Nebraska

NET WEIGHT CLAUSE GOOD

State Wins Four Out of Five Cases Brought Under Food Act.

COTTOLENE CASE IS LOST

Decision of the Lower Court on This Product is Reversed Because of a Defect in the Statute.

(From a Staff Correspondent.)

LINCOLN, May 23.—(Special.)—The decisions in several test cases made on the net weight provisions of the pure food law were given today by the state supreme court, the provisions being sustained in full by the ruling. The principal cases were against the National Biscuit company. The cases involved the legality of sales of package goods by the retailers and interstate and intrastate sales as well. In the entire list of cases the legality of the pure food law is upheld, the supreme court further holding that the package provision holds to lard, but not to cottolene.

In the cottolene decision the holding was that the latter product may be sold without being branded as to net weight or measure, because the state law prescribes that any compound sold under its distinctive name is not misbranded if it be labeled with its name, ingredients and manufactory.

Chief Justice Reese wrote the opinion pronounced by the supreme court in the biscuit cases and Judge Letton those in the lard and cottolene cases.

Details of Decision.

Writs of habeas corpus were asked for by Lew Agnew of Pawnee City, who purchased goods of a dealer in another state; by Burton T. Page, state agent for the National Biscuit company, who shipped goods from one point to another in Nebraska, and by O. J. King, a retail grocer of Lincoln, who bought goods of the state agent in Lincoln and sold them at retail here. These parties were arrested for violating the state law. They instituted habeas corpus proceedings, alleging that they had been unlawfully deprived of their liberty.

They allege the state pure food law to be unconstitutional for these reasons:

1. That rules and regulations governing food products have already been prescribed by act of commerce and no state can enforce a statute making different provisions.
2. That the state law is an attempt to interfere with interstate commerce.
3. That the articles sold were pure and wholesome and not adulterated.

Chief Justice Reese in his opinion scores the stipulation of facts entered into by the attorney general and the county attorney of Lancaster county on one side and John L. Webster, attorney for the defendants, on the other. The opinion says.

"Before entering upon a discussion of the case we wish to enter our most emphatic disapproval of the manner of submission upon the so-called agreed stipulation of facts, and to say that, had we known before argument of what we would have to encounter in the perusal of the stipulation of facts we certainly should have refused to allow the cases to be submitted thereon and have insisted that a reasonable stipulation should be filed."

In the Page Case.

In the case of Page, the state agent of the company, the court says:

"When goods, enclosed in a receptacle or package, are shipped from a point in one state to a point in another, they become and are a part of the interstate commerce of the country and retain that distinctive character until sold or the original package in which they were consigned is broken after they arrive at the point of destination. If the original package is broken by the consignee for the purpose of the sale of the smaller units or packages contained in the original enclosure the interstate quality of the whole is lost and the consignment becomes a part of the body of the property of the state and is subject to its laws."

Cracker Suit.

In the Agnew case, involving crackers shipped in from another state, the court finds:

"An original package, as governed by interstate commerce law, is that which is delivered by the importer to the carrier at the initial point of shipment and retains its form and contents until received by the consignee in the same condition as when shipped. If upon arriving at its destination in a foreign state the package is broken and its contents in smaller units offered for sale and enters into the retail commerce of the state the distinctive quality of interstate commerce is lost and the goods become at once subject to state laws."

In the King case, involving a purchase of crackers from the manufacturer's agent in this state after the package had been broken, the buyer subsequently exposing the goods for sale in his retail store, the court decides that the same principle of law laid down in the Agnew case will govern.

The application of the three men for writs of habeas corpus are all dismissed and they are remanded by the court to the custody of the sheriff.

Lard and Cottolene.

The lard and cottolene cases were simply appeals brought to the supreme court in the usual manner. Freadrich Bros. of Lincoln were the defendants in the former, while the cottolene proceeding was brought against Jacob Lichtenstiger of Lincoln. Convictions were secured and fines imposed.

In the lard case the defendants alleged that the package sold was put up by a retailer and therefore the sale without net weight branding was permitted by the statute. In respect to this pleading, the court holds:

"A corporation whose principal business is manufacturing and selling a certain food product in package form, is at whole, sale, held not to be exempted from the requirement of the statute as to marking the weight or measure of the net contents of the package on the label by reason of the fact that it also maintains at its packing house a retail store at which it sells packages of the same nature at retail to consumers."

The court says the Nebraska statute relating to net weight and measure does not deprive one who sells a "misbranded" package of the equal protection of the laws and is not violative of the fourteenth amendment to the constitution of the United States. The judgment of the district court is affirmed, Judges Fawcett and Rose not sitting.

Women and Contracts.

It may have been the general rule that a married woman without a separate estate cannot make a contract, but the supreme court of Nebraska has decided that a woman, who has no separate estate may employ an attorney to begin and prosecut or defend an action for divorce and make a contract to compensate the attorney for his services in such action. This is the holding of the court in the case of M. D. Taylor against Mary J. Winder, a suit from Madison county. Judge Fawcett and Chief Justice Reese dissent. Judge Sedwick wrote the opinion of the court.

Mrs. Winder sued for divorce and employed Mr. Taylor as her attorney. The attorney later brought suit to recover his fees for services. The district court gave him judgment and this is now affirmed by the supreme court.

Cuts Down Sentence.

The court reduced the penitentiary sentence of William Coffman of Otoe county, from two years to one year. He was convicted of stealing a saddle from a barn, the jury finding him guilty of burglary and larceny and breaking and entering in the night time.

Detailed Census of Nebraska Counties

... the census has announced the population of Deuel county, according to its minor civil divisions, as follows:

	1910.	1900.	1890.
DEUEL COUNTY	1,786	2,130	2,891
Big Springs precinct	665	221	214
Chappell precinct, including Chappell village	756	317	521
Chappell village	529	...	...
Swan precinct	365	237	295

Bankers Score Bank Guaranty Measure

Would Give Law Fair Trial to Show Its Alleged Evils to the People.

(From a Staff Correspondent.)

LINCOLN, Neb., May 23.—(Special.)—In speeches delivered at the annual meeting of Group I, Nebraska Bankers, held here today, there were no roses thrown at the banq guaranty deposit act and none of the assembled bankers made reference to it except to criticise it in various ways. Nevertheless the consensus of opinion is that the law should be given a fair trial in the state in order that its alleged evils may be fully shown up to the people.

In making his opening address, Dan J. Riley, president of the group, said that no depositors in the state had lost because of the failures of any bank in the state.

"Beyond question," he continued, "our people have forsaken speculation for investment. However Wall street looks upon that, the Nebraska banker will view his opinion with euanimity. Justice White's opinion upholding the constitutionality of the bank guaranty deposit act fetters by a legal and moral obligation my conduct and my business, but not my mind. The people of the state have begun to realize that the banker is a physician sitting at the financial pulse of the nation."

Court is Ready to Try Preacher

Divines of United Brethren Church Meet to Try Rev. J. A. Smith of Beatrice.

BEATRICE, Neb., May 23.—(Special Telegram.)—Three ministers of the United Brethren church, Presiding Elder Epley of York, Rev. M. O. McLaughlin of Omaha and Rev. Mr. Jones of Lincoln, arrived in this city this evening to act as a court to try Rev. J. A. Smith, pastor of the United Brethren church here, against whom charges have been preferred. Dr. Schell of York will prosecute the case and Rev. Mr. Burkett will defend Mr. Smith. The trial opens tomorrow and some sensations are expected.

The following are the charges preferred against Mr. Smith: First, that his financial record is not good. Second, that his leaving the Blue Springs church to come to Beatrice was irregular. Third, that he is guilty of wreckless and irresponsible statements. Fourth, that he has circulated false and slanderous statements concerning the United Brethren hospital here. Fifth, that he has disobeyed the order and discipline of the church.

Fainting Bertha is Given Three Years

Woman Who Has Been Frequently Arrested Pleads Guilty to Shoplifting in Lincoln.

(From a Staff Correspondent.)

LINCOLN, May 23.—(Special Telegram.)—"Fainting Bertha" Liebbecke, who has a long police record in several of the cities of the west, was sentenced this morning to three years in the state penitentiary by Judge Cornish of the district court of this county. She pleaded guilty to the theft of various pieces of dress goods from two department stores. She fainted when sentence was pronounced on her and screamed for mercy. She will be taken to the penitentiary this afternoon.

PATRICK COONEY ACQUITTED OF CHARGE OF MURDER

Jury Finds that Kearney Man Did Not Murder Elmer Mercer Last December.

KEARNEY, Neb., May 23.—(Special Telegram.)—A jury tonight brought in a verdict of not guilty in the case of Patrick E. Cooney, charged by the state with the murder of Elmer Mercer in this city on the night of December 31. The jury was out two hours. Four of the most prominent lawyers of this part of the state were engaged by Cooney, while the county attorney and the city attorney of Kearney conducted the prosecution.

The principals are both men from well-known and wealthy families. Cooney is a bartender and Mercer was found dead in front of his saloon with a broken neck and his face bruised. The men had been quarrelling a few minutes before Mercer was found.

DR. WILLIAM PROTZMAN DIES

Oldest Physician in Active Practice in Lincoln Passes Away After Very Short Illness.

(From a Staff Correspondent.)

LINCOLN, May 23.—(Special.)—Dr. William Protzman, the oldest physician in active practice in Lincoln, died this morning at 11 o'clock at his home, 504 South Thirteenth street.

Dr. Protzman was at his office on South Tenth street yesterday as has been his custom for many years. He came home in the evening and mowed the lawn and appeared to be in his usual good health. At 4 o'clock he became very ill.

He came to Lincoln twenty-eight years ago, being born in Ohio, July 19, 1828. For some time he was in partnership with his son, Dr. Charles Protzman, now of Malcolm.

The deceased is survived by a widow, one son, Dr. Charles Protzman, and two daughters, Mrs. Ida Seidell and Mrs. Willard Hammond of Lincoln. The funeral will be held Friday afternoon at 3 o'clock at the home. Burial will be at Wyuka cemetery.

Dies of Acute Alcoholism.

LINCOLN, Neb., May 23.—(Special.)—John Olson, a Swedish cement laborer, was found dead in his rooms here last night. An inquest and an autopsy today indicated that the man had died of acute alcoholism. The room where he lived contained scores of whisky bottles, which were revealed when the room was searched.

Nebraska News Notes.

IMPERIAL—Chase county is to have a new $25,000 court house this season, the contract for the construction of which will soon be let.

MULLEN—Thomas Dowell, a well known and prosperous ranchman residing north of this city, was thrown from a bronco and died the following day from injuries received.

MULLEN—A prairie fire started a few miles northwest of here, but was put out before any damage was done, other than the destruction of two hay stacks belonging to H. B. Boyer.

CAMBRIDGE—The baccalaureate sermon to the 1911 class of the Cambridge schools was delivered by Rev. W. T. Gatley, pastor of the First Methodist church of Cambridge, Sunday evening.

FAIRFIELD—Despite the rain, the Christian church was filled Sunday morning to listen to the baccalaureate sermon preached by Rev. Williams. A large class of graduates were present.

CRAIG—Two deaths occurred here the last week from whooping cough, followed by pneumonia, and one other child is now very ill. The dead are a 3-month child of Wayne Tibbles, a farmer, and the other a 2-year-old child of C. E. Whitaker, harness maker.

BEATRICE—Beatrice lodge No. 26, Ancient, Free and Accepted Masons, met last night and elected these officers: W. W. Wright, worshipful master; U. S. Raynor, senior warden; Harry Shaffer, junior warden; J. L. Anderson, treasurer; B. L. Spellman, secretary.

MULLEN—J. A. Allen, who has been city barber and jeweler for the last ten years, died in the Broken Bow hospital after an operation for blood poison. The funeral services were held in the Methodist church in this city Sunday. The body was sent to Elkhart, Tex., for burial.

BEATRICE—The funeral services for the late Robert Nicholas, the aged man who committed suicide at his home at Dewitt Sunday, were held today at 2:30 o'clock from the Episcopal church, Rev. Mr. Moore officiating. The remains were interred in the Dewitt cemetery.

CRAIG—The baccalaureate sermon for the senior class of the Craig High school was preached Sunday night in the Methodist Episcopal church by the pastor, Rev. Gerriet Janssen. The class is composed of four girls and five boys, and commencement exercises will take place Thursday evening.

BEATRICE—Murray Geddes, who has been in charge of the material department of the Nebraska Telephone company at this point for the last few years, has been promoted to the position of wire chief at Tecumseh for the company and left yesterday for that place to assume his new duties.

FAIRFIELD—The F. W. Reed Lumber company has sold its yard to W. T. Crone of Courtland, Neb., possession to be given June 6. The John Lansing elevator, one of the first built in Fairfield and now owned by the Updike Grain company, burned at 8:30 Sunday evening. It had not been used for several years.

BENKELMAN—The contract for erecting Benkelman's new public school building was awarded to J. T. Kearns of Brush, Colo., for $13,640, Monday afternoon by the Benkelman school board. There were seven bidders, among them the Trenton Building company of Lincoln and the Burgess-Hoye company of Omaha.

HARVARD—A full house greeted Rev. A. B. Warren and the graduating class of Harvard schools last evening at the Methodist church, where the baccalaureate sermon was delivered, and fine music furnished by a chorus of the combined choirs of the city, under the direction of Miss Berkin, director of music in the school.

LYONS—The funeral of Isaac V. Walter was held here Monday at the home of his daughter, Mrs. Frank M. Wilkins. He died two days ago at Norfolk and was brought here for burial. He is an old pioneer of Nebraska, having lived at one time in an early day at Omaha and Council Bluffs and later in Burt county. He was 76 years old.

FAIRBURY—The eighteenth alumni banquet and reception to the graduating class was given in the Mary-Etta hotel Monday evening and was a glittering success. About 150 members of the Fairbury High school alumni were present and the forty-four graduates admitted to the association. A reception and class reunion was given in the parlors between 8 and 9 p. m. Then a banquet was given in the hotel parlors. Music was furnished by Bactoritch's orchestra.

YORK—The rain commencing Saturday night and continuing Sunday and Monday has so thoroughly saturated the soil that farmers of York county are rejoicing over the good crop prospects. Nearly all corn was planted before the rain. Wheat was in good condition, but oats needed rain and cooler weather. Alfalfa hay, clover, timothy and blue grass pastures will be benefited. The first crop of alfalfa will be ready to cut in the next ten days. The acreage of alfalfa in York county is estimated at 16,000.

HARVARD—Mr. and Mrs. T. H. Matters of Omaha Sunday brought the body of the late Samuel Wistrum to this city for burial in the family lot. Mr. Wistrum was a brother of Mrs. Matters and an early resident of Harvard, where for a time he conducted the Harvard Courier. Later he removed to Denver, Colo., and it was here that his best work was done, for, as an attorney, he built up a good business and enjoyed home life till the death of his wife and his own failing health brought its trials, and death came at the age of 54 years.

STELLA—Lawrence Curtis had a very narrow escape from death this morning. He had hauled an iron pump out of the well the day before and fastened it up with a chain till the valve could be repaired. This morning he had just begun work on it again and had stooped over to raise it up a little farther when the chain broke, letting the heavy pump down on his head a distance of twenty feet, cutting a long gash in his scalp and tearing the flesh loose on one cheek. If his head had just been a little farther forward he would have been instantly killed.

YORK—The announcement of E. A. Butterfield for nomination for county sheriff on the republican ticket has started others and indications are that York county will have a number of tickets and candidates in the field. Owing to the large vote the socialists secured in the city election and the great growth that party is making, their leaders do not wish to be absorbed and taken advantage of by the democrats and they propose to nominate a county ticket. It is believed that if they poll as large a vote according in the county as they did in the city they will have a larger vote than the democrats.

TABLE ROCK—The baccalaureate sermon was preached here last night at the Methodist church by Rev. Mr. Wimberly, pastor of the Presbyterian church. There are nine in the graduating class this year, as follows: Ada E. Mort, Addie C. Wiar, Callie I. Barrett, Ella M. Beck, Gertrude B. Glenn, Glen E. Wood, Hazel M. Taylor, Lillian F. Strejc and Lylas B. Jobe. Commencement exercises will be held Wednesday evening at the opera house. The class play will be given Friday evening and Saturday night the annual banquet of the Table Rock High School Alumni association will take place.

"Police Eater," but His Appetite Fails

Negro Preacher Declaims and Declares—Ardor Cools When Officers Appear.

The Rev. William Smith, a negro preacher of much local fame, stood on Dodge street between Twelfth and Thirteenth early last evening, presenting a long sermon which had been suggested to him by the story of Jonah and the whale.

"I eats 'em, I fairly eats 'em!" shouted the famous preacher as he rose to Alpian heights in eloquent oratory, attracting the attention of some thirty. The little minister was speaking principally about policemen. He had "eaten" more coppers than there are on the Omaha force, he declared, by way of freeing himself from the charge made by several negroes that he was a police snitch. Rev. Smith pleaded and then he coaxed with them, he said, but still they held the opinion that he was a "police snitch." Then came the decalaration that he had "eaten" policemen, which statement, he said, did not have its effect. So then he stood the crowd at bay with an imaginary revolver concealed at the rear of his ecclesiastic cloak. The reverend gentleman stood to the full height of four feet four and held off the mob, and ever ready to "eat" the first policeman who hove in sight.

Detective Joe Hell and Officer Bellman came in at the psychological moment and at their calm request, Rev. William Smith went to the police station, charged with disturbing the peace and quiet of the Third ward. A whisky bottle was found in the place supposed to have been occupied by the revolver.

Fortune for Mrs. Debolt.

ATCHISON, Kan., May 23.—Mrs. Elizabeth Rowan Debolt, daughter of Major Andrew Rowan, U. S. A., retired, who carried the message to Garcia before the Cuban campaign in 1898, came into possession of more than $100,000 today, the fortune being a one-fourth interest in the estate of A. B. Syms of Atchison, her grandfather.