WHITTAKER IS A FIGHTER

Goes to Jail for Contempt in Refusing to Obey Mandate of Court.

TAKES CASE TO THE HIGHEST TRIBUNAL

Trouble All Arises Over Contest for Possession of an Island in the Platte River in Buffalo County.

(From a Staff Correspondent.)

LINCOLN, Dec. 5.—(Special.)—A petition in error was filed in the supreme court today by Judge Hamer, who was granted a supersedeas in the Platte river island case, wherein Whittaker, McBride and Kilgore are contending for possession of a piece of land in the river in Buffalo county. Whittaker, defendant, is now in jail in Buffalo county serving out a $25 fine for being in contempt of court for having removed back to the land after he had been ejected by order of court. The case has already been to the supreme court, which decided against Whittaker. In the petition in error it is contended that Whittaker could not be guilty of anything because he is living on government land belonging to the public domain, and nobody can put him off except the government, but the government needs him as a homesteader.

It is claimed also that the island is different from other public lands because the act of 1876 was an invitation for settlers to go upon the Fort Kearney military reservation before the land had been surveyed, and it is claimed that Whittaker, as the first lawful settler, cannot be ejected from the premises by any court, and it is the duty of all courts to protect him.

It is claimed further the right of appeal exists to every judgment that may be rendered by a district court; that even though the supreme court should issue its mandate to the district court to render a particular sort of judgment that there is still a right of review under the constitution and the code and upon the ground that the supreme court may not know whether the district court has followed its mandate until it inspects the work of the lower court.

The land in controversy is a portion of the Fort Riley military reservation and is an unsurveyed island. Judge Hamer claims under the law the island belongs to public domain and that his client, Whittaker, being the first settler was entitled to hold it against anyone.

The attorneys for Kilgore and McBride claimed their clients owned the island because they owned lots on either side of it that were separated from it by small branches of the Platte river. Whittaker claims that the failure to survey the island was the mistake of the government surveyor, who not only failed in that, but in surveying other islands in that vicinity. He claimed that such failure to survey should not prejudice the rights of the United States to own the island or the rights of any settler to hold it. He claimed the local act pertaining to the settlement and sale of the Fort Kearney reservation was passed to protect all settlers on the reservation and that he as the first settler was entitled to hold it.

Reverses Lower Court.

Commissioner Duffie, who wrote the supreme court opinion in the case reversed the judgment of the lower court, which favored Whittaker. He held that the failure of the government surveyors to survey the island enabled Kilgore and McBride to hold it and that Whittaker could not raise questions that the surveyor had made a mistake in failing to survey it. He held that while the government might still own it, only the government itself could lay claim to it, and Whittaker could not be heard to say that the island belonged to the general government and that he had the right to settle on and make homestead entry on it.

In accordance with the opinion the supreme court sent out a mandate to the district court of Buffalo county directing that court to enter judgment quieting title to the island in Kilgore and McBride. When the mandate was received Whittaker objected that there was a motion pending in the supreme court to recall and for a rehearing. His objection was overruled and judgment rendered against him quieting title in Kilgore and McBride.

The district judge refused to allow a supersedeas bond and immediately issued an execution and put Whittaker and family off of the land. The sheriff piled the goods of the Whittakers in the highway and compelled the family to leave the premises. A few days later Whittaker made application to another judge of the district court to recall the writ of assistance and to fix the amount of an appeal bond so as to allow Whittaker to review the action of Judge Gutterson. Judge J. N. Paul heard the case and finally rendered a judgment, on November 20, fining Whittaker $25 and costs and committing him to the county jail until the fine was paid and until he would surrender possession to McBride and Kilgore. He also enjoined Whittaker from occupying the premises or from laying any claim to the premises. A warrant for the arrest of Whittaker was issued and he was sent to jail. Before Judge Paul completed the hearing of the applications Whittaker prosecuted a petition in error to the United States supreme court. Justice Sullivan of the state supreme court allowed the writ of error and fixed a supersedeas bond. This bond was given and the case was duly lodged in the United States supreme court.

Five Hundred for Husband.

The sum of $500 was declared by a jury in Judge Cornish's court to be the amount of damages sustained by Mrs. Sarah Beardmore by reason of the death of her husband. The judgment runs against Hargreaves Bros., but it is said that an elevator insurance company will be the party to put up the coin if it is eventually decided that liability exists.

Defends Reciprocal Tax.

This morning Attorney General Prout filed in the office of the clerk of the supreme court a brief in support of the reciprocal insurance tax, which has been attacked in the court by the Insurance Company of North America, a Pennsylvania corporation, which refuses to pay $802.38 into the state treasury, under section 33 of chapter xiiii of the compiled statutes.

Judge Waters this afternoon decided that C. H. Imhoff was entitled to recover $7,500 for the services he rendered Sanford Rector during his lifetime in the handling of his investments. Mr. Imhoff asked for $10,000, which was opposed by two heirs as excessive. Mr. Imhoff is a grandson of Mr. Rector.

DAKOTA CITY SCHOOL CHANGES

Principal Hale's Resignation Follows Kicks—Grammar Teacher Also Steps Out.

DAKOTA CITY, Neb., Dec. 5.—(Special.)—Prof. E. T. Hale, principal of the public school here, tendered his resignation at the last meeting of the board, to take effect immediately, and as there had been general dissatisfaction over the way the schools have been running, his resignation was immediately accepted. Prof. Harry H. Adair, a former assistant principal, has taken temporary charge of the schools, and will continue until the holiday vacation, when a permanent principal will be chosen. Mr. Adair was elected clerk of the district court for this county at the late election.

Only a short time ago Miss Effie Engelen, grammar teacher, resigned, to take effect January 1, when she will enter upon the duties of deputy county clerk under Clerk-elect W. L. Ross. Miss Mary Easton was selected to fill her place.

NEW NEBRASKA SILVER MINES

Columbus Firm Gives This Name to a Breed of Chickens Which Lay Well.

COLUMBUS, Neb., Dec. 5.—(Special.)—The Platte County Poultry and Pet Stock association closed a five days' meeting here today. The exhibits were the best ever seen here. The birds came from many parts of the state. L. P. Harris of Clay Center was judge of the exhibits and announced his awards last evening. A distinct new breed of chickens was on exhibition for the first time. They are called the "Nebraska Silver Mines" and were bred by Swartsley & Son of this city by crossing two standard breeds. They are especially recommended for their laying qualities. W. T. Ernst also had a very large exhibit of pigeons, over twenty varieties being represented.

FORTY PER CENT IN FOUR YEARS

Wonderful Increase in Land Values in Cass County Shown by Recent Sales of Farms.

PLATTSMOUTH, Neb., Dec. 5.—(Special.)—Several farms in Cass county have recently changed owners. Morgan Waybright sold his farm, consisting of 160 acres, and known as the J. C. Cummins farm, two miles west of Plattsmouth, to Joel and Frank Wiles for $100 per acre. Mr. Waybright purchased this land four years ago for the sum of $72 per acre and thirty years ago it sold for $25 per acre.

The Albert Pappe farm, consisting of 300 acres, was sold to Charles C. and Tom E. Parmele for $70 per acre, or $21,000.

Lorenz Brau sold his 80-acre farm for $6,000, and with the money purchased 320 acres of land in Indian Territory.

LAD IS SHOT AND SHOWS PLUCK

Gun Explodes as He Fires, Making Ugly Gash in Forehead, but He Walks Home with Rabbit.

COLUMBUS, Neb., Dec. 5.—(Special.)—A yound lad named Henry Hoppe, living about six miles east of town, was severely injured with an old Zulu gun last evening. He was out hunting and took a shot at a rabbit, when the gun exploded and drove a part of the breech into his forehead, making an ugly gash. Although stunned for a time, the boy quickly recovered, picked up his rabbit and when home, where his wounds were cared for. He will always wear an ugly scar as a reminder of the occasion.

Operation is a Success.

PLATTSMOUTH, Neb., Dec. 5.—(Special.)—Joseph Nejedley has returned to his home in Plattsmouth, last evening, after being in a hospital in Omaha for five weeks. About a year ago he underwent an operation in the same hospital, and over 500 gallstones were removed. For a while he was relieved, but later the old trouble came back, and the doctors decided to remove the gall bladder entirely, which was successfully done, and, although quite weak, there is reason to believe that in the course of time he will be all right again.

Because His Wife Distrusts Him.

BEATRICE, Neb., Dec. 5.—(Special.)—Frank McColery, a well known resident of this city, yesterday filed suit in district court for a divorce from his wife, Mrs. Mary McColery. In his petition McColery alleges cruelty and says that his wife accuses him of infidelity. The case will probably be disposed of when court convenes this month.

Blocks Track for Five Hours.

PLATTSMOUTH, Neb., Dec. 5.—(Special.)—The Burlington's track between here and Pacific Junction was blocked for about five hours yesterday morning owing to an accident in the big cut leading to the bridge. A furniture car attached to a northbound freight train left the track and rolled over on one side. The track was cleared by a crew from the local yards.

In Aid of Y. M. C. A. Building Fund.

BEATRICE, Neb., Dec. 5.—(Special.)—A mass meeting will be held at the Presbyterian church Sunday afternoon, which will be addressed by Governor Mickey and the local pastors. The proceeds of the meeting wil go to the Young Men's Christian association building fund.

Turned Over to Kansas Authorities.

BLOOMINGTON, Neb., Dec. 5.—(Special.)—The five alleged bank robbers held here were, upon a requisition of the governor of Kansas, and on order of Governor Mickey, turned over to the Phillips county authorities.

Otoe Farmers Husk More Corn.

BEATRICE, Neb., Dec. 5.—(Special.)—Farmers in this vicinity have resumed corn husking after a delay of a week, which was caused by the recent snow and wet weather.

BOY KILLED BY FAST MAIL

Was Standing on Track and Did Not Notice Approach of Train.

STEAM OBSCURES ENGINEER'S VISION

Eye Witnesses Testify Before Coroner's Jury, Which Brings in a Verdict of Accidental Death, with No Blame on Anyone.

GRAND ISLAND, Neb., Dec. 5.—(Special Telegram.)—Gussie Burnett, the 7-year-old son of Mr. and Mrs. E. R. Burnett, was struck by the eastbound fast mail at 2 o'clock this afternoon and instantly killed. He and a brother and two other lads were on their way to the stock yards and were going along the track. A freight was pulling out for the west. The boys were throwing pebbles at the cars. None of them saw the fast mail approaching from the west.

The engineer of the mail train did not see the lads until close upon them, owing to the steam escaping from the freight engine. When he had passed this engine he saw the boy but a few rods ahead. He whistled, but the lad did not hear it. The pilot of the engine struck him and hurled him to the next track south. He was instantly killed.

Fortunately none of the other boys were standing on the track.

An eye witness, a stranger on the way to the sugar factory, corroborated the statements of the boys as well as of the engineer, Wood W. White. Coroner Roeder called an inquest, the jury finding death accidental and no blame attachable to anyone.

M. Burnett, the little fellow's father, is an employe of the Smith Hide company. He and Mrs. Burnett had just departed for Central City to visit friends over Sunday. The accident happened within a quarter of a mile of where Robert Cowan was killed ten days ago.

LODGES SELECT OFFICERS

Fraternal Societies Take First Step for Work of the Coming Year.

NEBRASKA CITY, Neb., Dec. 5.—(Special.)—Berwick castle No. 57, Highland Nobles, have elected the following officers for the ensuing year: John Shannon, P.; M. H. Collins, P. P.; Mrs. Louis Freidenberg, E.; Miss Caroline Sheer, counselor; C. S. Jessup, secretary; Fred Sheer, treasurer; George Morris, sentinel; I. J. Henry, guard; M. H. Collins, trustee.

BEATRICE, Neb., Dec. 5.—(Special.)—Queen City council No. 76, Fraternal Aid association, met last night and elected the following officers for the coming year: Mrs. L. A. Bates, president; S. A. Werner, vice president; J. R. Craig, secretary; E. F. Wilt, treasurer; Drs. G. H. Brash and L. W. Studley, medical examiners; Mrs. M. Brown, chaplain; M. M. Murray, guide; Mrs. M. M. Hafele, observer; Maude Werner, sentinel; A. H. Hollingworth and O. K. Reedy, trustees.

WEST POINT, Neb., Dec. 5.—(Special.)—At a regular meeting of the Knights of the Maccabees the following officers were elected: Sir knight commander, F. W. Melcher; sir knight lieutenant commander, Thomas Seip; sir knight record keeper, S. Reppert; sir knight finance keeper, S. Reppert; chaplain, William Provaznik; medical examiner, Dr. H. L. Wells; sergeant, Frank Rubin; master-at-arms, Alva Webb; first master of guards, Ed Sass; second master of guards, Gus Newman; sentinel, Alfred Geist; picket, Henry Bank; trustee, Charles Sass.

At a meeting of the members of Rebecca lodge the following officers were elected: Miss Gertie Miller, noble grand; Miss Lena Bromer, vice grand; Miss Lizzie Long, secretary; Louisa Wichert, treasurer.

NEBRASKA CITY, Neb., Dec. 5.—(Special.)—The local camp, Woodmen of the World, have elected the following officers for the ensuing year: Thomas Slack, consul commander; F. M. Golden, acting lieutenant; John Clinkenbeard, banker; I. M. Palmer, clerk; John Noah, escort; J. H. Sneed, watchman; Louis Spangler, sentry; B. F. Bryan, manager, and Drs. Wilson, Ginn and Crudup, physicians.

WALKS HOME AFTER RUNAWAY

Team Dumps Driver in Ditch and He Spends Night There Before Regaining Consciousness.

PLATTSMOUTH, Neb., Dec. 5.—(Special.)—George E. Berger, while on his way home from this city lost control of his team and was dumped out by the roadside, sustaining such injuries as to render him unconscious. About 4 o'clock the next morning he regained consciousness and walked home, a distance of about three miles. His head, face, left leg and side were badly bruised.

Farmers' Institutes Prove Profitable.

BLOOMINGTON, Neb., Dec. 5.—(Special.)—A farmers' institute held here this week was well attended by the farmers of the surrounding country. C. H. Barnard of Table Rock lectured on "Horticulture and Soil Culture." D. P. Ashburn of Gibbon, Joseph Wing of the Breeders' Gazette and C. M. Llewelling of Brownville lectured on different topics pertaining to successful farming, stock and poultry raising.

CRETE, Neb., Dec. 5.—(Special.)—An interesting and profitable farmers' institute was held in the city hall yesterday afternoon and evening. Both sessions were unusually well attended, the hall last night being too small to seat all present. Profs. Lyon and Hecker of the University of Nebraska agricultural department were present in the afternoon and spoke on the subjects, "Corn Growing" and "Dairying." In the evening Prof. Sweezy, formerly of Doane, now of the university, gave an interesting stereopticon lecture on the subject, "Do the Planets Control the Weather?"

Diphtheria Rages in Columbus.

COLUMBUS, Neb., Dec. 5.—(Special.)—A 2-year-old son of Mr. and Mrs. Samuel Kavich died last evening from diphtheria. The remains were taken to Omaha today for burial. There are other members of the family afflicted with the same disease, and in another family in the same part of town four are down with it. The premises are quarantined and every precaution is being taken to prevent an epidemic.

Famous Will Case to Be Decided.

HUMBOLDT, Neb., Dec. 5.—(Special.)—Judge Thompson of Grand Island will convene court in this county December 21, at which time he will render his decision in the famous Miles will case, which has been hanging fire in the courts for so long. The decision involves the possession of property amounting up into the millions.

Congregationalists Have New Church.

AINSWORTH, Neb., Dec. 5.—(Special.)—A new Congregational church building, costing $3,000, was dedicated here, free of incumbrance. Rev. Harmon Bross of Lincoln delivered the sermon. The church has an enrolled membership of between sixty and seventy.

Celebrates in New Home.

BURWELL, Neb., Dec. 5.—(Special.)—Postmaster D. S. Begnor is just completing a large new house and as yesterday was his twentieth wedding anniversary, friends of Mr. and Mrs. Begnor, on invitation of Miss Rebecca Begnor, to the number of 200, gathered at the new home to celebrate the occasion.

CATTLE DIE FROM CORNSTALK

Farmers in Clay, Adams and Butler Experience Heavy Losses from the Dread Disease.

HASTINGS, Neb., Dec. 5.—(Special.)—Reports from Clay and Adams counties say that quite a number of the farmers have experienced cattle losses from cornstalk disease and considerable apprehension is felt by cattle owners about allowing cattle to forage upon the cornstalk lands.

LINWOOD, Neb., Dec. 5.—(Special.)—The cornstalk disease has broken out in this section. One farmer lost fifteen head in a few hours, others from one to three. Most of the farmers were very conservative about letting their cattle run in the stalks, only letting them in for a few hours each day, but this plan did not prevent the breaking out of the disease this year, as it has in the past. If no remedy can be found the farmer will suffer severely, as most of them depend on the stalks for their rough feed.

Visit Boyhood Scenes.

WEST POINT, Neb., Dec. 5.—(Special.)—Theodore Bombeck and William Ringbeck started on a journey to their fatherland, in Westphalia, Germany, last Monday. They expect to remain about three months before returning to their respective homes in this county, their chosen place of abode. They will visit the scenes of their boyhood days and many of the prominent cities of the old world.

Hastings College Endowment.

HASTINGS, Neb., Dec. 5.—(Special.)—President Wight of Hastings college has returned from the east, where he has been for some time soliciting funds for the endowment of the college. He succeeded in raising $4,000, which brings the total endowment to $34,000. This figure, it is thought, will soon be raised to $50,000 and a new building erected.

Hastings Has More Lights.

HASTINGS, Neb., Dec. 5.—(Special.)—The city council has ordered thirteen new arc lights established and they are now being set in place. This is the result of complaints from various parts of the city.

Thieves Take Ten Fur Coats.

PENDER, Neb., Dec. 5.—(Spetial Telegram.)—Sneak thieves broke into the harness store of J. B. Wingert about 2 o'clock this morning and carried away ten fur overcoats valued at $200.

New Trial for Jerry Crowley.

STURGIS, S. D., Dec. 5.—(Special.)—Jerry Crowley, who was convicted at Sturgis, during the recent term of Meade county circuit court, of horse-stealing and sentenced to one year and ten months in the penitentiary, has been granted a new trial. It was claimed at the time of the trial that Crowley had perfect title to the horses alleged to have been shipped out of the state by him, and the new trial has been granted by Judge Rice on the showing made by his attorneys.

DOCTOR AND NURSE RUN AWAY

Story of Physician from Cleveland, O., Who Settled in Mitchell, S. D., and Suddenly Disappeared.

MITCHELL, S. D., Dec. 5.—(Special.)—The mystery which surrounded the sudden departure of Dr. K. B. Waite and his wife has been solved by the arrival of the Daily World of Cleveland, O., which gives the story of his escapade and elopement, which took place last May. Dr. Waite and his wife came to Mitchell during the week of the corn palace and decided to make their home here. He claimed they had been traveling for the last two years for the benefit of his wife's health and were now ready to settle down. By their very pleasing and attractive manners they made a good impression on many people in the city and the doctor was employed in his official capacity. He had elegantly furnished offices and was in a fair way to do a fine business.

Suddenly Dr. Waite and his alleged wife left town owing several bills and hints were heard that they were not married. Correspondence was taken up with the Cleveland papers and it now transpires that the doctor was connected with the staff of the Huron Street hospital in Cleveland and had a large practice which he disposed of and left the city mysteriously. At the same time Miss Sarah Smelser, a graduate of the Huron Street hospital, also left Cleveland, and their whereabouts were unknown until they appeared in Mitchell. It is believed they got a tip that they were being pursued.

Dr. Waite sent his wife to Toronto, and it has been learned that he is located somewhere in Ohio, intending to return home to his wife and children, whom he deserted.

Lives with Hole Through Body.

DEADWOOD, S. D., Dec. 5.—(Special.)—With an opening entirely through his body large enough to admit a man's hand, Ernest Yahr, who received a charge from a shotgun through the stomach, is rapidly getting well. The danger from the wound in the intestines has entirely passed. There is still doubt as to whether he will have the perfect use of his limbs. Part of the hip bone was blown away by the charge of shot, and the surgeons dressing the wound took out most of the crumbled bone. They are in hopes that what was left will reunite, although it is expected that much of this will work out.

New Lutheran Church at Sioux Falls.

SIOUX FALLS, S. D., Dec. 5.—(Special.)—The members of St. Olaf's Lutheran church at Humboldt, this county, have recently dedicated a handsome new church building. The dedication exercises were of an elaborate character, and were participated in by hundreds of persons.