Judge Baxter Announces Determination to Begin Mi.ler Trial Monday.

LAWYERS SEEM TO PLAY FOR MORE TIME

Defendant's Counsel Objects to Method of Drawing Special Venire of Jurors, but Court Says Trial Will Proceed.

Judge Baxter of the criminal branch of the district court had a conversation yesterday with Attorneys Ed P. Smith and Nelson C. Pratt which was earnest almost to the extent of being heated.

It concerned the special venire drawn for the trial of Alonzo V. Miller of the South Omaha school board on a charge of bribery. After the conversation ended Judge Baxter said very positively:

I announce that the trial will proceed at the designated hour next Monday unless obstacles insuperable are raised." Attorney, Pratt, after that, hastened to

say: "We are just as anxious as anybody to have the case come to trial and I have no other idea than that it will, Monday. I don't think there will be any objection raised to that panel."

However, it was not Mr. Pratt who seemed most inclined to pick flaws this morning. It was Mr. Smith, and he grounded his objection on the method of drawing the venire. He told the judge that instead of drawing forty names from the box last week and requiring the men to appear Monday, they should have twenty days notice or else the sheriff should be sent out to gather in forty men from the body of the

"Well," said the judge very promptly "If you want a panel secured in the latter fashion, you can have it. We can arrange that right away."

But Attorney Smith then appeared less eager and permitted the matter to drop without definitely committing himself.

Throws Out a Reminder. Judge Baxter also reminded Pratt that last Wednesday, while Smith was engaged in another court, he (Pratt) had said: "You may as well go ahead and draw a special venire. It will have to be done sooner or later anyhow, as you have not jurors enough now," and that he had indicated nothing but approval when the judge made in his docket the following minutes: "December 24: Defendant in court. By consent of parties cause passed and set for trial December 29, 1902 at 9:30 a. m., and a special venire of forty jurors is ordered drawn from jury box to report here at said time."

This initial case against Miller has been in district court seven times already without coming to trial. November 18 he was arraigned after proceedings in county court and pleaded not guilty. December 8 he demanded that notice be given before names of additional witnesses be endorsed upon the information. December 10 the continuance until December 22 was taken. Decem ber 13 he was given leave to withdraw his plea of not guilty and to file a motion to quash. December 15 his motion to quash the information because indefinite was sustained. December 20 he demurred to the state's reply and objected to being required to plead, such objection being overruled, whereupon he pleaded not guilty and the trial was set for December 23. On that day Counsel Smith was busy with another case and on the day following the special venire entry above referred to was made.

DOES NOT LIKE HIS BARGAIN C. R. Diets Would Like to Get Out of Supplying Coal to

C. N. Dietz of the coal company bearing 184 tons of hard coal and been turned down. The commissioners bought 300 tons at \$12.50 per ton from Mr. Dietz and he delivered 116 tons. He wished either to cancel the contract, allowing the commissioners \$15 per remaining ton, or else the commissioners to pay for the same in advance. Mr. Dietz and Mr. Connolly had quite a spirited controversy over the matter last Wednesday, but is yet nothing has come of it.

It is said that Mr. Dietz interpreted the contract to mean that all coal was to be paid for as soon as delivered and that when he discovered that payment of warrants earlier than next July is improbable he desired to break the agreement, arguing further that the raids on the sheds at St Paul indicate to what extremity the public may go in a cold snap.

JUDGE EXPLAINS HIS RULING Gives Additional Reason for Holding Amended Tenant Law Uncon-

stitutional.

Judge Slabaugh's ruling of last Wednesday, in the case of Pusey against the Presbyterian Hospital association, that the amended forcible entry and detainer law of Nebraska is void because unconstitutional, has become a general topic of discussion among lawyers, as the law is involved in a large number of cases yet to be tried and the judge yesterday, for



Gives point to the fact that excessive or irregular eating disturbs the digestion. Nightmare or night hag has it's day time correspondence in the undue fullness after eating, with the belchings and sour or bitter rising so often experienced after

too hasty or too hearty eating. Dr. Pierce's Golden Medical Discovery cures dyspepsia and other diseases of the stomach and its allied organs of digestion and nutrition. When these diseases are cured, the whole body shares in the increased strength derived from food properly digested and perfectly assimil-

"Your 'Golden Medical Discovery' and Dr. Sage's Catarrh Remedy have been of great benefit to me." writes (Prof.) Pleasant A. Oliver, e: Fiola, Fulton Co. Ark. "Refore I used the authors of the control at we mentioned remedies my sleep was not sound; digestion bad: a continued feeling of misery I now feel like a new man. Any one in seed of medical treatment for masal catarrh could do no better than to take treatment of Dr. R. V. Pierce. I know his medicines are all right in this class of diseases."

Sometimes a dealer tempted by the little more profit paid on the sale of less meritorious medicines will offer the customer a substitute as being "just as good" as the "Discovery." It is better for him because it pays better, but it is not as good for you, if you want the medicine that has cured others, and

which you believe will cure you.

Dr. Pierce's Pleasant Pellets cleanse the clogged system from accumulated

WANTS NO FURTHER DELAY the further enlightenment of some who did not understand the ruling, made the explanation that the amended law is unconstitutional because the amendment is no germain to the section which it is intended o amend. The original section read: "Judgments shall be not a bar to any after action brought by either party," whereas the amendment of 1875 read: "A tenant shall be deemed holding over whenever he has failed to pay his rent."

> KNIVES FLASH ON TRAIN Illinois Miners Fight in Cars on Alton and Six Are Badly

SPRINGFIELD, III., Dec. 26 .- In a fight n a Chicago & Alton southbound train leaving here tonight, in which fifteen coal miners from Auburn and Pawnee were the combatants, half a dozen were badly cut with knives.

Cut.

J. H. Havlin, a miner from Greenridge, who was attacked by the others, was brought here suffering from a dozen cuts, and his recovery is doubtful. Havlin made a hard fight and inflicted serious injuries sion is borne out in more ways than one, by upon a number of his assailants.

Passengers were terrified, and when the train was stopped a number of persons left It between stations.

Congressman Bardwell and the superinthe unwilling witnesses to the fight.

BANKERS TO ADD BOARD Consolidated Lake Superior Directors Resign in Favor of

Financiers.

PHILADELPHIA. Dec. 26.-The directors of the Consolidated Lake Superior company met today to consider changes in the organization necessitated by the recent loan. In order to make room for representatives of the banking syndicate W. S. Douglas, W. P. Douglas, Edward C. Lee and James Butterworth resigned and their places were filled by Charles McDonald and the Commercial Trust company of this city. Joseph S. Swartz was elected vice president to succeed E. C. Lee.

FITZSIMMONS WINS FIGHT Knocks Out Mike Ranke, Montana Heavyweight, in Second

Round.

BOZEMAN, Mont., Dec. 26.-Robert Fitzsimmons knocked out Mike Ranke, the heavyweight fighter of eastern Montana, fifteen seconds after the gong had sounded for the second round. Ranke went down before a heavy jab on the jaw.

Jeffries did not appear. It is understood he will train before meeting anyone again with a forfeit up.

GOING General Accepts Invitation to Dine with Club at Emporia Next

Month.

EMPORIA, Kan., Dec. 26.-General Leon-Kansas Day club to respond to a toast at its banquet on January 29. General Funston and Galusha Grow will lso probably be present.

JOHN GREGG, HERO.

Boy Who Will Get There Whether He "Fires" or Goes to College

John Gregg, 14 years old, of Principlo, Md. thinks he would sooner be a locomohis name has offered the commissioners of tive fireman than to have a college educa-Douglas county a profit of \$2.50 per ton on tion. He can be the one or enjoy the advantages of the other, reports the New York times over, he went to Fort Laramie and Sun, for the Pennsylvania Railroad company stands hat in hand (although corporations have no souls) to give John his choice. small garrison at the fort, consisting of The explanation is that the boy saved the Colonial express from plunging into a washout the other day, and the company wishes to do the handsome thing in recognition of danger as the rails began to tremble under the pounding of the great express, for it was flying along at the rate of sixty miles an hour with its precious freight of human lives. John was only a barefoot boy with face of tan (to borrow from the late Mr. Whittier), but he rose to the occasion, tore off his coat, jumped to the middle of the track and waved his tatters with frantic energy as a signal to the engineer to stop his train. Before it came to a standstill John had slipped down the embankment and disappeared. But that boy must be found, for he had not only saved human life, but he had rendered the railroad company an inestimable service. John was hunted up and the benefits of the college education, which the corporation proposed to give him, were pressed upon him. was puzzled, and faltered out: "I guess I'd

> Boys of John Gregg's age prefer the strenuous and spectacular life to the academic. No youngster of 14 wants to be anything else when he grows up but the pilot of a ferryboat, the man at the throttle of a leviathan locomotive or the fierce soldier in khaki alert to fight the battles of his country John Gregg can see nothing worth while in a humdrum college course and a foolish degree at the end of it. For him, the fireman, his sooty face a badge of honor, heaving coal into the roaring furnace under the boiler. John wants to be in employment where something is doing all the time-something that will make him the envy of the rising generation. But it would be wicked to turn his day dream to account or interrupt it rudely, so the soulless corporation has given the boy a year to think t over hoping that before the year expires John will wake up and decide for the college education. If his family had put a money valuation on his herotam, the company could have liquidated the indebtedness by the pareimonious scratch of the pen, bu t recognizes in John Gregg the stuff of which are made strong men, such as a great ratiroad wants in its service. Be sure that f the boy accepts the college education there will be a place for him on the staff

rather be a fireman than anything."

of the Pennsylvania Railroad company when he graduates.

Insurance Merger Abandoned. NEWARK, N. J., Dec. 26 .- President Dryen of the Prudential Life Insurance comannouncing that the plan proposed for the boy and compelled the squaw to eat Gratmerger of the Prudential company and the tan's heart as a punishment for having Fidelity Trust company of Newark had been tried to shield one of the whites.

Killed in Saloon Brawl.

THREE LAKES, Wis., Dec. 26 .- During a urfrei in a salson Prank Schmidt shot George Vilan in the stomach, fatally wounding him. Vilan, it is said, was intoxicated Laramie, but the company surgion, Dr. and assaulted Schmidt and came back, it is Snyder, dressed the chambermaids, housealleged, for a second attack, when the keepers and laundresses of the fort up in shooting occurred.

Cuble Makes a Change.

NEW YORK, Dec. 26.—R. R. Cable, for anny years chairman of the Rock Island oard of directors, has resigned that posiion and been elected chairman of the executive committee. D. G. Reid has been elected chairman of the board of directors. Mr Cable has long desired to lighten his work and the change was made at his re-quest. He is now 79 years of age.

FOLLY LEADS TO MASSACRE

Annals of a Border Tragedy Recalled by a Frontiersman-

BLOODY CHAPTER IN WESTERN HISTORY

Absurd Demand of an Officer Provokes Indian Hostilities-Second-Hand Details of the Horrible Affair.

Those who are familiar with the history of the great west have more than once had occasion to regret the absence of any detailed and definite information on the subject of the massacre of Bouvee's ranch. Students of the history of that section of the republic have long suspected that at the time of writing their works on the western country, Mark Twain and other writers were unable to secure sufficient information in regard to this event to give it more than passing mention, and this conclucertain things that have occurred of late years, and which have tended to throw some light on the subject.

"You are quite right in what you say about the lack of historical information or tendent of public instruction were among the subject of the massacre of Bouvee's ranch," said an old frontiersman to a Washington Post reporter. "It was an event fully as important as that of the Cus ter massacre, yet for some reason which students of American history have never been able to divine, not one of the authorities on western history has ever been able to tell the cause of the trouble, or to state whether the Indians or the whites were in the wrong. However, I have been more fortunate in this respect than the general run of Americans, for, in 1858, I had the good fortune to learn the full and complete details of the massacre, what caused it, together with all other facts as to when and how it originated.

"In 1858 I was stationed at Fort Bridger Wyoming, where I was a member of the Charles H. Tweed of Speyer & Co., New Tenth Infantry, forming part of the army York; Horatio G. Lloyd, president, and of General Albert Sydney Johnston, sent by Thomas Dewill Cuyler, vice president of the government to chastise the Mormons for the part they played in the Mountain Meadow massacre of 1856. While there I formed the acquaintance of an old French-Canadian halfbreed, a trapper, of the name of Pinto, and in the course of time became quite friendly with him. One day I happened to mention the Bouvee's ranch mas sacre, which took place in 1854, the locality in question lying at no great distance from Fort Laramie. He replied that he was on the spot at the time, that he knew all the facts in regard to the matter, and that if I cared to listen to him he would relate the story of the massacre just as it occurred.

Indians were Hungry.

"Early in 1854, he said, the Sloux, Cheyennes and Arapahoes encamped at Bouvee's awaiting the arrival of commissioners from Washington to pay them their annuities and distribute rations. The win TO KANSAS ter preceding had been unusually severe and the Indians were hungry and on short rations. While they were thus waiting, a Mormon appeared on the scene in a wagon, drawn by three oxen, which, in the west, we used to call a spiked team, and the Indians crowded about him eager to trade ponies for the extra ox. By means of their rd Wood has accepted an invitation of the sign language they offered him first one. then two, and then as many ponies as he liked, for the ox, but the Mormon was obdurate and refused to part with the animal at any price. Whereupon the Indians took the ox by force, giving him to understand that they would repay him several times over as soon as they received their money from the commissioners and were

ble to buy whatever they liked. "But the Mormon was not only unusually stupid, but unnecessarily pig-headed as well, and instead of relying on the honesty of the redskins, who most assuredly would have repaid the value of the ox several there laid the matter before Lieutenant Grattan, who was then in command of the some thirty men under arms, together with about twenty others employed in divers

John's presence of mind. He discovered the stupid as the Mormon, and worse still, was more wars with the savage and aboriginal races than all other things combined. when under the influence of liquor, he ordered out his small garrison, and taking the two twelve-pounders, the only artillery at the fort, marched down to Bouvee's ranch

to bring the Indians to terms. "He had as an interpreter a half-breed and through him he called upon the chief of the Sioux, a very old and gray haired man

pany of America issued a statement today the indians dragged her away, killed the

THE ILLUSTRATED

**************** RIGHT AFTER CHRISTMAS

comes The Hlustrated Bee, the brightest and best regular visitor known to thousands of homes. It always has something new, something fresh, something timely, entertaining and instructive for its readers. The number which will be out on Sunday next is no exception to The Bee's eatablished custom. It will contain special articles and illustrations on the following topics:

GEORGE BRUCE CORTELYOU, secretary to President Hosevelt, who is mentioned in connection with the new cabinet position, secretary for commerce, has been prominent in many respects for several years and yet little is known of the real man. His picture is used for a frontispiece and a sketch of his career accompanies it.

WING SHOOTING IN THE SOUTH is the title of a copyright article by Martha McCulloch Williams. Mrs. Williams is one of the best known of American writers, and her sketches of southern life have often charmed the readers of magazines and the better grade of newspapers. In this article she discourses on a topic with which she is thoroughly familiar and does it most entertainingly.

DAILY LIFE IN MEXICO is an article contributed by Cora Chaffee Babcock, a former Omaha woman, who is now living in the City of Mexico. She tells of some features of domestic existence in the southern capital, with which tourists do not come in contact. It is illustrated from photographs taken in the City of Mexico.

CALESTHENICS AT THE HIGH SCHOOL is a full page of pictures made by The Bee's staff photographer at the Omaha High school. The girls who take the physical culture course are shown in various attitudes of their class work. The groups will be found most interesting to patrons of the

AMERICAN SHOES were found tramping all over Europe by Mr. Frank G. Carpenter. His experience in Belgium leads him to write a chapter on shoe leather, and the result is one of his most entertaining letters. Illustrations are from photographs made in Belgium

JUXURY IN MODERN DWELLINGS tells of the many things that are being introduced by builders for the convenience and comfort of people who live in houses. Some novel and ingenious appliances are described.

INDEPENDENT AND INBIVIOUAL pletures are many and of a sort that will attract attention. No department has been omitted or slighted, and the number will be found up to the standard. If you are not how a subscriber you should leave your order with your newsdealer today

THE ILLLUSTRATED

lish colonization have been the cause of which has been repeated time and again in army circles with all manner of elaborations and embellishments, that for having With that Dutch courage which a man feels saved Fort Laramie the government allowed Snyder a drink for each and every star in the flag every day in the week, except Sunday, when he got a drink not only for every star, but every stripe in the American flag as well."

SUPREME COURT SYLLABI

the party has said to the court, in ef-******************* duct the party has said to the court, in effect, that he will be satisfied with either of
such requests and will abide by the choice
which the court shall make of them.

I. When, in an action for damages for the
alleged breach of a contract, the petition
micrecites the agreement in an important
particular, but the answer gives a true recital thereof, which is accepted by the
plaintiff as correct, and the action proceeds to trial and judgment in all respects
as an action upon the contract set out in
the answer, so that it is apparent that the
defendant has not been misled, the variance
between the petition and the proof should,
under section 12s of the code, be treated as
immaterial.

under section 12s of the code, be treated as immaterial.

2. It such a crse as is mentioned in the last foregoing paragraph, if the court has given to the jury the correct rule of damages for the alleged breach of the contract set forth in the answer it is not error prejudicial to the defendant, if he afterward instructs them what is the measure of damages for v breach of a contract substantially such as is set out in the petition, if the measure so given is also equally applicable to the like breach of the contract as rectied in the answer.

12574. Brooks against Stanley. Error from Dawson. Reversed. Duffle, C., division No. 3.

Dawson. Reversed. Duffie, C., division No. 3.

"Where, on a line of the same survey and between remote corners, the whole length of which is found to be variant from the length called for, it is not to be presumed that the variance was caused from a defective survey of any part, but it must be presumed, in the absence of circumstances showing the contrary, that it arose from imperfect measurement of the whole line, and such variance must be distributed between the several subdivisions of the line in proportion to their respective lengths." Crum against Johnson. Error from

lengths.

13%5. Crum against Johnson. Error from Douglas county. Affirmed. Lobingier, C., division No. 1. Unreported.

1. An action on an appeal bond is governed exclusively by section 14 of the code and not barred until after ten years.

2. Where different sections of the statute of limitations are equally applicable, the one allowing the longer period governs.

12416. Elliott against Elliott. Error from Burt county. Affirmed. Hastings, C., division No. 1. Unreported.

1. Section 331 of the Code prevents the giving in evidence by a lawyer, only of confidential communications properly entrusted to him in his confidential capacity.

2. Communications not confidential in their character, and whose proof is necessary to effectuate the instrument, in preparing which the attorney was engaged, are not objectionable on this ground.

3. Evidence in this case examined and held to sufficiently show that the will in question was signed by the draftsman, in the testator's presence, at his previously made request.

4 Evidence examined and held to warrant

2. The contents of letters and telegrams which pass between parties in the course of a business transaction, not otherwise identified than by a witness, who has a direct legal interest in the result of the suit, are not competent evidence as against the personal representative of a deceased person

No. 1240]. First National Bank, Chadron, against Hughes. Error from Dawes county. Affirmed. Ames, C., division No. 3. Unre-

about twenty others employed in divers capacities other than that of soldiers.

"Now, if anything Grattan was twice as stupid as the Mormon, and worse still, was a confirmed sot, one of a class of officers who in the history of American and English colonization have been the cause of which has been repeated time and again in more wars with the savage and aboriginal army circles with all manner of elabora-



Boys don't care. They only think of today. It's the parents who must watch and worry. They know what exposure to the wet and cold means - tender throats, sore lungs, hard coughs. That's why so many homes keep on hand

Ayer's Cnerry Pectoral

Just a single dose, when the cold first comes on, is often sufficient. Your own doctor will explain why this medicine is so good for coughs of all kinds, for bronchitis, and even for consumption. Three sizes: 25c., 88c., \$1.00. J. C. AYER CO., Lowell, Mass. "In the winter, when the children take cold so easily, I always keep Ayer's Cherry Pectoral on hand. It is a wonderful medicine for threat and lung troubles."

MRS. SOFHIA KRIETER, Brooklyn, N. T.

has power to restrain the acts from which such consequences flow.

2. Where the evidence is conflicting and there is sufficient to support the finding of the trial court the judgment will be af-firmed.

12304. State ex rel Johnson against Holm. Error from Antelope. Reversed with in-structions. Albert, C., division No. 2. Un-reported.

reported.

The discretion conferred on the courts by section 623 of the Code is not an arbitrary, but a legal one, to be exercised within the limits of legal and equitable principles. Following Wallace against Sheldon, 56 Neb.,

are included in this mortgaged 00 head of their calves, which are to be branded SH. The above described chattels are now in my possession on, etc. Held that this description was so indefinite as to be void against subsequent purchasers of a part of the herd of calves, without actual notice of the instrument.

2. When chattels are taken under a writ of replevin from the possession of a person not a party defendant to the action he is entitled, on motion, to be admitted to defend his possession without reference to the statute on the subject of intervention.

3. In replevin the plaintiff must recover, if at all, upon the strength of his own title and not because of the weakness of that of his adversary.

12388. South Omaha against Hager. Error from Douglas. Reversed, Oldham, C., division No. 2.

Where an instruction assumes to define where agreement is pleaded in a party time of the district court, for the alleged reason that it was not in issue in the county court where the case was first tried should be overruled where it appears that such matter was pleaded in the lower court and is only set out more fully and in detail in the pleading to which the motion is directed.

2. Where an instruction assumes to define where agreement will be abound thereby in the absence of fraud or mistake. But where such written agreement is pleaded in a manual of the defense, contained in an answer filed in the defense, contained in an answer filed in the district court, for the alleged reason that it was not in issue in the county that it was not in issue in the county that it was not in issue in the county that it was not in issue in the county that it was not in issue in the county that it was not in issue in the county that it was not in issue in the county that it was not in issue in the county that it was not in issue in the county that it was not in issue in the county that it was not in issue in the county that it was not in issue in the county that it was not in issue in the county that it was not in issue in the county th

giving in evidence by a lawyer, only of trusted to that just contained and the carried of trusted to that just contained the case of the control of the cont

servation of the case in hand.

2. An ordinance regulating the speed of electric street cars is immaterial in a case in which it is not shown at what rate of speed a car, alleged to have caused an injury, was, in fact, at the time moving.

12388. Jacques against Dawes. Error from Lancaster. Affirmed. Lobingier, C. Division No. 1. Unreported.

1. A petition in an action to recover the value of corn which sets forth the correspondence between the parties may be open to the charge of pleading evidence, but if the correspondence discloses that the price and terms of payment were communicated to the prospective seller, though no particular corn was mentioned, the petition is not, on account of such omission, objectionable as failing to state a cause of action, if it also alleges the delivery of the corn.

2. A purchaser of land at execution sale is

2. A purchaser of land at execution sale is to all crops planted thereon after confirmation.

3. One who has purchased corn relying B. One who has purchased corn resymp upon the title of the seller, but who is later advised of the claims of a third party, may protect himself in the event of suit on be-half of either claimant by filing an affi-daylt in the nature of a bill of interpleader provided for by section 48 of the code.

LUCKY NUMBERS.

Seven and Eleven Have Brought For-

The Mark and in secretary and successful and the secretary and the tune to Senator Alger.