Rebbers Evidently Belong to the Anti-Corporation Faccion.

TAKE NOTHING BUT COMPANY MONEY

After Securing the Cash Men Disappear and Police Have Been Unable to Secure a Trace of Them Up to the Present.

When the street car on the Docge street line reached Thirtieth and Bristol streets last night at 12:30 o'clock two men, with masks and with revolvers, surprised Conductor D. A. Hood and demanded his With uplifted hands Hood was compelled to stand and let the men relieve hird of all the cash he had in his pockets and also a revolver.

Have you any money of your own?" "A little of it belongs to me," he replied;

'We want only the company's money,' the man said, and he handed the conductor

the amount be claimed as his own. One of the masked men then examined the revolver, and removing all the car-

"I guess that gun isn't very dangerous now, so you can keep it. too." Apparently no attention was paid to the

motorman. There were no passengers on Keeping the car men on the anxious seat by threats of what they would do if any attempt was made to move until told it

would be all right, the masked men deliberately backed off into the darkness and disappeared. As speedily as possible the car was run back to the barn and word sent to the police station with as good a description of the robbers as the car men could give.

The whole affair occupied only a few minutes and the conductor was so busy doing what he was told to do that he was unable to give anything but a very general description of the men. Their dayguise and masks prevented an accurate description. excepting that of height and general size Detective Pattullo and Afficer Dan Bald-

and endeavored 'a get some trace of evidently had the whole affair carefully

### **EDWARDS ATTENDED THE BABY**

Salt Lake Man Has a Good Time at the Union Depot with Strange Kid,

In all John Edwards' years of life in Salt Laize City he never had an experience with bandes which can be compared to the one be met yesterday in Omaha. In future he will not engage to care for strange infants while the mothers leave for a short time. As a result of Sunday's adventure he missed his train, causing him to remain one day longer away from his own bables in the hands of an irate father.

Mr. Edwards had been to Indianapolis walting at the Union station for the Union Pacific train west he noticed a woman walking back and forth with a fretful child in her arms. His sympathy went out to her and he endeavored to help her by diforgotten the incident. But the woman had not. His fatherly appearance had evidently won her confidence. She approached

"Won't you be kind enough to take the baby for a few minutes? I'll come right

The secret of Mr. Edwards' tribulation was that he took the baby. It was ten minutes yet until time for his train to go. He dandled the little one on his knee for five minutes and the mother did not appear. He walked the floor of the waiting room for three minutes more and she did not come Another minute passed by and he was beoming anxious. He looked around, but or.ld see no person whom he would trust with the baby. The seconds ticked away.

All at once Edwards awoke to the realigation that his train was in motion. dropped the child on a seat, seized his suit case and ran frantically out of the depot and across the platform. People laughed

## (IN STRICT CONFIDENCE.

Women Obtain Mrs. Pinkham's Advice and Help.

She Has Guided Thousands to Health. How Lydia E. Pinkham's Vegetable Compound Cured Mrs. Fred Seydel.



It is a great satisfaction for a woman to feel that she can write to another telling her the most private and confidential details about her that her letter will be seen by a woman only, a woman full of sym-pathy for her sick sisters, and

above all, a woman who has had nore experience in treating female ills than any living person.

Over one hundred thousand cases of

female diseases come before Mrs. Pinkham every year, some personally, others by mail, and this has been going on for twenty years, day after day. Surely women are wise in seeking advice from a woman of such experience, especially when it is absolutely

Mrs. Pinkham never violates the confidence of women, and every testimouial letter published is done so with the written consent or request of the writer, in order that other sick women ay be benefited as they have been. Mrs. Fred Seydel, of 412 North 54th Street, West Philadelphia, Pa., writes:

Dear Mrs. Pinkham: "Over a year ago I wrote you a letter asking advice, as I had female ills and could not carry a child to maturity. I received your kind letter of instructions and followed your advice. I am not only a well woman in consequence, but have a beautiful baby girl. I wish every suffering woman in the land would write you for advice, as you have done so much for me."

Just as surely as Mrs. Seydel was ured, will Lydia E. Pinkham's egetable Compound cure every woman suffering from any form of

No other medicine in all the world has such a record of cures of female troubles as has Lydia E. Pinkham's Vegetable Compound. Therefore no prudent woman will accept any substitute which a druggist may offer.
If you are sick, write hirs. Pinkham,
Lynn. Mass., for special advice. It is
free and always helpful.

STREET CAR CREW HELD UP to see him tear down the track after the

He came back and took the baby on his knee, jerking it savagely. It began to cry at a great rate. All at once he was confronted by a mus-

ular, black bearded man, who seized the haby from his hands and east at him a MISSOURI AVENUE PAVING TO BE ORDERED look of anger. What right have you to abuse this hild?" roared the stranger. "Is it yours? Well, I guess not. For one small copper

the back of your neck." Edwards slunk away. He sent a telegram to his wife and walked slowly up

penny I'd beat your face completely into

OMAHA CURFEW NOT THE ONLY Mexico Has a Similar Custom with Quite a Difference Between Observance There and Here.

"The curfew will catch you if you don't watch out," were words weighted with the curfew whistle shattered the atmosphere in Omaha. Time has dulled the scare and familiarity bred indifference to the screaming signal of youthful bedtime. They towns. Curfew means what the law says for young and old.

A correspondent of Leslie's Weekly, traveling in Mexico, bumped against the curfew law in one town and tells what happened, "And now," he writes, "for the where the curfew is still rung every night, something probably now unknown in any Port Au Prince, the capital of the West dozen of tourists have 'done' the region through which we have just passed in the therefore, that not one person in a million Mexican town where everybody who ven-Santa Maria two of our party-the doctor will be light.

and myself-were arrested and put in jail. "By Mexican standards, Santa Maria is a full-fledged modern city. From an American viewpoint it is a medieval kind of promptly went to the scene of the rob- of the town is lord of all the peons for miles around. It has an alcalde, or mayor highwaymen, but, no trace of them and that mayor is a sort of czar over the uld be found. They had a good start and whole country. One of his predecessors, decades ago, established the custom of ringing the curfew every night at 10 o'clock. This custom the present mayor maintains-not only as to the mere ringing, but also as to the enforcement of the letter of the curfew law. And woe to the peor or stranger who is caught abroad after 10.

#### CIGAR CLIPPER WORKS WELL Inquisitive Woman Loses End of One Finger Through Investigating Machinery.

A young colored woman named Sallie Catrell of 1009 Capitol avenue, while in drug store on Douglas street yesterday became interested in a cigar cutter on the show case, and to learn how the machine worked, pressed one of her fingers into Utah, and narrowly escaped a beating at one of the holes. She drew the finger out with an accompaniment of screams The point of the finger was cut off as and was on his return home. While he was neatly as if it had been a cigar. The wound was dressed in the drug store and she started to go home, but fainted on the sidewalk. The patrol wagon was called and the woman was taken to the station. where Police Surgeon Kennedy, after converting the attention of the baby to a big siderable trouble in quieting his patient on account of an attack of hysterics, case. The young one ceased crying and a dressed the wound, after which she was ble to go home.

> Announcements of the Theaters The determination of the Conried Metropolitan Opera company to give Omaha a season of opera fully as complete in every way as the original production in New York City has led them to a very heavy extra outlay in Omaha, as they have constructed the stage at the Auditorium and fitted it out completely at their own ex pense. It is now up to the people of Omaha, as a mark of appreciation of this generous purpose, to reciprocate by a heavy attendance on Wednesday and Thursday

One of Shakespeare's greatest plays, a melodrama and a masterplece of tragic omposition is "Macbeth." It holds a ascinating interest for its intensity of action as well as for its sublime poetry and the peculiar air of the supernatural that prevails through it all. No other piece has enlisted greater attention on the part of players than this. It will be offered at the Boyd theater this evening for a single performance by a company at the head of which is John Griffith. Miss Louise Ripley is the Lady Macbeth of the cast. The supporting company is said to be large and ompetent, while the management has laid particular stress on the scenic equipment of the piece, and promises some genuine sensations in the way of the spectacular.

Mystery About Injuries.

Barney Haley, a well known character in police circles, was found at 9:15 o'clock last night on the Union Pacific tracks about fifty feet west of Fourteenth street. The men who found him notified a watchman near that point and left without giving their names or much description of the circumstances. Haley had a number of very severe scalp and other wounds, all of which, the police think, could have been caused by a fall. Haley could give no connected account of what had happened as he had been drinking considerably. His wounds were dressed by Police Surgeon Kennedy and Haley was taken care of at the police station.

Deserter Captured. John L. Tilt, who was reported from Fort Crook as a deserter from Company D. Thirtieth United States infantry, while on duty at the Omaha reservation, was arrested last evening by Officer Crowe. After his arrest Lilt gave the name of John A. Dennison, but after examination proved he was the right man Lilt admitted his name and that he was a deserter. His parents live at Fork River, Manitoba. Lilt deserted May 6, 1904, and managed to keep safely out of trouble until his affection for a woman in the red light district in this city drew him back. He will be returned to the military authorities at Fort Crook.

Condemn Unsenting of Adams. Condemn Unscating of Adams.

DENVER, March 26.—The Denver Trades and Labor assembly today voted down a resolution setting April 30 as a day on which organized labor throughout the state should assemble at the state capital and demand the resignation of Governor McDonald in favor of the "rightfully elected Governor Alva Adams." A resolution condemning the action of the general assembly in unseating Adams was adopted.

Albert Still in Asylum. A letter to The Res from Hans Albert, the well known violinist, denies the rumor in circulation that he had been paroled from the asylum at Lincoln, where he is now confined, but declares for the information of his friends that he expects to be at liberty again in a few weeks.

### LOCAL BREVITIES.

John A. Dennison of Chicago was ar-rested yesterday by Officer Crowe and booked as a deserter. The Woman's Alliance of Unity church will give a dancing party at Metropolitan hall on Friday evening, March II Thieves entered the barn of Simeon Ro-husek, 282 Farnam street, Saturday night and stole a set of harness. George Nixon, 318 South Ninfh street, was thoughtless enough to shoot pigeons inside the city limits Sunday afternoon and landed in jail.

Rev. Alexander Corkey, a native of Ire-

### AFFAIRS AT SOUTH OMAHA

again and Edwards tossed it up and down Council Meeting This Evening Will Be a Most Important One.

Start Will Be Made on One Big Public Improvement and Many Other Matters Will Be Given Attention.

This evening the city council will meet and pass the Missouri avenue paving ordinance. This ordinance will have been published two weeks and will be passed just as soon as the clerk reads it the third time. This ordinance provides that the street is to be paved from Thirteenth street to Twenty fourth street with vitrified paving block laid on a concrete base. Under this ordinance two-thirds of the cost of this imthrobs of fear for youngsters when first provement will be paid by the city at large and the balance by the abutting property owners. As soon as the ordinance is signed by the mayor the city clerk will be directed to advertise for bids for the paving and do things differently in some Mexican grading. The curbing contract has already been let. When let the contract will call for the completion of the work in ninety days and it is thought that if work can start soon after April 1 that this can be accomplished.

Mayor Koutsky will send in names of votstory of the queerest town of all, a town ers to fill vacancies on the Registration board, which meets on Saturday of this week for a revision of the registration. Ar other town in the western hemisphere save rangements are now all completed for the election to be held on April 4. Three mem-In an republic of Hayti. Not a baker's bers of the Board of Education are to be chosen and the park and city hall bond proposition is to be submitted to the votlast dozen years. I venture to believe, ers. There is a posmbility that the council may permit the voters to suggest a preferin the United States knows of the little ence for a site for a city hall building, but such a selection would be no ways binding tures from his doorstep after 10 o'clock on the council. So little interest is maniat night is arrested. Yet there is such a fest in the bond propositions that it is fig-It is called Santa Maria-and in ured that the vote on these propositions

Judges and clerks of election will be required to fill out forms giving the total vote on School board candidates and the vote on the bond proposition as soon as the balplace-a relic of feudalism, where the boss lots are counted and to get these returns to the office of the city clerk immediately after the total is known. By doing this the people will be given the returns before

> Engle Lodge Club Rooms. Aerie No. 154, Fraternal Order of Eagles will establish club rooms at the Eagles' hall. Twenty-sixth and N streets, about May 1. This was decided at a committee meeting held yesterday. Four rooms on the econd floor of the Hunt block, where the odge has headquarters, have been rented. There is to be a parlor, reading room, buffet and bath rooms. According to estimates made the furnishings of these rooms will cost about \$870. Decorators will start to work shortly after April I and the rooms will be decorated and furnished nicely. William Wright will most likely be chosen as steward and he will have an assistant and a porter. It is thought that it will take t least a month to fix the rooms for ocupancy. .The South Omaha aeric now has 600 members and there is quite a large balance in the treasury. The club rooms will be used by members only.

> Regular Spring Vacation. All classes in the public schools will have ne week's vacation, commencing today, with the exception of the high school. This is the time for the regular spring vacation. Owing to the high school moving to its new building the high school was given a vacation a couple of weeks ago. The vacation at this time will enable a number of teachrs and principals to attend the nineteenth annual meeting of the North Nebraska Teachers' association, which is to be held at Norfolk, Neb., on Wednesday, Thursday and Friday of this week. J. A. Mc-Lean, superintendent of schools here, is president of the association. The schools will close on June 2 for the summer vaca-

Surprise Was Complete. Members of the Lotos club gave a surprise party to Mr. and Mrs. H. C. Richmond their home on North Twenty-fourth street Saturday evening. The Lotos members came in a body, accompanied by an express wagon laden with chairs, tables and well filled baskets. Then they took possession and played "500" until a late hour, concluding with the presentation of an elegant rocking chair and center table, the acknowledgement of which was made by Mr. Richmond in a felicitous speech. The visitors were Messrs, and Mesdames John M. Tanner, E. D. Munshaw, C. A. Melchor, H. D. Moseley, W. S. King, H. E. Tagg. W. W. Fisher, J. A. Cavers, J. G. Kelly, Dr. and Mrs. E. L. Delanney, Miss

Parkhurst and Dr. Marcus King. Magie City Gossip. Robert B. Montgomery was reported to e some better yesterday.

Fred H. Meyers of Chamberlain, S. D., is sere visiting Colonel J. G. Martin and here visiting Colonel others for a few days. G. I. Beeman, with the Rock Island road at Des Moines, is spending a two weeks' vacation here with friends. The Misses Grace and Ethel Dobbs have returned to their home at Sait Lake City, after spending a month with friends here. The republicans will hold a big rally at Workman temple on Tuesday night. Candidates for the Board of Education will speak.

L. L. Rushing, a prominent stockman located at Rawlins, Wyo, left for home yesterday after visiting friends for a few

Washakie tribe No. 39, Improved Order of Red Men, will meet Monday evening at fasonic hall for the transaction of some Fred Garlow came down from Elm Creek

Gladstone's Physician Gives Warning Against a Growing American Custom.

The growing habit amongst Americans of taking a mint tablet or some other socalled digestive after eating a hearty meal, is something that Sir Andrew Clarke, Mr. Gladstone's physician, advises strongly against, saying: "It is absolutely dangerous to take into the stomach remedies which are popularly supposed to aid in the direction of food."

There is nothing known to the science of nedicine that can perform the work of the human stomach. Drugs do not and cannot digest the food. They simply decompose it. What can be more revolting or disgusting than the thought of taking something into the stomach that is going to turn the good food you have eaten into a mass of corruption.

The only way to overcome indigestion and its evil effects is to remove all irritation, congestion and inflammation from the stomach, liver and intestines, and Mi-o-na is the only agent known that will do this. When a Mi-o-na tablet is taken before each meal every trace of irritation and inflammation is removed from the stomach and digestive system, and those organs will extract from the food all that goes to make good, rich blood, firm muscle, steady nerves and a sound, healthy body. If you suffer with headaches, indigestion, flatulency, spots before the eyes, vertigo or dizziness, palpitation of the heart. sleeplessness, or any stomach trouble, get a fifty-cent box of Mi-o-na from Sherman & McConnell, one of our most reliable drug firms, whose faith in the remedy is shown by their offer to return the money d, will lecture at immanuel Baptist if Mi-o-na does not give complete satis-irch, Twenty-fourth and Binney streets, faction.

yesterday with three cars of sheep. Mr. Garlow is well known in South Omaha, having resided here for a number of years. The police are still looking for Bird Leil, olored, who is supposed to have fired the colored, who is supposed to have fired the shot that broke bones in one of Ed Webb's legs at a dance on N street Saturday night.

legs at a dance on N street Saturday night.
Frank G. Hagin, who has served as a mail carrier here for about four years, has tendered his resignation to Postmaster Etter. Mr. Hagin proposes going into business at Ansley, Neb.
Rev. M. Carlson of Stromsburg and Rev. R. Osback of Bristow, Neb., will hold evangelistic services at the Swedish Baptist church; Twenty-second and K streets, every evening this week.

M. Takryama, a Japanese employed at

M. Takryama, a Japanese employed at Cudahy's, was arrested yesterday after-noon for shooting inside the city limits. The Jap was shooting at a mark at For-tieth and L streets when gathered in by a

DR. R. V. PIERCE IS VINDICATED. Magazine Publishers Acknowledge Their Inability to Substantinte Churges.

Dr. R. V. Pierce of Buffalo, whose Golden Medical Discovery" and "Favorite Prescription" have established themselves n the patent medicine field as remedies extraordinary merit, has every reason o feel highly elated over the outcome of his suit for \$206,000 damages ugainst a well known periodical. This publication declared in a recent issue that Dr. Pierce's medies were not all of what they were represented to be. Now that the doctor has brought this suit for damages, the publication has come out with an article in which the publishers acknowledge that they had absolutely no proof of their PRETTY COMPLIMENT.

Comley's "History of New York State" as this to say of Dr. Pierce:

Every nation owes everything that disinguishes it as an individual nation to the few men who have had the courage to step beyond the boundaries prescribed by prossional tradition or social custom. "Of this class of men the medical proession has furnished a distinguished example in the successful and justly cele-

brated physician, Dr. R. V. Pierce of

Buffalo, N. Y., and any history treating

of the industries of the Empire state would be incomplete without a sketch of his earnest and useful work. "That his success is real is evidenced by the fact that his reputation, as a man and physician, does not deteriorate; and the fact that there is a steadily increasing demand for his medicines proves that they

are not nostrums, but reliable remedies for

BUSY INSTITUTION. Dr. Pierce has a large laboratory in Buffalo and a hospital for the treatment of various ailments. The place is full at all times, and treatment is given by the best of graduated specialists. The doctor is not only one of the principal manufacturers of patent medicines in the country, but he is one of the greatest advertisers. He knows that to deal propertly with the public it is necessary to let the public know you have something that

is needed. Human nature is very contradictory. merchant advertises his business, and it is all right. He has \$1 silks he is selling for 64 cents; but if a doctor undertakes to tell the public that he has a new remedy for a particular ailment he is frowned upon-by thing he knows is good he can't expect to sell it unless he lets the public know about it, too. Fake advertisements carry a business for a short time only. Lincoln was right when he said: "You could not feel all the people all the time." A business which, like Dr. Pierce's, has stood the test for 40 years, could not have been built up on fake advertisements.

officers and other noted members will be W. H. KELLOGG, F. M. M'CULLOUGH, Recorder.

#### SUPREME COURT SYLLABI

13378. Schwingle against Anthes. Appearom Clay. Motion for rehearing overruled Per curiam.

13396. Carly against Boner. Appeal from Dawes. Former judgment of reversal adhered to and decree entered in this court confirming and establishing appellant's right to redemption heretofore effectuated.

1. In an interlocutory order entered on a rmer appeal of this case considered and ld not to be res judicata as to the rights of the parties to redeem land from a decree rendered in the action and sale made in pursuance thereof so as to become the law

rendered in the action and sale made in pursuance thereof so as to become the law of the case.

2. The statutory right of redemption from sale differs essentially from the equity of redemption proper, it is usually self-executing and to enjoy the benefit thereof no proceedings are ordinarily required to be had in the courts to make such right effective. This right or privilege is given by statute to the owner of the equity of redemption or his grantee.

2. Whether or not the redemption of real estate by the owner of the equity of redemption or his grantee from the decree and the sale made thereunder as effectuated is with or without prejudice to the rights of one claiming as the assignee of a morigage, is not determined. This question is not within the issues raised by the application to redeem, nor is it involved in the exercise of the statutory right of redemption from a decree and a sale of real estate made in pursuance thereof.

1388. Jandt against County of Sloux, Error from Sloux. Affirmed. Letton, C.

Certain live stock in herds was removed on the 7th day of April from Sloux county, in which it had been situated for three years and where it was legally liable to be listed and assessed for taxation, to Box Butte county, in which it was listed and assessed improperly. The owner paid the taxes in Box Butte county. Held, that these facts do not relieve him from paying the tax properly and legally assessed in Sloux county.

the tax properly and legally assessed in Sioux county.

13729. Roberts against Lemont. Appeal from Madison. Reversed and remanded. Oldham, C.

1. A valid agreement in restraint of trade must be established by clear and satisfactory proof to warrant a court in restraining its breach by injunction.

2. In determining the validity of a contract in restraint is only such as is necessary to afford a fair protection to the interests of the party in whose favor it is given, and not so much to interfere with the interest of the public.

2. A contract in restraint of trade, which is not limited either in time or space, is against public policy and void.

15721. Loomer against Loomer. Appeal from Dawes. Affirmed. Ames. C.

1. An examination of the evidence shows that the plaintiff failed to produce a preponderance thereof in support of the grounds alleged for a divorce, and the judgment of the district court dismissing the

ponderance thereof in support of the grounds alleged for a divorce, and the judg-ment of the district court dismissing the action is affirmed.

e action is affirmed.

13733. Sinyter against Schwab. Error.
Clay. Reversed and remanded with directions. Oldham, C.
Where the owner of two contiguous lots of land conveys one of such lots to A, and subsequently conveys the other to B, held: That in a contest between A and B concerning the boundary line between the lots, A cannot for the purpose of establishing title by adverse possession against B tack his own possession to that of the common grantor.

13739. Furey against Holmes. the common granter. 13739. Furey against Holmes. Affirmed.

13739. Furey against Holmes. Affirmed. Letton. C.

1. Where an affidavit in a proceeding to revive a judgment alleges the existence of the judgment, the fact that it is unpaid and that it has become dormant, these allegations are sufficient to justify the district court in making a conditional order of revivor and upon proper service and default to sustain an order making the revivor absolute.

2. The five years' lapse of time from the rendition of a judgment or the issuance of an execution thereon to the time that a judgment becomes dormant, only raises the presumption of payment thereof and a judgment becomes dormant, only raises the presumption of payment thereof and does not deprive the judgment of all vitality. Wright against Sweet, 10 Neb., 190.

3. In this case the fact that the transcript of a judgment in justice court was filed in the office of the clerk of the district court after the judgment had become dormant did not prevent the district court from acquiring jurisdiction of proceedings to revive the judgment.

137:0. Noide against Gray. Error, Clay, Reversed. Oldham, C.

1. In an action by a vendes to recover damages for breach of contract to convey land, the measure of damages is the difference between the price agreed to be

paid an the value of the land when the paid an the value of the land when the breach occurred with interest.

2. To recover such a measure of damages the vendee must either be evicted from the premises or rescind his contract, because of the failure or inability of the vendor to perform, and thus place the vendor in statu que.

3. Evidence examined and held: Not sufficient to sustain the judgment of the trial court.

12898. Wheeler against State. ex rel. Clement, Error, Cass. Reversed and dismissed. Ames. C.

1. Statutory amendment and repeal by implication being expressly forbidden by the constitution are not favored by the courts.

courts.

2. An act of the legislature can deal with no subject not clearly expressed in its litle, hence an act to provide for "incorporation, government, regulation, duties and powers" of a certain class of cities can contain no valid enactment relative to the powers or duties of a county officer.

to the powers or duties of a county officer.

2. Section 57 of Chapter xix of the Session Laws of 1901 is void.

13724. Patterson against First National bank. Error, from Richardson, Reversed and remanded. Letton, C.

1. Where a petition is for money had and received, the answer plends payment by check, and the reply alleges facts negativing and disputing the payment alleged in the answer, the reply is not inconsistent with the petition and it is error to strike out its allegations. But where proof is admitted of the allegations stricken from the reply in error is without prejudice.

2. Where a check for \$450 was drawn by a depositor in a bank upon her deposit, payable to the same bank or order, its indorsement by the bank and return to the drawer as paid, is prima facte evidence of the receipt by the bank of the amount evidenced by the check. It is not conclusive. denced by the check. It is not conclusive, but it is open to explanation or denial.

3. Where a depositor draws a check upon a general deposit in a bank, payable to the bank or order, the purpose being as the depositor claims to change a general deposit subject to check into a time deposit in the same bank, and the check is returned indorsed paid and the bank seeks to avoid liability by a plea of payment the burden of proof is upon the bank to show that the amount of the check was posid at the depositor's request to a third party.

4. Evidence offered as to other transactions held properly rejected as res inter allos acta.

5. Where the hand to pay is also the hand to receive payment may be made by a

o receive payment may be made by a ransfer of credits upon the books of a ank.

6. Where a depositor claims that a check 6. Where a depositor claims that a check for \$450, payable to the First National bank, was given by her to the same bank for the purpose of changing her general deposit therein into a time deposit, and the only controversy whether or not a certain "time check," signed by the president of the bank by his individual name alone was fraudulently delivered to her in exchange for the check instead of a certificate of deposit, or whether the check was paid, the money loaned by her to the bank president individually, and the "time check" given by him as evidence of his own debt, it is error to instruct the jury that before the plaintiff can recover she must prove "not only that the \$450 check was fraudulently procured from her, but that the time checks given her were fraudulent," since the plaintiff does not claim there was fraud in procuring the check.

um does not claim there was fraud in pro-curing the check.

1407. State ex rel, World Publishing company against Fink. Error from Doug-ias Affirmed at costs of respondent. Ames, C.

After a petition for the foreclosure
of tax liens pursuant to an act of 1863 entitled "An act to enforce the payment and ollection of delinquent taxes and special assessments on real property," has bee filed in the office of the clerk of the dis filed in the office of the clerk of the dis-triet court, and the county treasurer has published the required notice in a suitable newspaper, he will not be compelled by mandamus to republish the same on the sole ground that such newspaper was not designated for the publication by the proper official authority.

14114, Henry Kock against State, Error from Cuming. Proceedings in error dis-missed, Barnes, J.

The supreme court has no jurisdiction

ment of the district court in a criminal case unless proceedings in error are instituted therein within six months after the rendiion of such judgment.

1372. State of Nebraska against Gower. Error from Thurston. Affirmed. Ames. C. 1. Whether an information in quo waranto lies against a county judge who, under color of his office, has usurped pubic functions and powers in excess of the urisdiction conferred upon him by law, is diverted to but not decided. A. O U. W. Notice.

Members of 159 and all members of the A. O. U. W. are invited to attend a smoker given by North Omaha lodge No. 159 at the temple, 119 North 14th street, Wednesday evening, March 29. Grand lodge has proceeded to judgment in the district has proceeded to judgment in the district

> tion in error.
>
> 13408. State ex rel McClay against
> Mickey. Original. Writ denied. Holcomb. C. J.
>
> 1. A law cannot be established by the certificates of the clerical officers of the senate and house of representatives made after the adjournment of the legislature sine die, for the purpose of authenticating a purported act as one having been duly passed by the legislative branch of government.

and while it is pending here on peti-

sine die, for the purpose of authenticating a purported act as one having been duly passed by the legislative branch of government.

2. The bill herein considered, not being authenticated by the signature of the presiding officer of either branch of the legislature as required by Section II. Article 3 of the constitution which provides "that the presiding officer of each house shall sign in the presence of the house over which he presides while the same is in session and capable of transacting business, all bids and concurrent resolutions passed by the legislature" held, not to have become a law.

18570. Parrotte against Dryden. Appeal from Buffalo. Judgment of the district court modified. Barnes, J.

1. Where an executor in good faith expends money for court costs and attorneys' fees in an honest effort to prosecute a claim in favor of his estate he is entitled to recover for such expenses, although his suit in such behalf may be unsuccessful.

2. But where an executor or administrator advances money for court costs and attorneys' fees for his own benefit or for the benefit of those whose claims are adverse to his estate, he cannot recover against bia estate for such advances.

3. Held, that the pleadings in this proceeding are not sufficient to warrant a personal judgment against the executor.

13570. Parrotte against Dryden. Appeal from Buffalo. Judgment of the district court modified. Barnes, J.

1. Where the supreme court has, in a

CALUMET Baking Powder

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C.
1. Under the provisions of section 161, chapter 12a, Compiled Statutes of 1901, known as "Omaha Charter," a board of equalization when properly in session with due notice given acts judicially and its action within its jurisdiction is not open to collateral attack except for fraud, gross injustice or mitake. justice or mistake.

injustice or mistake.

2. The provisions of section 164 of the same chapter, "no court shall entertain any complaint that a party was authorized to make and did not make to the city council sitting as a board of equalization, nor any complaint not specified in said notice fully enough to advise the city of the exact nature thereof, nor any complaint that does not go to the ground work, equity and justice of the tax" do not apply to cases of "fraud, gross injustice" within the meaning of this clause must be so flagrant and excessive in its nature as to substantially deprive a citizen of his property or a part prive a citizen of his property or a part thereof without due process of law and be

from Adams. Reversed. Ames, C. 1. Evidence examined and held not to support the verdict.

13718. McDowell against First National bank of Sutton. Error from Clay, Judgment of the district court modified. Old-ham, C.

proper proceeding, declared as a matter of law, that a judgment of the district court is valid and can not be collaterally attacked, such holding will ordinarily be treated as the law of the case in all subsequent proceedings involving the determination of that question.

2. A final judgment rendered on a demination of that question.

2. A final judgment rendered on a demination of that question in equity to obtain a new trial in a former suit, is an effectual bar to the prosecution of another action on the same grounds and between the same parties for that purpose.

3. One who obtains a mortgage on real estate while actions are pending which necessarily determine the rights of the mortgagor in the mortgaged premises, with full knowledge thereof, takes it subject to the judgments that may be passed in such suits, and in case the mortgage is adjudged to have no interest in the premises he takes nothing by his mortgage.

1852. Carroll against Cunningham. Appeal Custer. Reversed and remanded. Ames, C.

1. Petition for the dissolution of an alleged partnership and for an accounting and settlement of partnership affairs, examined and held to state a cause of 1863. Wead against Omaha. Appeal from Douglas. Reversed and remanded. Letton, C.

1. Under the provisions of section 181, chapter 12a, Compiled Statutes of 1901, known as "Omaha Charter," a board of equalization when properly in sossion with due notice given acts judicially and its action within its jurisdiction is not open to collateral attack except for fraud, gross lijustice or mistake.

reberate A's testimony.
13722. Lutz against Pender National Bank. Error from Thurston. Reversed with directions. Oldham. C.
1. A pleader is not required to anticipats matters in avoidance of his allegations. Larsen against First National Bank of Pender, Neb., 32 N. W. Rep., 729, followed and appropried

Pender, Neb., \$2 N. W. Rep., 728, followed and approved.

13727. Loyal Mystic Legion against Jones. Error from Adams. Reversed and action dismissed. Letton, C.

1. The proper registration of a party wall agreement is constructive notice to all purchasers of the real estate affected by the agreement, and such notice is as effectual and binding as actual notice.

2. Party wall agreement construed and held that it was the intention of the parties that the privileges, duties and liabilities given and imposed by the contract should pass to all persons obtaining title to either of the lots upon which the wall stood by grant from the original parties. Held further, that the agreement liaelf operates as an assignment to his grantee of the claim of the builder of the wall for compensation for its use as soon as that person was designated by his deed.

there of without due process of law and be confiscatory.

4. Where proceedings up to the time of assessment by the board of equalization are regular and in its determination the board errs in such a manner as to cause an excessive and unjust apportionment of the tax upon a particular piece of property such error as a general rule will not defeat the whole tax in equity.

5. If such excesses cannot be determined by computation and without proof the court should determine the amount of tax justify as practicable from the evidence produced on the trial and require the payment of the same as a condition of granting relief against the excess.

1934. Swobe against Marsh. Error from Douglas. Reversed. Letton, C.

1. The district court has jurisdiction in proceedings to assign dower.

2. The county court has jurisdiction to assign dower only when the right to dower is not disputed by the heirs and devisees or any persons claiming under them or either of them.

13713. Bagwill against Wrouchton. Error from Adams. Reversed. Ames, C.

1. Evidence examined and held not to

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