argest sales are of the 5-cent balls.

the boxing gloves, also a Cincinnati product,

Some 35,000 bats are made in Cincinnati

every year. All but the cheapest grade,

which is of poplar, are cut from ash tim-

BRIDEGROOM AT 104.

Venerable Montauk Half-Breed Takes

Wife Number 4.

feel pretty young, I kin tell you, with such

Jackson of Washington street, Jamaica.

head of your establishment here."

become his fourth wife.

younger men.

His bride is now 52.

The widow blushed, and said the pro-

posal was "so sudden," but, considering

that Miller loved her, she would consent to

So Rev. Mr. Jackson was summoned, and

he came to the little house in which the

couple lived, and in a few moments Mrs.

Jane White became Mrs. Townsend Miller.

Miller does not look his age. He says

he does not remember the exact day of his

birth, but he has records to prove that he

first saw the light of day in old Newtown in

Miller claims to be a descendant of old

Pharach, the Montauk chief who claimed

Montauk Point, which was recently pur-

for the estate. He has a full head of snow-

years.

6. Where such occupant entered originally without color or title or claim of right and the acts relied on to show entry and

and the acts relied on to show entry and occupation were consistent with a mere intention to trespass from time to time until interfered with by the true owner, his testimony that he intended to take possession and hold and occupy as owner, uncorresponded by acts necessarily indicating such intention, is not sufficient to require a inding in his favor.

11718. Topping against Jaenette. Appeal from Otoe. Reversed. Pound, C. Division No. 2.

chased by the Long Island railroad.

"Yes," said Townsend Miller, an

150 pairs of gloves is the daily output.

ber, of varying sorts.

No. 4."

have exactly quadrupled itself.

## CURRENT NEWS OF IOWA

## COUNCIL BLUFFS.

COMES ABOUT THROUGH NEW BUILDINGS

As Real Estate is Not Assessed this Year Improvements Are Listed as Personal and Help

Boost Personalty.

County Auditor Innes yesterday completed the footings of the assessors' books for the entire county for the assessment of personal property for 1902. They show an increase in actual value of \$193,316 and in taxable value of \$48,329 over 1901. The total actual value for 1902 is \$8,408,512, as against \$8,215,196 for 1901. The taxable talue is based on 25 per cent of the actual

The personal property assessment for 1902 is in reality less than for the preceding years, as \$303,438 is the amount assessed for new buildings and included in the personal property assessment, while in 1901 this class of property was included in the real estate assessment. This year only personal property is assessed, the assessment of real etate for the preceding

year being used. The moneys and credits show an increase of \$190,396 over 1901, while corporation stock shows a decrease of \$48,344. Merchandise shows an increase of \$192,214 over 1901 and other personal property besides that enumerated shows an increase of

The footings of the assessors' books give these totals on the different classes of personal property for 1902:

Bonai property for 1902:

Polls funder 45) 4.678, (over 45) 2.920; value of new buildings, £303,428; 1-year-old heifers, 9.097; value, £174,821; 2-year-old heifers, 6.472; value, £152,525; cows, 22,355; value, £304,698; 2-year-old steers, 21,229; value, £304,698; 2-year-old steers, 21,929; value, £304,698; 2-year-old steers, 21,229; value, £304,698; 2-year-old steers, 31,809; value, £364; cattle in feeding, 12,539; value, £323,044; bulls, 1342; value, £50,238; swine, 81,807; value, £505,379; sheep, 7,987; value, £152,24; g, asts, 157; value, £349; 1-year-old colts, 1,607; value, £44,512; 2-year-old colts, 4,168; value, £54,550; horses, 15,002; value, £50,2747; stallions, £50, value, £30,754; mules, 1,415; value, £56,550; horses, £307; value, £83,145; household furniture of hotels and boarding houses, £27,165; moneys and credits, £1,838,268; corporation stock, £436,482; merchandise, £1,512,563; capital employed in manufacturing, £5,368; other personal property, £664,232; total value, £3,468,612; taxable value, £2,102,128; dogs, male, £,048; female, 147.

Davis sells paint.

James McCabe Dies Unexpected.

James McCabe, member of the law firm of Harl & McCabe of this city, died shortly after midnight Wednesday at his home in Morningside. He had been seriously ill for several weeks with complications arising from an attack of sciatic rheumatism, but his death was not expected. His wife, two sons, Charles and Fred, and one daughter. Norah, survive him. Captain McCahe was born at Marietta, Q, in September, 1844. He enlisted in the federal army from New Joseph Newman, who while intoxicated Morningside. He had been seriously ill for

born at Marietta, Q. in September, 1844.

He enlisted in the federal army from New York in 1862 and served in the Sabine Pass expedition and at the siege of Port Arthur. He lost his arm in General Banks' Red river expedition.

After leaving the army he studied in college at Athens, O., and moved to Shennandoah, Ia., in 1872. He was married to Mies Hannah Low in 1873. He moved to Council Bluffs in 1890 and formed a parthership with Charles M. Harl in the law business, He practiced in this city and Dmaha and was well known to the bar of Dmaha and was well known to the bar of An information was filed in Justice. Omaha and was well known to the bar of Douglas county and western Iowa. According to present arrangements, the funeral will be Sunday afternoon. Rev. W. J. Calfee, pastor of Broadway Methodist phurch, of which Captain McCabe was a prominent member, will conduct the services, assisted by Rev. W. S. Hooker of Red Oak and Rev. W. S. Barnes, pastor. Omaha and was well known to the bar of Red Oak and Rev. W. S. Barnes, pastor of the First Presbyterian church of this

Plumbing and heating. Bixby & Son.

Christian Convention Adjourns, The convention of the Christian church of the Southwest district of Iowa, which has been in session since Monday evening, closed last night with one of the best attended meetings of the series. The morning session yesterday was given over to the discussion of the bible school. The afternoon session was devoted to the Christian Endeavor society and its work. Rev B. M. Perkins of Villisca, former pastor of the church in this city, gave an interesting talk, taking as his subject "The Analysis of the Bible." The feature of the closing session was an address by Rev. T. J. Dow of Des Moines, who spoke of the decline of the Christian Endeavor society and recommended several methods for instilling fresh enthusiasm into the society.

N. Y. Plumbing Co., telephone 250.

Council Inspects Paving.

The city council inspected the paving on First avenue, recently completed by Contractor Wickham, yesterday afternoon, and approved the assessment schedule prepared the city engineer. The council decided that all the abutting property was able to ordering the payment of Contractor Wicktham of the city's portion of the expense for the paving opposite Bayliss park. The council also investigated the condition of Sixth street south from Fifth avenue, which has been ordered paved, and depided that as it is now almost impassable, owing to the holes and ruts, Contractor Wickham be instructed to pave this street

Davis sells gines, MINOR MENTION.

Davis sells drugs Stockert sells carpets and rugs.
Wollman, scientific optician, 40 B'way.
Leffert eyesigh' specialist. 23 Broadway. Special sale of photo frames. C. E. Alex-nder & Co., 33 Broadway. Take home a brick of Metrger's ice fream. Vanille, 25c; Neopolitan, 25c. Mrs. B. N. Waller and children left yes-

A power to be shaken into the shoes. Your fateel swallen, nervous and hot, and get tired easily you have smarting feet or tight shoes, try Alien Feut-false. It cools the feet, and makes walking easy. Cares swellen, amesting feet, ingrowing halfs, bill ters and callous apots. Relieves corns and busions of all pain and given rest and comfort. Try it today, sheld by all druggiets and shoes stores for the. Den't show a life is a copy any substitute. Trial package FREE. Address. Allen 8 Olimstee, Le Roy, N. Y. ALLEN'S FOOT-EASE.

SUITS CLEANED-

Dyed and pressed. Special attention given ladies garments. Also chemilic cortains neatly cleaned, dyed and pressed. Phone Lefts lows Steam Dye Works. 564 Broadway.

LEWIS CUTLER

ENDS VERSELL

-FUNERAL DIRECTOR-

INCREASE IN PERSONALTY | terday on a visit to relatives in Charles Excelsior Masonic lodge will hold a cial meeting this evening for work in second degree.

County Auditor Completes Tabulation of Returns of Assessor.

Returns of Assessor.

Mr. and Mrs. Charles Green and Mr. and Mrs. B Brandt have gone to Seattle, Wash., where they will spend the summer.

Wash, where they will spend the summer.

Henry Shaw, arrested Tuesday night charged with insulting women on the public street, was discharged yesterday, no one appearing to prosecute him.

President Finley Burke has called a meeting of the Pottawattamie County Bar association for 9:30 o'clock Saturday morning to take action on the death of Captain James McCabe.

James McCabe.

Don't forget that we have a big selection of croquet sets and also remember that we sell them at a reasonable figure. Your investigation will decide that. Petersen & Schoening, Merriam block.

It is a pleasure to mow your yard if you have the right kind of a lawn mower. Have you seen that light running, ball-bearing, keen cutting machine at Petersen & Schoening's? It beats em all.

J. J. Stewart, administrator, of the

J. J. Stewart, administrator of the Thomas Officer estate, began paying the 5 per cent dividend authorized by Judge Wheeler of the district court yesterday, to the creditors of the Officer & Pusey bank. No use to figure how cheap you can buy hardware when you want to build. Just leave your order at Petersen & Schoening's and you can sleep peacefully that your hardware bill will be the lowest that any firm can make it.

John R. Furlong, an old time newspaper man of Council Bluffs, now a prosperous mine owner, with his home in Boulder. Colo., is renewing acquaintances in this ity, Mr. Furlong looked in vain for many of the old landmarks.

There is no art in buying a hammock if you go to the right place. It is to your interest to go to Peterson & Schoening's when you want one. They laugh competition in the face when it comes to hammocks, both in styles and prices. mocks, both in styles and prices.

G. Blodgett, boss of one of the railroad camps on the Great Western grade, filed an information yesterday in Justice Bryant's court sgainst "John Doe," a negro, whom he charged with drawing a revolver and threatening to shoot him.

From now on it will tax the wits of the people to figure out how to keep cool. The first step in the right direction is to purchase a refrigerator at Petersen & Schoening's. They have what one might term the only one that gives universal satisfaction. The Philomathian Literary society of the High school has elected these officers for the ensuing year: President, Charles Campbell; vice president, Alfred Hanchett; secretary, Charles Baldwin; treasurer, Clarence Henninger; sergeant-at-arms, John Clark.

Clarence John Clark. The supreme court has affirmed the verdict of the district court here in the suit of J. C. Nielson against the city of Council Bluffs. Nielsen was given \$1,000 damages for injuries received by stumbling over a water lock box on the sidewalk near the Northwestern depot.

Northwestern depot.

The hearing on the application for the removal of Receivers Bereshelm and Murphy of the Officer & Pusey bank was postponed yesterday by Judge Wheeler, owing to the death of James McCabe, one of the attorneys for the receivers. The hearing, it is expected, will be had Monday.

The suit of D. G. Pugh against Sarah Proffit was settled in the district court yesterday after the case had been called for trial. Pugh sued to recover damages for a portion of his land taken by Mrs. Proffit for a road. The condemnation jury awarded him \$7.50 damages and from this be appealed.

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

Real Estate Transfers. These transfers were filed yesterday in the abstract, title and loan office of J. W.

Squire, 101 Pearl street: Henry and Anna Sperling, executors, to Thersa Neumas, 5 acres in se corner swi4 nets 7-74-43, c. d. Ellen Gannon to Philip Bintz, nig nets and nig nwi4 4-76-41, w. d. ..\$ 390

9.070

Total, two transfers ...... 9,460

ARCHBISHOP DOUBTFUL Kenne Believes Report of His Succession to Corrigan Originated in New York.

DUBUQUE, Ia., May 30 .- (Special Telegram.)-"I think that cablegram originated in New York," said Archbishop Keane today, referring to the report from Rome that he would be appointed to succeed Archbishop Corrigan at the consistory June 9. Clergy attached to the archiepiscopal residence thought the succession would not be considered until after the month's mind for the dead metropolitan. Another clergyman credited the report from Rome.

He said Keane was the first choice of the clergy of New York and the country, and owing to effective services for the church bear the assessment for the cost of the in Cuba and the Philippines was in high improvement. A resolution was adopted favor at Rome where Governor Taft and Bishop O'Gorman are now.

Reviving Fair Association.

CRESTON, Ia., May 30 .- (Special.) -C. Fullard has been selected as president and James McCornack as secretary of the new Creston District Fair association. The old fair grounds tract has been fixed up. The association is now engaged in putting up buildings and sheds on the ground, which will cost nearly \$4,000 and the dates of the fair have been set for September 16 to 19. This will be the first fair in Creston for the past ten years, and if it proves successful it will be made a permanent thing.

Alleged to Have Given Poison. WATERLOO, Ia., May 30 .- (Special Telegram.)-Mrs. Lizzie Scroggins was arrested oday charged with poisoning her husband by placing strychnine in his food. He is 50 years old and she is 19. They have just completed a four weeks' honeymoon. Both have secured divorces from former partners and both have stood trial for adultery. The food pumped from Scroggins' stomach is being held for chemical analysis.

THREE THOUSAND QUIT WORK

Blast Furnace Workers Take Steps to Enforce Demand for Shorter Day.

YOUNGSTOWN, O., May 30,-Three thou divided in number between the Mahoning and Shenango valleys, will quit work Sunday morning to enforce their demands for an eight-hour day and a three-shift force

of workmen, each to work eight hours. The union officials state that they will | the floor below and, as a last stage in the include the Pittsburg district in the strike process, rubbed back and forth against an (Successor to W. C. Estep) when the organization there is sufficient production of the contract of the contrac when the organization there is sufficiently

ROBBERS BEAT A PRINTER

Frank W. Briggs Dying as Result of Injuries Inflicted by Footpads.

DEMOCRATS ARE IN NO HURRY TO MEET

Probability that State Convention. Will Not Be Held Until Some Time During the Month of August.

(From a Staff Correspondent.) DES MOINES, May 30 .- (Special.) - Frank W. Briggs, a printer, well known in Des Moines, is lying at the home of the chief of police in this city, critically ill from the effects of a beating he received from footpade. He had removed to Fort Dodge, intending to live there, and came back to Des Moines to look after some business matters. He is a brother-in-law of the chief of police and at a late hour at night was on his way to the home of the latter. Passing an alley he heard a groan and going into the alley was set upon by two unknown men, who beat him into insensibility and rifled his pockets of money, getting \$32 for their crime. Briggs was found unconscious and it is believed he can hardly recover from his wounds.

Democrats to Meet. The democratic state committee will meet in Des Moines June 5, to make arrangements for the democratic state convention this year. It is probable that the convention will be called to meet the latter part of August in Des Moines. There has been no consideration given to candidates

by the democrats this year. Meeting of the Gideons.

The call has been issued for the third \$24 a month. On receiving his pension annual convention of the Gideone, the Christian Traveling Men's association, to Mrs. White and said: be held in Cedar Rapids beginning June 4. It is expected at least 600 delegates and members will be present. The last annual meeting was held at Madison, Wie., when thirteen states were represented, the reports of the officers of the organization showing that camps had then been established to thirty states. Iowa stands third in the list of membership. On Sunday, June 5, the services in several of the churches will be given over to the Gideons.

Cedar Rapids Water Works Case.

The supreme court this morning rendered in opinion in the famous Cedar Rapids waterworks case, reversing the lower court, but falls to decide the vital point of whether a water company may be compelled to accept reduced payments from city as failure to fulfill contract to maintain high degree of water pressure in the hydrants. The city tendered in settlement of the claim two-thirds the price that would have been paid had the pressure been what was promised. The lower court ruled that the city must pay all or none of the claim, and that the tender of two-thirds the amount was not good. The supreme court does not enter into the merits of the controversy, but reverses the decision be cause of errors of the lower court in rulings excluding evidence on the part of the defendant and excluding certain instruc-

SUPREME COURT SYLLABI The lowa supreme court today rendered 11419. Battle Creek Valley Bank against Colings. Appeal from Antelope county. Affirmed. Barnes, C. Division No. 2.

1. Where evidence is conflicting the finding of a fact based thereon by a court of equity will not be set aside unless clearly wrong. Evidence examined and held sufficient to sustain the finding of fact by the trial court.

2. A judgment in a former suit will be a bar in a second action between the same parties and their privies involving the an opinion in the case of Christian Miller. appellant, against L. B. Cousins, sheriff of Pottawattamie county; Judge Macy; action to restrain execution of sheriff's deed; affirmed; opinion by Waterman.

Rev. Dr. Guy Potter Benton, president of the Upper Iowa university at Fayette, Ia., has accepted the presidency of Miami university, Oxford,

FRENCH

Be and their privies involving the same subject matters, as to everything which the record shows was within the scope of the issues litigated in the former ENTERTAIN Friendly Sons of St. Patrick Banquet the Rochambeau Delegates

NEW YORK, May 30.—The members of the French delegation after enjoying the hospitality of Whitelaw Reid at Ophir Farm, White Plains, returned to the city to-

from France.

At 6 o'clock the Sixty-ninth regiment escorted them from the Waldorf-Astoria to the banquet given at Delmonico by the

to the banquet given at Deimonico by the
Friendly Sons of St. Patrick.

The walls of the banquet hall were covered with festoons of flags, bunting and great bunches of green oak leaves. The Stars and Stripes and the flag of Ireland were draped with the French tricolor on every side. Directly behind Supreme Court Justice James O'Gorman, president of the Friendly Sons of St. Patrick, was a life sized painting of St. Patrick, Immediately over the president were illuminated letters reading: "Cead mile fallthe."

Among those present, besides the members of the French mission, were: General Horace Porter, American ambassador to France; W. Bourk Cockran, Justice Fitzgerald, J. I. C. Clarke, Colonel Theory of the President were sent to the president were general to France; W. Bourk Cockran, Justice Fitzgerald, J. I. C. Clarke, Colonel Theory of the president was a whole, they may convey an erroneous impression.

5. An occupant who claims by adverse possession must show that he occupied adversely during the entire period of ten years.

6. Where such occupant entered originally

Fitzgerald, J. I. C. Clarke, Colonel Theofore Bingham, U. S. A., Samuel Sloan, Ambassador Cambon, Mayor Low, Rev. John Ireland, D. D., archbishop of St. Paul; Chauncey M. Depew, Consul General Bruwaert, Rev. John McGolrick, D. D., bishop of Duluth; George L. Rives, Judge Joseph F. Daly, Justice Morgan J. O'Brien, John A. McCall, Thomas F. Gilroy, Charles W. Dayton, Surrogate Fitzgerald, Perry Bel-

mont and William McAdoo. Following the dinner President O'Gorman read the following telegram from President Roosevelt, which was received with cheers:

11718. Topping against Jaenette. Appeal from Otoe. Reversed. Pound, C. Division No. 2.

1. In order to justify reformation of a written instrument in any substantial particular the evidence of mistake must be clear, convincing and satisfactory.

2. But it is not required that mistake be shown beyond a reasonable doubt; and where the extrinsic evidence is full, unequivocal and satisfactory, the terms of the instrument alone will not suffice to sustain a decree denying reformation.

11743. Stanisics against McMurtry. Error from Lancasier. Reversed and remanded. Day, C. Division No. 1.

In an action by a grantee of a deed against his grantor to recover for a breach of covenant against incumbrances parole evidence is inadmissible to show that taxes were by tontemporaneous oral agreement excepted from the terms of the deed.

11754. Grand Lodge Ancient Order of United Workmen against Bartes. Error from Colfax. Reversed, with instructions. Barnes, C. Division No. 2.

1. A fraternal beneficiary association having a grand lodge and principal place of business in this state, and which is doing an insurance business therein, is a domestic corporation or association under the provisions of section 91, chapter xilli of the Compiled Statutes, and services of summons should be made upon it according to the provisions of reapter if of the code providing for service of summons on corporatione and insurance companies.

2. Where such association is not privileged from being sued in the county where the action against it is commenced, and it appears in such action and files an answer see which contains an objection to the jurisdiction, and also a defense to the action upon the merits thereof, such answer is a waiver of the jurisdictional questions, and the case should be proceeded in and tried upon the merits thereof, such answer is a waiver of the jurisdictional questions, and the case should be proceeded in and tried upon the merits thereof, such answer is a defense to the action and effection and the case should be proveded in with cheers:

WHITE HOUSE, WASHINGTON, May 23.—To Hon. James O'Gorman, President Friendly Sons of St. Patrick—Please assure the members of the society of my hearty appreciation of their cordial invitation and express to those present at the dinner my very real regret at my inability to be present. I should greatly enjoy being with you if it were possible. I congratulate the society and send to its members and distinguished guests my sincere and best wishes.

THEODORE ROOSEVELT. MAKING BASE BALLS.

Description of the Process, Which is

Said to Take Six Weeks. Cincinnati supplies practically the entire middle west with base balls and something like 125 people earn a living in the base

ball factories of that city. The process of making base balls on wholesale plan is a rather interesting one, consuming in a single season something like 8,000 skins. The scrappings from the shoe factories, of which the "raw" balls are moulded, are stored in cellars of about one acre area, and from this material the balls are shaped by hand. According to quality, the ball is bound by a few or several dozen rounds of cord. The "raw" balls are placed in automatic moulds, shaping the ball, and at the same time pressing out all moisture,

ploye will chape as many as 4,000 of the raw balls in a single working day. The newly pressed balls are then sorted and allowed to dry out for a period of from and blast furnace workers, about equally three to four weeks, when their weight is reduced to perhaps five conces. Something like 200 of these twine-bound leather balls can be found in the bins at all times.

to the tune of 300 gross a day. One em-

In the meantime the skin covers for the balls have been seasoned and dressed on the floor below and, as a last stage in the process, rubbed back and forth against an upright blade, to take out all kinks in the skins and also whiten them. The covers the terms of a trust the party or parties

are cut from the skins by hand and sewa around the balls by women. Each woman is expected to finish fifteen dozen balls daily. From every skin from fifteen to fore the trust and to obtain the benefit thereof.

2. A misjoinder apparent on the face of the petition is waived if not objected to before the trust.

thirty pairs of covers are obtained.

All in all, it takes about six weeks to turn cut a base ball, and the prices of the product will vary from 3 cents to \$1.25. The largest sales are of the 5-cent balls.

the petition is waived if not objected to before the trial.

A. An objection "that the court is without jurisdiction to hear a cause on the equity side of the court" is not a sufficient demand for a jury, even though the action be one at law.

4. Evidence examined and held to support in the judgment. About twenty-eight varieties of balls are now turned out. Within the last five years

the base ball trade in Cincinnati is said to In addition to base balls the local factories turn out a considerable number of foot balls. The skins for these are cut according to pattern and sewn by machine. The stuffing and lacing is the work of girls. Each ball passes through seven pairs of hands in the course of manufacture, while

pass through about forty. An average of

Montauk half-breed, living at Jamaica, in the borough of Queens, N. Y., "I'm 104 years old, and I've taken a fourth bride. I handsome helpmate as Jane White, who did me the honor of becoming Mrs. Miller

Miller is on his honeymoon, and he says that he will not return to Jamaica for several days, reports the New York World. The wedding took place Tuesday night, the ceremony being performed by Rev. De Witt iself in evidence.

2. It is error to submit to a jury by intructions, questions of fact not embraced in the issues or concerning which there is When the bride was a child in Newtown about fifty years ago Miller was a servant

in her family and wheeled her about. When the civil war broke out he enlisted. Recently he went to Jamaica, and there hoarded at the home of Mrs. White, on Catherine street. He gets a pension of money last Tuesday morning he went to

in the issues or concerning which there is no evidence.

3. A land owner through or adjacent to whose lands is constructed and maintained a public road has a right to such advantage from it by way of drainage, as is incidental to its existence, and does not inconvenience the public or individuals, or injure the public work.

11847. Runquist against Anderson. Error from Polk. Affirmed. Hastings. C. Department No. 1.

1. Objections to instructions en masse will not be considered where any of those so complained of are corrected.

2. Instruction that the giving by plaining as surety of a redelivery bond for property levied upon does not of itself estep her from maintaining, after its return and a vain demand for it, an action for its conversion by the execution creditor, approved.

2. Where no estoppel on that ground is "Jane, I've thought a great deal of you ever since you was a little girl. I've got a pension of \$24 a month and a small amount of property. I know I'm pretty old, but won't you marry me? I'm tired of boarding, even if I am a star boarder. I'll turn all my pension money over to you if you become my wife and let me be the real

proved.

I. Where no estoppel on that ground is pleaded, and no offer made to show knowledge by the wife at the time of the facts, not error to refuse evidence that debt for which property was levied upon, was contracted through faith on the creditor's part in husband's ownership of the property in question.

4. Mere subsequent statements by a purchaser at execution sale are not compe-

4. Mere subsequent statements by a purchaser at execution sale are not competent proof of facts stated as against one suing for conversion by such sale of the property sold.

1. When the answer is a general denial and the plaintiff has produced evidence tending to prove the allegations of his petition it is error to refuse to permit the defendant to introduce contradictory evidence and to instruct the jury to return a verdict for the plaintiff.

11676. City of Lincoln against Morrison, Error from Lancaster. Reversed, with instructions. Pound, C. Division No. 2.

1. Misappropriation of a trust fund does not entitle cestul que trust merely as such and for that reason alone to a preference over general creditors of an insolvent trus-

is one of those who have put in a claim over general creditors of an insolvent truswhite hair, and is as brisk as many much 2. In order to obtain a preference, cestul

action.

11503. Knight against Denham. Error from Butler county. Reversed. Pound, C., Division No. 2.

1. A denial of the very words of the allegation of the petition, without denying their substance and effect, tenders no issue.

2. An answer denying that plaintiff's testatrix on a date named "was the owner in fee simple and entitled to the possession" of the land in controversy, and denying that she died "on or about" said date, being consistent with ownership after said date and before she died, and also with ownership before and at said date, subject to a right of possession in someone else, does not put the plaintiff upon proof of title.

crease the estate out of which he seeks a preference or is represented there in some form. But it seems that where such money has gone into the general estate of a trustee who afterward becomes insolvent there is a presumption that it remains therein at his insolvency and the court will not say that it cannot be traced or has wholly disappeared where the contrary may fairly be inferred.

5. It is presumed that moneys drawn out of a fund wherein the trustee has lingled his own money and that of cestul que trust are his own, and so long as any portion of the fund so constituted remains it may be followed and the charge of cestul que trust thereon may be asserted.

6. But if the whole of such fund or a greater portion thereof than that representing the trustee's own money is used by an insolvent trustee in paying his debts, cestul que trust is not entitled to a preference over general creditors for the amount of his money so lost.

7. Property or assets of the insolvent trustee acquired before, or with the proceeds of property held before the trust money came into his hands, and not in sny way mingled therewith, are not subject to any lien or claim in cestul que trust, and the rights of the latter with respect thereto are those of a general creditor only.

8. A change in the form of a portion of a fund in which money of the trustee personally and of cestul que trust has been mingled is not necessarily a withdrawal of such portion. When the trustee retains such portion and dissipates the remainder the portion retained in the altered form is taken to represent such fund and may be claimed by cestul que trust.

9. Where a portion of a fund made up of trust money and of individual money of the

beneficially interested may maintain an action in their own tall to enforce the trust tion in their own tall to enforce the trust tion in their own tall to enforce the trust tion in their own tall to enforce the trust.

2. A misjoinder apparent on the face of the petition is waited if not objected to before the trial.

3. An objection to hear a cause on the equity side of the court is not a sufficient demand for a jury, even though the netton be one at law.

4. Evidence examined and held to support the state of the court is not a sufficient demand for a jury, even though the netton be one at law.

4. Evidence examined and held to support the state of the court is not a sufficient to the state of the court is not a sufficient to the state of the stat

class the authorities thereof for the p-pose of protecting and preserving the p-lic health, comfort and welfare, are e-powered to enact by ordinance all nec-sary and reasonable regulations for collection and removal of all garba-filth and other noxious and unwholeso substances, askes, stable manure, rubb-and other waste and refuse matter ac-mulating in centers of population, a

substances, askes, stable manure, rubbish and other waste and refuse matter accumulating in centers of population, and which, without such regulations, would become nuisances, menacing to the comfort and health of the inhabitants of such cities, and to license persons engaged in such occupation or business.

2. Such cities may also as incident to the power of regulation, grant an exclusive privelege by contract to one person to collect and remove under its own immediate direction and control and in pursuance of regulations enacted for that purpose those noxious and unwholesome substances which are nuisances per se and a menace to the public health.

3. The legislature cannot under the guiss of police regulation, arbitrarily invade private property or personal rights. The test when such regulations are called in question is whether they have some relation to the public health or public welfare, and whether such is, in fact, the end sought to be attained. Smiley v. McDonald, 42 Neb., 5.

4. It is not competent for the city as a police regulation to grant a monopoly to one individual by contract to enter upon the private premises of the inhabitants of the city and at their expense collect and remove those innoxious substances, such as ashes, cinders, stable manure or other substances not in themselves nuisances, but which if allowed to accumulate in unreasonable quantities would become such, or which may be utilized for some beneficial purpose. Such an attempted exercise of power is in excess of the authority granted by the charter, an invasion of the personal and property rights of the citizers, in restraint of trade and unneces-

granted by the charter, an invasion of the personal and property rights of the citizens, in restraint of trade and unnecessarily creates a monopoly.

5. The section of the ordinance of the city of Omaha under consideration held void and unenforceable because an attempted exercise of power in excess of the authority conferred by the charter governing such city.

12542. State ex rel Wright against Savage. Original. Writ denied. Sullivan, C.J.

1. The right of the courts to determine all judicial questions, whenever or however they may arise, is given by the constitution in explicit terms and is indisputable.

2. In order to obtain a preference, cestul que trust must show that the estate, out of which he claims such preference, has been increased to some extent by the misappropriation of the trust property; and he is entitled to a preference to the extent of such increase only.

3. Where a trustee mingles trust moneys with his own funds, cestul que trust, is entitled to a charge upon the whole, and so long as any portion of the mass into which the trust fund has entered remains in any form, it is subject to such charge and may be followed and claimed.

4. The burden is upon cestul que trust to show that the trust money did in fact in crease the estate out of which he seeks a preference or is represented there in some form. But it seems that where such money has gone into the general estate of id does not at all depend upon official id. Whether the writ of mandamus old be granted or refused has been de to depend in every case decided by a court upon the character of the act in stion and not upon the office of the

espondent.

5. The theory that the judiciary in issung a mandamus to a member of the executive branch of the government is thereby indirectly and in violation of the hereby indirectly and in violation of the property beonstitution exercising power properly be-inging to the executive department has seen repudiated by this court in a long en repudiated by this court in a long ie of decisions. The established doctrine in this state

ine of decisions.

6. The established doctrine in this state is that when a law in positive terms enjoins upon the governor or other officer of the executive department a mere ministerial duty, leaving him no choice or discretion in regard to the matter—no judgment to exercise as to whether he will or will not set—that writ of mandamus may issue, and its issuance is an appropriate exercise of judicial power.

7. The doctrine of res judicata is that a question once determined by a judgment on the merits is forever settled, so far as the litigant and those in privity with them are concerned. The question decided is while the decision stands, a scaled and closed question.

8. A public officer is regarded as being in privity with his predecessor when both derive their authority from the same source.

9. A judgment against a public officer in regard to a public right binds his successor in office.

10. All litigants are affected by the rule of the thing adjudged. It is equally binding upon the sovereign and the citizen.

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