public highway cannot be acquired by lapse of time where the roadway is through the inclosed premises of the owner and the use thereof permissive only and the roadway is changed from time to time to suit the convenience of the owner, and no acts of control or dominion over it is exercised or asserted by the public authorities.

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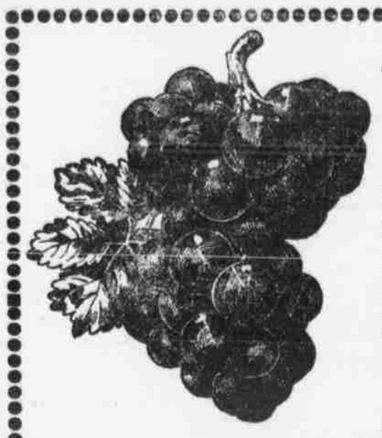

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