UNION PACIFIC NIGHT TRAIN

Harriman Line Plans for Late Passenger to Accommodate Patrons.

WILL HELP OMAHA AND THE COUNTRY

Commercial Club Working for This Train, Which Would Be Great Advantage to All Interests.

Plans are being considered by the Union Pacific to give their patrons a train out of Omaha about midnight. The benefits of this new train are apparent and the commercial interests of the city have worked for years for just such a train which would give the people of the state an opportunity to come to the metropolis to do their shopping, remain to the theaters and return the same evening. As it now is, the late train leaves Omaha before 6 o'clock, giving but a short time in the city without remaining all night.

"The late train would have a great many advantages," said a prominent official. "People could remain to the theaters and this would be an extra inducement for more to come to Omaha to shop. Many trains arrive from the east in the evening and people now have to remain until the morning trains, and these could continue their journey the same night with a train leaving Omaha about midnight. No doubt when more motor cars are built dummy service will be established on the Union Pacific."

Work on Double Tracks.

Work is progressing nicely on the double tracking between Lane and Valley, the track between Waterloo and Valley being now in use and the other work being pushed as fast, and large forces of men are able to do it with the enormous number of trains constantly moving over that division. No date has yet been set for the completion of this work, but the finish is not far distant.

The motor cars which the Union Pacific has in service have been doing satisfactory work and the officials of the road are elated over the remarkable showing made. During the first seventeen days of this month 105 trips were made by motor cars, and of this number the cars were exactly on schedule ninety-seven times and late but seven times. On the times which they were late the average was less than ten minutes.

While the official trial trip of motor car No. 8 proved conclusively the success of the new McKeen motor which was built in the Union Pacific shops, the splendid record these cars are making in actual service has cemented the confidence the officials had in the new cars, and all are now anxiously awaiting the time when more will be built and put in service. These will be built in the Union Pacific shops in Omaha and their construction will give employment to many skilled laborers.

New Burlington Train.

The Burlington has prepared a new time card, effective October 28, which will give people residing on the Grand Island line a better opportunity to come to Omaha in the forenoon to do their shopping. The new schedule calls for a new train to be known as No. 37, which will leave Lincoln daily, except Sunday, at 6:45 p. m. and arrive at Grand Island at 10:20 p. m., making all stops. Another new train, No. 38, will leave Grand Island at 7 a. m. and arrive at Lincoln at 10:10, connecting there with No. 92, which arrives in Omaha at noon.

This new schedule will give the Burlington four trains from the west to Omaha, No. 4 arriving at 9 a. m., No. 92 at noon, No. 2 at 3:40 and No. 42 at 6:30 p. m. By the addition of the new trains, caused by the heavy travel, the through trains to and from the northwest will stop only at Aurora, York and Seward between Lincoln and Grand Island.

NOT THE SAME J. C. LINDSAY

Member of School Board Joked Over Namesake Who Gets Sixty Days.

James C. Lindsay of Douglas Printing company disclaims any knowledge of J. C. Lindsay, who was reported in last evening's Bee as having got sixty days for wife beating. The similarity of names has caused no end of chaffing, of which Mr. Lindsay has been the victim. The house telephone has been kept going by people who suggest certain cures for blemishes his wife is supposed to have received, and one angry taxpayer called and said that sixty days was not enough for a man who voted to increase the teachers' salaries, as Mr. Lindsay is a member of the Board of Education.

GILLAN GETS THE WILD WEST

Manager of Auditorium Closes Contract with Miller Bros., for Their Famous Show.

J. M. Gillan, manager of the Auditorium, has returned from Kansas City, where he secured a contract with the Miller Bros. to bring their famous wild west show to the Auditorium for the week following the Horse show. As the show will exhibit in Kansas City Sunday, it will be impossible to open in Omaha until Tuesday night. This is the famous troupe from Miller Bros. 101 ranch in Oklahoma. They are not in the show business, but simply have their cowboys and Indians out for a little vacation. When the show was first put on at the ranch 40,000 people witnessed the performance. A feature of the show is a 17-year-old girl riding the wildest broncho. Settlers crossing the plains in schooners are attacked by Indians and the wagon burned after the settlers are killed.

SUPREME COURT SYLLABI

In the supreme court of the state of Nebraska the following opinions were filed October 4, 1906:

14205. Union Pacific Railroad company against Connolly. Error, Douglas. Affirmed. Albert, C. Division No. 2.

1. A verdict is the unanimous decision, made by a jury and reported to the court, on the matters lawfully submitted to them in the course of the trial of a cause and under our practice must be in writing and signed by the foreman.

2. A mere statement by the foreman in open court that the jury have agreed, without stating the nature of the decision they had agreed upon, is not a verdict.

3. On the trial of a cause, where two parties were joined as defendants, the jury were called into court and asked if they had agreed upon a verdict; the foreman answered that they had agreed as to one of the defendants, naming him, but not as to the other, not stating the nature of their decision; the court expressed a doubt as to its right to receive a verdict as to one defendant without a verdict as to both, and asked counsel for suggestions; receiving no response, it discharged the jury without receiving a verdict as to either defendant; no objection was made or exception taken to such course. Held: That the error, if any, was waived.

4. After the jury were discharged the foreman delivered a package of papers to the bailiff, who in turn delivered them to the court; among the papers was what purported to be a verdict in favor of one of the defendants, signed by the foreman; it was delivered at a time and under such circumstances as to afford no opportunity to poll the jury or apply the ordinary tests to determine whether it was the unanimous decision of the jury. Held: The trial court promptly refused to treat the paper purporting to be a verdict as the verdict of the jury.

5. Where a railroad company for many years has permitted the public without objection to cross its tracks at a certain point, not in itself a public crossing, it owes the duty of responsible care towards those using such crossing, and whether such care has been exercised is ordinarily a question for the jury.

6. The mere fact that warning of the approach of a freight train, or portion of a freight train, backing upon and over such crossing, was given by ringing the bell and sounding the whistle, does not of itself show that the defendant company had discharged its full duty to those using the crossing; whether, in view of the time, place and circumstances, further precautions were required is, ordinarily, a question for the jury.

7. That the crossing was located in a populous district and over a system of tracks and switches within the corporate limits of a city; that it was in common use day and night by a large number of people; that such use had been so extensive and long continued that the defendant company was chargeable with notice of it; that a portion of a freight train was backed upon and over the crossing without displaying any lights on the rear car, or having any person stationed on such car, or at the crossing to give warning of its approach, would warrant the inference of negligence on the part of the company operating the train, although the bell was rung and whistle sounded.

8. Evidence examined and, Held: Sufficient to sustain a finding that plaintiff was injured as a proximate result of a failure on the part of the defendant company to give due warning of the approach of a train backing upon and over such crossing, and that the plaintiff was not guilty of contributory negligence.

9. Where contributory negligence is relied upon as a defense, it is error to instruct the jury that where negligence on the part of the plaintiff is disclosed by him in making his case the burden of proof is upon him to show that he was not guilty of contributory negligence; but as to the defendant, it is error without prejudice.

10. An instruction which states that it is the duty of a person at a railway crossing to look and listen for approaching trains is not erroneous because of the omission to state the direction in which such person is required to look, especially when a more specific instruction is not asked by the complaining party.

11. Where the entire answer of a witness to a question is excluded, but substantially the same matter, so far as competent, is received in answer to a subsequent question, the error in excluding the former answer, if any, is cured.

12. Certain evidence tendered by the defendants examined and, Held: properly excluded.

13. On the facts stated, Held: That a verdict of $27,500 as damages for an injury resulting in the amputation of both legs about five inches below the knee is not excessive.

14282. Lincoln Traction company against Brookover. Error, Lancaster. Reversed and remanded. Epperson, C. Division No. 1.

1. In an action for damages against a street railway company for a personal injury, caused by the alleged negligent starting of one of its cars, when the plaintiff, a passenger, was in the act of alighting, the defense being a general or special denial, the burden of proof never shifts, but remains with the plaintiff, to prove that the injury was received substantially as alleged.

2. When in an action for damages for a personal injury, inflicted while the plaintiff, a passenger, was in the act of alighting from a street railway car, the evidence is conflicting, as to where the plaintiff alighted, an instruction that "plaintiff became a passenger of the company, and continued to be its passenger up to and including the act of alighting at his proper stopping place," is erroneous.

1427. Citizens Insurance company against Herpolsheimer. Error, Lancaster. Affirmed. Duffie, C. Division No. 2.

1428. Phenix Insurance company against Herpolsheimer. Error, Lancaster. Affirmed. Duffie, C. Division No. 2.

1416. Brinegar against Copass. Appeal from Richardson. Affirmed. Duffie, C. Division No. 2.

The overflow waters of a stream, especially where they run in a well-defined course and again unite with the stream at a lower point, must be regarded as a part of the water course from which the overflow comes and cannot be regarded or dealt with as surface water. Chicago, Burlington & Quincy Railroad Company against Emmert, 53 Neb., 237, approved and followed.

If you have anything to trade advertise it in the For Exchange column of The Bee Want Ad page.

MUSIC AND MUSICIANS.

(a) "Allemande," prelude to suite in G minor; (b) Perpetual Motion.....
.....Franz Ries
Robert Cuscaden.
Recitatif et Air d' Oedipe a Colone. Opera de Sacchini (1786).....
Mr. Ellis.
"Carmen" Fantasie.....J. Hubay
Robert Cuscaden.
Ciascun lo dice, "La Figlia Del Reggimento".....Donizetti
Mrs. Turner.
(a) Sunset.....Buck
(b) The Herb of Forgetfulness..Von Fielitz
(c) Sands o' Dee.....Clay
Mr. Ellis.
(a) Serenade.....A. d'Ambrosio
(b) Dance of the Elves.....Popper-Hallr
Robert Cuscaden.
(a) Sunshine Song.....Grieg
(b) Songs My Mother Taught Me..Dvorak
(c) "Twas April (by request).....Nevin
Mrs. Turner.
Duet—Io Vivo, E T'amo.....Campana
Mrs. Turner and Mr. Ellis.

The above program was given last night at the new Schmoller & Mueller recital hall. It would be a fine thing for musical Omaha if such entertainments could be given often. It was consistent and artistic throughout, and the artists who took part are to be commended for their sincerity and true scholarly feeling. A goodly audience was present and showed its appreciation in applause and a general warmth of demeanor.

The first part of the evening was devoted to music of the strictly classical and difficult order. Mr. Cuscaden opened with the prelude to the G minor, Franz Ries, suite, which he played with broad tone, and much feeling. His higher numbers, especially the Popper "Dance of the Elves," was received with great enthusiasm. Mr. Cuscaden has a sure technique and a confident manner of playing which is most satisfying. Mr. Ellis was at his best in his first number and the "Sands o' Dee." In the latter he did some exquisite work in head tones. He is on the right track. He has a good idea of values which he should pursue.

Mrs. Turner was heard to the best advantage in "Songs My Mother Taught Me," Dvorak, and Grieg's "Sunshine Song." Mme. Muentfering was the accompanist and bore her share of the work nobly, though one could wish sometimes that she did not use so much volume in her tone when playing a secondary part.

It is much to be hoped that this coterie of people will give other programs during the winter. This one last night was most enjoyable. MARY LEARNED.

WOOL MEN WIN DAMAGE SUIT

Silberman Brothers Get Decision in Eleven-Thousand-Dollar Action in Federal Court.

A verdict has just been rendered at the session of the United States circuit court at Lincoln in the case of Ferdinand Silberman and others against the Northwestern State bank of Weston Springs in favor of Silberman and others for $11,779.40 for damages growing out of a wool transaction at Hay Springs in April, 1905.

The amount of wool involved was 6,600 packages, which had been bought by the Silberman Bros. of Chicago and loaded into cars on the Northwestern road for shipment to Chicago at 18 cents per pound. The bank at Weston, through which the transaction was being negotiated, did not have sufficient cash on hand to meet the full payment of the Silberman draft for the consignment of wool, and in the interim of settling the final transactions between the Silberman Bros. and the bank one of the brokers at Hay Springs resold the wool to other parties, with which the Northwestern State bank was interested and the bank brought a suit in replevin to recover the wool from the Silberman Bros. A suit in injunction was instituted by the Silberman Bros. in United States court against the bank and an additional suit for damages also was filed, and this latter suit is the one just settled by a verdict for the Silbermans at Lincoln.

Lecture on Saint Paul.

Rev. Arno Clemens Gaebelein of New York City, editor of the religious periodical Our Hope, lectured at the First Presbyterian church Thursday evening on Saint Paul's Epistle to the Colossians, the talk being a careful discussion of the main ideas of the work. It was planned that a second lecture should be delivered at the church Friday evening also, but as Rev. Gaebelein is obliged to leave Omaha in order to reach Winnipeg in time to fill a date there, he will lecture in the afternoon instead at 2906 Farnam street.