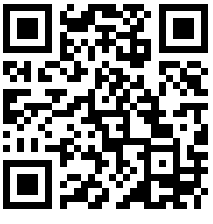

FOREWORD

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DEVOTED TO THE INTERESTS OF THE STATE BAR AND THE REPORTING OF ALL IMPORTANT DECISIONS OF THE DISTRICT COURTS.

Volume I.

COVERING THE YEAR

1893

JOHN A. LARIMORE,
EDITOR.

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THE

MINNESOTA LAW JOURNAL.

MAY, 1893

LEGISLATIVE PRIVILEGES IN MINNESOTA.

BY C. D. O'BRIEN, ESQ.

Recent occurrences in the procedure had by a joint committee of the Minnesota Senate and House of Representatives during the last session of those bodies have called the attention of the public to the subject matter which is the caption of this article. And for the first time in the history of this state the people are confronted with the assertion on the part of the members of the Legislature that such a body is privileged, first, to take, carry away and secrete the personal property of private citizens without other process or warrant than a resolution of a committee of either body; and secondly, that for such acts, or any other acts so perpetrated by them in their representative capacity, all civil proceedings against them are suspended until the expiration of the session for which they are assembled. If the rights and privileges thus asserted actually exist we have, as a result, an assemblage of persons convened once in every two years in this state, who for a period of at least ninety days are privileged to perpetrate upon the community, or any member of the

community, any civil outrage that they may see fit to perpetrate, with complete immunity to the perpetrators of such acts, their agents and employees, during such period of ninety days. The proposition is attractive if for nothing more than its novelty, but the serious part of the question lies in this, whether under the Constitution of the United States and the Constitution of the State of Minnesota such a condition of things can possibly exist, and be recognized as a legal and valid condition. It is hardly worth while to elaborate at any great length the many arguments against it. A very slight examination of the organic law of this state, and the principles from which such organic law sprung and was enunciated is happily sufficient to set at rest such preposterous assertions, and to point out to the persons who have either committed or threatened to commit such acts in the capacity first referred to, that they are not beyond the scope of the law, but are wholly and entirely within its power and answerable to it to the same extent that every other citizen is.

It must be recollected at the beginning of this inquiry that the government of the United States, and that of every state in the Union, including, of course, Minnesota, is founded upon and contained within the limits of written constitutions; that it is a cardinal doctrine of American law that all power is vested, first, in the people of the several states; that they have endowed the federal government with such of those powers as they have seen fit to part with to it for federal purposes; that the unceded power of the people remains intact in the communities contained within the limits of the several states, in that in those states the sovereign power still continues in the citizens of each except in so far as they have ceded the same to the federal government or provided for the exercise of the same by their officers and representatives as evidenced in the several state constitutions. To look outside or beyond the constitution of the State of Minnesota for the purpose of ascertaining the rights or privileges of any citizen thereof, or of any officer or employee thereof, except in so far as those rights and privileges may be provided for or passed upon by the provisions of the federal constitution, is absolutely idle, for the Constitution of the State of Minnesota is not only the creation of the people of that state, but it is the last, ultimate and most complete expression of the sovereign authority of such people upon any subject provided for in it. And we, therefore, find in the Constitution the proper expression of every right and guaranty necessary to the protection of the citizen in a republican form of government.

A review of Article I. of the Constitution of this State, unnecessary to be copied in this article, will amply and fully sustain the position herein contended for. But the expressions of Section VIII. of Article I. of that Constitution are of sufficient importance and are sufficiently terse to be included within the scope of this article. Section VIII. Remedy for Injuries and Wrongs.—"Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property and character. He ought to obtain justice promptly and without delay, freely and without purchase, conformably to the laws." It follows from the mere reading of Section VIII. that to extend to a member of the Legislature the privilege of being protected against civil suit during the term that the House to which he belongs may be in session, at once and entirely abrogates the provisions of Section VIII. so far as that particular member of the Legislature is concerned. During the session of the House, which is now ninety days and may be extended indefinitely by statute, he cannot be sued upon any claim, demand or right of action against him,—that is, if we are to sustain this privilege as it is asserted; and this exemption applies to everything of a civil nature; so that he may, without let or hindrance, during the session, defy his creditors or all persons having claims against him, transfer his property, put it out of the state beyond reach of process of our law, and then on the day before the session of his House expires, leave the state and place himself without the jurisdiction of the courts. Surely, the authority for a privilege of this kind, so contrary to the rights of all other citizens of the State, should be found in the Constitution, which not only creates the Legislature but defines and limits its powers and duties as an aggregate.

Now, the Constitution *does* pass upon this subject, and Section VIII. of Article IV. of the same Constitution provides that the members of each House shall in all cases save of treason, felony and breach of the peace, be privileged from arrest during the session of their respective Houses; and this is the only privilege accorded to members of the Legislature by the Constitution of the State of Minnesota. The District Court of Ramsey County in passing upon the motion made by the defendants in the case of Rhodes vs. the Members of the Coal Committee held that the word "arrest" in the Constitution meant its ordinary and usual significance,—that is, a personal restraint of the body of the individual. That it did not apply to or mean the issuance or service of civil notice or civil process. But the same court held that at common law at

one time in England the privilege of members of Parliament extended to exemption from civil process during the session of their Houses. And following the common law rule, as to the propriety and application of which to matters in this State the court expressed great doubt, it set aside the service had upon the members of the Committee, apparently more for the purpose of having a final and authoritative enunciation from the Supreme Court than in any belief that such was the present law of this State.

It is not proposed in this article to discuss the opinion of the District Court of Ramsey County or to criticise it. All of the questions involved in that matter are now pending on an appeal to our Supreme Court, and will be determined at the October term. But it is singular that the Court was compelled to go beyond the provisions of our Constitution and actually ignore them in order to find a foundation upon which to place its ruling.

And this brings us to the other privilege asserted by our last Legislature, which is perhaps best found in the language of the resolution pretended to have been passed by the Committee referred to, and was in the following words, "That the Sergeant-at-arms of the House of Representatives be instructed to proceed to the office of John J. Rhodes and bring back with him all the books and papers therein relating to the coal combine, and report same to the next meeting of the committee." Here we have an assertion of right upon the part of this committee to search for, seize, take and carry away from the private office and custody of any citizen such books and papers or other personal property as such committee may desire, and which is movable in its nature. The reader will bear in mind that this resolution was not preceded by any demand for such books and papers; that it contained no description of the same; that the purposes for which they were wanted by the committee was not stated; that the end their possession by the committee was designed to serve did not appear. It is a mere wilful, naked instruction to an employee to plunder the private citizen of certain of his property and bring the spoils before the persons comprising such committee. Here we are again compelled to refer to the Constitution of this State. Section X. of Article I. provides: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and properly describing the

place to be searched and the person or things to be seized." This provision of the Constitution has been further construed by legislative enactment. The only process (except replevin) by which the personal property of another can be seized is what is technically known as a Search Warrant, and the statutory provisions upon that subject require the same care and solemnities to be observed as are in the issuance of a warrant for the arrest and detention of an individual; and indeed the Search Warrant requires the officer executing the same to bring the property into court and arrest the individual in whose possession he may find it. It is in fact a proceeding for the punishment of crime not used for the purpose of obtaining evidence. But having disregarded the provision of Section VIII. of Article I. of the Constitution, it was neither difficult or extraordinary for the same persons to abrogate the provisions of Section X. of the same article, which we have just cited. If time and space permitted, the history of the crime herein alluded to might be farther extended. It is sufficient for present purposes to say that not only the privileges claimed do not exist, but that the entire proceeding upon the part of the committee known as the Coal Combination Committee was a farce and entirely beyond the jurisdiction of any legislative committee.

There exists in this state and has existed since 1891 a statute making combinations and trusts unlawful. It was pretended by the persons in interest that there existed in this state a combination among dealers to raise and keep up the prices of coal. If such a combination existed and had acted as the committee asserted they had, then the parties concerned therein had committed an offense under the statute of 1891, and their punishment was solely and entirely confided to the judicial power of the state. Article III. of our Constitution provides, in Section I., "The powers of the government shall be divided into three distinct departments: Legislative, executive and judicial; and no person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others." Now, when an offense has been committed only the judicial department of the government can act upon it. The legislative department has no right, power or authority to proceed in such matter to any extent or in any manner whatsoever. In *Kilburn* v. *Thompson*, *103 U. S., Supreme Courts Reports, page 168*, the entire question is taken up and thoroughly discussed, and the conclusion hereinbefore stated is announced as being self-evident, and this too upon the construction of the Constitution of the United

States which is practically identical with our own upon the particular subject matter herein involved.

What has been here said is sufficient to attract the attention of the reader to the subject matter and the indicated references are sufficient to place him upon the track of the subject sufficiently to fully advise and inform him as to the entire scope of it. It is not too much to say that a successful assertion of these pretended privileges and a succession of arbitrary acts under them would result, of necessity, in the dissolution of our form of government or indeed of government that permitted them. That the persons asserting them contiuue in such assertions is evidenced by recent enactments of the last Legislature; notably, one in which it is expressly provided that no action can be brought or maintained against any member of the Legislature for any act done by him under color of his office. Of course every one understands that such legislation amounts to nothing; that when submitted to the authority of the courts it will crumble to pieces and be as utterly dissipated as last year's snow, but this tendency by members of the Legislature, claiming the right to represent their several constituencies, who besides their natural allegiance to the State, have each and all of them, individually, taken a solemn oath to support the Constitution of the United States, and the Constitution of this State, to proceed by personal acts and legislative enactment to violate both, to the detriment of the rights of the private citizen, is one that should be repressed; and when these acts are perpetrated by those who are the people's servants and not their masters, the remedy ought to be speedy and effectual. Such acts and such conduct have all of the features, corruptions and evil consequences of a servile revolution without its excuse.

NOTE AND COMMENT.

BOYCOTTS AND THE FEDERAL COURTS.—Several new questions have lately been passed upon in the Federal Courts which have something of interest in them in that they throw some light upon the administration of the Inter-State Commerce Act by the Courts. The first arose in the case of the Toledo, Ann Arbor and North Michigan Railway Company against the Lake Shore, Michigan Central, Pennsylvania and other Railway Companies, to compel the latter to receive and forward freight and cars, which were destined for shipment from state to state. This proceeding was instituted in the Circuit Court of the United States, and the bill was drawn under the third section of this Act, which provides:

> That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or to locality or any particular description of traffic in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality or any particular description of traffic, to any undue and unreasonable prejudice or disadvantage in all respects whatsoever.

Judge Ricks, in a lengthy and well considered opinion, decided that the complainant had the right, under the section above quoted, to have the connecting roads receive and forward its inter-state freight upon equal terms with that of other companies; and that the duties imposed upon the company are equally obligatory upon all its employes. Summing the matter up, the Court concludes:

> The section in the interstate law above quoted made it mandatory upon connecting railroads to receive and deliver passengers and freight and to afford equal facilities for the interchange of traffic. Corporations can act only through their officers, agents and servants, so that the mandatory provisions of the law which apply to the corporation apply with equal force to its officers and employes. The authority of the court to issue such an order has been questioned, but it rests on well established principles.

So far as the employes are concerned, the effect of the decision appears to be that a breach of their contract, such as an ordinary strike, accompanied by a boycott by other organizations, is unlawful, in so far as it may interfere with the transportation of inter-state freightage. It makes no difference whether the employment is left freely, or under compulsion. By leaving his employment in violation of his contract of

service, he causes his company, whom he represents, to violate the clause above cited and brings down upon his own head the penalty.

On the same day, Judge Taft, of the same Circuit, rendered an important decision bearing somewhat upon the same points as were presented in the former case, but in a different way. The doctrine is laid down that all persons who combine for the purpose of leaving the service of such a railway company and going on what may be termed a "sympathy strike," where such strikes will affect the movement of interstate freight, are guilty of conspiracy and come within the penalties provided for violation of the Inter-State Commerce Act.

As the statement of the question is so clear and the reasoning so cogent, the major portion of Judge Taft's decision is here given in full:

All persons combining to carry out rule 12 of the brotherhood against the complainant company, if any one of them does an act in furtherance of the combination, are punishable under the law. This is true because, as already shown, the object of the conspiracy is to induce, procure and compel the defendant companies and their employes to refuse equal facilities to the complainant company for the interchange of inter-state freight, which, as we have seen, is an offense against the United States by virtue of section 10 above quoted. For Arthur to send word to the committee chairman to direct the men to refuse to handle inter-state freight, and for the men in furtherance of rule 12, either to refuse to handle the freight, or threaten to quit, or actually to quit, in order to procure or induce the defendant companies to violote the penal section of the inter-state commerce law would constitute acts in furtherance of the conspiracy which would render them also liable to the penalty of the same section.

But it is said that it cannot be unlawful for an employe either to threaten to quit or actually quit the service when not in violation of his contract, because a man has the inalienable right to bestow his labor where he will and to withhold his labor as he will. Generally speaking, this is true, but not absolutely. If he uses the benefit which his labor is or may be to another by threatening to withhold or agreeing to bestow it, for the purpose of inducing, procuring or compelling that other to commit an unlawful or criminal act, the withholding or bestowing his labor for such a purpose is itself an unlawful act.

Herein is found the difference between the act of the employes of the complainant company in combining to withhold the benefit of their labor from it, and the act of the employes of the defendant companies in combining to withhold their labor from them, that is the difference between a strike and a boycott. The one combination was lawful because it was for the lawful purpose of selling the labor of those engaged in it for the highest price obtainable and on the best terms. But the employes of defendant companies are not dissatisfied with the terms of their employment. So far as appears, those terms work a mutual benefit to employer and employed. What the employes propose to do is to deprive the defendant companies of the benefit thus accruing from their labor, unless the companies will consent to a criminal and unlawful injury to the complainant. Neither law nor morals can give a man the right to labor or withhold his labor for such a purpose.

We finally reach the question whether in view of the foregoing this court can enjoin Arthur from inciting, inducing or procuring the members of the brother-

hood, in the employ of defendant companies, to carry out rule 12 and refuse to handle complainant's freight. We have no doubt of it. For him to do so will be to cause an unlawful, irreparable injury to complainant, and will be to induce, on the part of the employes, a violation of the mandatory order of this court. Either of these grounds is ample for the exercise upon him of the restraining power of a writ of injunction.

While the ordinary strike is held not to come within this view of the matter, the more important and threatening question of boycott receives an explanation which is somewhat new, and certainly aggressive. As both cases have been appealed, a final determination of these questions will soon be had; but in the meantime these decisions cannot but be productive of much good, as showing that the courts can be relied upon to grapple with the perplexing questions involved.

JUDGE SPEER ON "RULE NO. 12"; A VIOLATION OF THE SHERMAN ANTI-TRUST LAW.—Closely following the announcement of the decisions of Judges Ricks and Taft came a lengthy opinion by Judge Speer, in the Circuit Court for the Northern District of Georgia. The matter came up on a petition presented by the Brotherhood of Locomotive Engineers, to require the receiver of the Central Georgia Railway to enter into a contract with that organization for the service of its members on that road. After ordering the receiver, under some limitations, to make such a contract, the Judge turns his attention to the famous Rule 12, which is practically the same as the rule of that number referred to in the case last mentioned. It is as follows:

"Twelfth—That hereafter when an issue has been sustained by the grand chief and carried into effect by the Brotherhood of Locomotive Engineers it shall be recognized as a violation of the obligation if a member of the Brotherhood of Locomotive Engineers who may be employed on a railroad run in connection with, or adjacent to said road, to continue to handle the property belonging to said railroad or system in any way that may benefit said company with which the Brotherhod of Locomotive Engineers are at issue until the grievances or issues of difference of any nature or kind have been amicably settled."

It was admitted by the petitioners that the effect of the rule would be in case an engineer ascertained there was a car in his train which belonged to a road on which there was a strike of engineers, to oblige that engineer to refuse to handle such train containing such car, and if the company insisted that it should be done, he should at once resign his station and abandon his duty. The learned Judge then passes to the main question. He says:

"There cannot be a doubt that this rule of the Brotherhood is in direct and positive violation of the laws of the land and no court, state or federal, could hesitate

for a moment so to declare. It is plainly a rule or an agreement in restraint of trade or commerce, as described in section 1 of the act of July 2, 1890, known as the Sherman anti-trust law. A combination of persons, without regard to their occupation, which would have the effect to defeat the provisions of the inter-state commerce law, inhibiting discriminations in the transportation of freight and passengers would be liable to the severe penalties of the statutes. Now, it is true, in any conceivable strike upon the transportation lines of this country, whether main lines or branch roads there would be interference with inter-state of foreign commerce. It will be practically impossible, hereafter, for a body of men to combine to hinder and delay work of the transportation company without becoming obnoxious to the provisions of these laws; and a combination or agreement of railroad officials or other representatives of capital with the same effect, will be equally under the ban of these penal statutes."

While the representatives of the Brotherhood seemed to regard the fact that the court ordered the receiver to make the contract as requested, as a great victory, little reason can be seen for such rejoicing. The receiver is practically a nonentity, and as such is absolutely under the direction of the court; no such order would have been made had it been otherwise. As it was, the presentation of the petition in this case brought out the above expression, which is certainly the most radical statement of the criminal liability of strikers yet promulgated by a court in this country or any other. It will perhaps teach the various organizations of railway operators that the privileges are not all their peculiar property and the penalties that of the corporations; that a conspiracy among workmen is as reprehensible as one among railway corporations: lessons that they have been a long time in the learning.

LEGALITY OF THE ANTI-SCALPER BILL.—A recent decision in Illinois has a direct and important bearing on some legislation passed at the last session of our law-making body and popularly known as the Anti-scalper Bill.

It appears that indictments were found against Edward List and five other ticket brokers in Chicago for violation of a law of that state, practically identical, in its important provisions, with our own. Upon habeas corpus proceedings the defendants were discharged upon some technical defect in the indictment, but the Court, Tuthill, McConnell and Dunne, J. J., sitting, took occasion to say:

This law comes within the constitutional inhibition of section 22, article 4, of the state constitution, which declares that the general assembly shall not pass any special law granting any special or exclusive privileges, immunity or franchises whatever. Considered as a police regulation it is unique as delegating governmental authority to corporations.

The last remarks of the Court seems to be quite in point, under our law, which provides:

SECTION 1. It shall be the duty of the owners of any railroad or steamboat for the transportation of passengers, to provide each agent who may be authorized to sell within the state, tickets or other evidence entitling the holder thereof to travel upon his or their railroad or steamboat, with a certificate setting forth the authority of such agent to make such sales, which certificate shall be duly attested by the corporate seal of any corporate owner of such railroad or steamboat. After issue of such certificate, as aforesaid, such agent or superintendent or general officer of such owners shall, within ten days thereafter, exhibit the same to the secretary of state of Minnesota, and at the same time shall pay to said secretary of state a license fee of three dollars, whereupon said secretary of state shall issue to such agent so presenting said certificate, a license under the seal of the state of Minnesota, authorizing such agent to engage in the business of selling transportation tickets of said common carrier.

The Secretary of State has no choice in the matter, but must issue certificates to whom ever the transportation companies may appoint, and to no one else. For all practical intents and purposes, the company has all the power the law gives to any one.

While the act may perhaps be looked upon in the light of an experiment, at least so far as this state is concerned, yet it will soon assume a more certain character—what there may be left of it—when our Courts will have had an opportunity of passing upon it; which will not be far removed, as it goes into operation July 26th next, and determined efforts will doubtless be made by those interested to have the question of its validity tested.

THE SAINT LOUIS CASE.—The final order of the District Court for Hennepin County in the celebrated case of Henry Siebert against the Minneapolis and St. Louis Railway Company was filed by Judge Lochren on May 5th last. The case involved priority of the various issues of bonds made by that company and has been in progress of settlement for five years. During the greater portion of that time the case was practically in Judge Young's charge, and on his retirement in 1891, Judge Lochren assumed control. It seems that the road has been handled by the Court in a more satisfactory manner than by its former officers, a result which is rather unusual in such cases.

In finding for the plaintiff, the Court allows him his costs and disbursements and makes an allowance of attorneys' fees to most of the counsel engaged. The Court allows the plaintiff's attorneys in all the sum of $50,000; the attorney for the Central Trust Company, $35,000;

the attorneys of the Fidelity Company, $20,000, and the attorney for the Farmer's Loan and Trust Company, $20,000; making a total allowance of $135,000, which is probably the largest amount ever paid in one case in the Northwest. But as the property involved exceeded Five Millions, the amount cannot be said to be unreasonable. The counsel in the case were:

For Plaintiff—Eugene M. Wilson (now dead), and Judge J. M. Shaw; Thos. F. Withrow (general counsel of the Chicago, Rock Island & Pacific Railway, now dead), and Thomas S. Wright (general attorney for the Chicago, Rock Island & Pacific Railway Company).

For the Receiver—J. D. Springer, until his removal to Chicago, Nov. 1, 1889; since that time Albert E. Clarke.

H. C. Truesdale, for the Farmers' Loan & Trust Company; Woods & Kingman, for the Fidelity Insurance, Trust and Safe Deposit Co; Harris Richardson, for the Central Trust Company, of New York; Keith, Evans, Thompson & Fairchild, for certain bondholders, and Lusk, Bunn & Hadley for certain of the bondholders.

The decision of the Court is for plaintiff in all things, but is too lengthy and too much in detail to be set out in full here. It gives the road a year in which to redeem by payment of the plaintiff's bonds, amounting to $3,887,000 and accrued interest; if not redeemed, the road is to be sold by the sheriff. The whole matter is now settled in such a way as to permit re-organization upon a sound basis.

JUDGE GRESHAM'S SUCCESSOR.—President Cleveland found it a by no means easy task in appointing a successor to Judge Gresham, to find one who could be expected to acceptably fill the place left vacant by the elevation of that eminent jurist to a position in the Cabinet. It seems, however, that the appointment recently made will prove a satisfactory one, as the new Judge of the Seventh Judicial circuit, James G. Jenkins, of Milwaukee, Wis., is a man of large experience, having been admitted to the bar in 1855, been Judge of the United States District Court for the Eastern District of Wisconsin for many years, prominent in the politics of his state and at one time the Democratic candidate for Governor. Judge Jenkins is in the prime of life and is likely to hold his present position for years to come. The President is doing well in following the precedent established by President Harrison in promoting those who have so long served the Nation in minor judicial capacities.

JUDGE LOCHREN.—On the 8th day of May the resignation of the Hon. William Lochren as a Judge of the District Court for the Fourth Judi-

cial District was tendered to and accepted by the Governor; an act which terminated a long and most honorable career on the Bench. For more than thirty years Judge Lochren has dealt out justice and has gained thereby a reputation for legal sagacity and judicial fairness unexcelled by any. Himself and his labors are too well known in Minnesota to require description; and all Minnesota wishes him the success he so richly deserves in the difficult and responsible position to which he has been called.

On the evening of May 9th, the Judge gave a reception to the members of the bar at his residence, at which a large number of those who had appeared before him in the years past were present. An incident of the evening was the presentation, to Judge and Mrs. Lochren, of a handsome silver water set, as a slight token of the regard in which the recipients are held by the Bar of Minneapolis.

JUDGE LOCHREN'S SUCCESSOR.—In appointing to the place left vacant by the resignation of Judge Lochren the Hon. Robert D. Russell, Governor Nelson has pleased not only the members of the bar in the Fourth District, but the great mass of the people as well. For many years City Attorney for Minneapolis, always prominent at the bar, a pleasant gentleman and a good man, Judge Russell embarks upon a judicial career which we trust may be as long and successful as that of the eminent jurist whose place he takes. While the Judge was a candidate for that position in 1890 and went down with his party in the avalanche of that year, there can be but little doubt of his nomination and election next year for the full term of six years.

RULE EIGHTY-SEVEN, U. S. CIRCUIT COURT.—On May 9th a new rule was promulgated to cover cases where there has been a mis-trial, counsel usually expecting such cases to come up early in the succeeding term. The rule is as follows:

"Whenever any case is tried before a jury and the jury reports a disagreement, the clerk shall, at the time he prepares the trial calendar for the next succeeding term of court, place such case at the foot of such calendar.—*R. R. Nelson, Judge.*"

JUDGE OTIS ON LEGISLATIVE PRIVILEGES.—The memorandum which Judge Otis attached to his order setting aside the service of the summons

in the case of *J. J. Rhodes* v. *R. A. Walsh, et. al.*, is so altogether novel and unusual in its character that we reproduce it in full. It is as follows:

In *Anderson* v. *Rountree 1 Binney, 115*, the Supreme Court of Wisconsin held that a member of the Legislature was, during and for a limited time before and after the session, privileged from the service of summons; that this was a common law right unaffected by the statute providing for exemption from arrest. At the time this decision was rendered, Minnesota was part and parcel of the Territory of Wisconsin and this declaration of privilege by a Court of last resort became the law of the land, or at least, as it seems to me, became and remains binding upon and is to be followed by all other courts within the jurisdiction until overruled by a like tribunal of last resort, in the same manner and to the same extent as if rendered by the Supreme Court of the Territory, or of the State of Minnesota.

At the same time, after a very careful examination of the authorities, I think the correctness of that decision is open to serious question. It is doubtless supported by a few ill-considered decisions and by numerous *dicta* in other cases which assume the existence of such a privilege as a common law right.

Its existence, however, was denied in England as early as A. D. 1640, by the eminent jurist, Sir Orlando Bridgeman in the case of *Benyon* v. *Evelyn*, (*Bridge's Reports, 333*) upon a full review of the authorities, and an exhaustive discussion of the question. The doctrine here announced as well as the profound learning and research of the jurist declaring it were highly commended and indorsed by Lord Menborough in *Bursett* v. *Abbott, 14 East Rep. 134*; also the notes to the case of *Benyon* v. *Evelyn, Supra;* (here many cases are cited) and *Merritt* v. *Giddings, 4 MacArthur, 55*, wherein Mr. Justice Wylie of the Supreme Court of the District of Columbia denies the privilege in a learned and forcible decision, with a comprehensive review of all the authorities. It is true that members of Parliament were claiming this exemption from service of process, a right, however, not conceded to them by the Courts, and finally, to set the matter at rest and prevent the obstruction of the ordinary course of justice, in the year 1770, Parliament expressly enacted "that any suit may at any time be brought against any peer or member of Parliament, which shall not be impeached or delayed by *pretense* of any such privilege, except that the person of a member of Parliament shall not thereby be subject to any arrest of impeachment."

It seems strange indeed, that in this land and these times our Courts should be called upon and feel constrained to recognize a privilege, the existence of which was denied by the Courts, and the very presence of which was wiped out by express statutes more than one hundred and twenty years ago, as something that was not to be tolerated, even under a monarchical form of government.

It is for this Court, however, to follow the decisions of our Courts of last resort, and leave it to them to overrule ill-considered and erroneous declarations of the law, if such have been made.

While the learned judge, in deciding against the authorities in general and his own apparent convictions, may have been entirely justified in that course under the peculiar attendant circumstances, yet it is doubtful if the judicial history of this State furnishes another example of a similar character, certainly not in any court of general jurisdiction.

NOTES ON RECENT DECISIONS.

MORTGAGE FORECLOSURE FOUNDED ON USURIOUS CONTRACT HELD VOID—In the case of *Chase* v. *Whitten* (*53 N. W. Rep., 767*) the Supreme Court of Minnesota were called upon to apply the statute (Chap. 23, sec. I.) upon interest and usury to a case where a mortgage has been foreclosed for nonpayment of interest, where the note bore on its face a greater rate of interest after than before maturity. The Court holds that as the note as a contract was manifestly usurious as to the interest, under the plain wording of the statutes above cited, no interest was ever due, and that the provision in the mortgage authorizing the mortgagee to declare the whole sum due upon default of payment of interest was a mere nullity: setting aside as void an attempted foreclosure predicated upon such default. It seems that the effect of that decision will be far-reaching. Many agencies have for several years past been making loans all through the state, where a greater rate was exacted after maturity than before. Large numbers of these mortgages have been foreclosed, and the property has gone into other hands; thus creating a dangerous and insidious enemy to the quiet enjoyment of the property by the present possessor. Not being a defect discoverable by examination of records, the attorney will not be able to discover that there is a break in the title, until perhaps some grantee of the former mortgagor brings ejectment for possession, and shows the foreclosure upon which the owner stands to be a nullity. It seems that the Court decided nothing new, simply applying what has been the law for six years, yet many thousands of dollars are and have been out on such paper, in apparent disregard of the plain statutory requirement.

MASTER AND SERVANT; CONDUCTOR AND FIREMAN, FELLOW SERVANTS; WHEN FEDERAL COURTS NOT BOUND TO FOLLOW STATE LAW.—On May 6th last, the Supreme Court of the United States, through Justice Brewer, rendered a decision which will revolutionize to a large extent the law of master and servant, as now understood. One Baugh was a fireman on a Baltimore and Ohio engine engaged in pushing trains over a hill. There was no conductor in charge, but the engineer was by the rules of the

company given the authority of a conductor. Baugh was injured by the carelessness of the engineer, and brought suit for damages and was awarded $6,750 in the circuit court in the Southern District of Ohio. The question was whether this engineer and fireman were fellow servants or whether the engineer was in the position of a master representing the company. The majority held the former opinion, which substantially reverses the celebrated case of *Railroad Company* v. *Ross*, from Minnesota. In the Ross case it was held that a conductor represented the company and was not a fellow servant to the engineer and employees on the train. In this case there was no conductor, and the court holds that Baugh assumed the risk and consequently cannot recover. Justice Brewer also held that the case does not come under the Supreme Court act of 1789, which requires the Supreme Court of the United States to follow the laws of the State wherein the action rose The holding of the Court on the question of whether the fireman and conductor were fellow servants would have little or no effect in Minnesota and many other States, were it not that the Court decided that in such cases the Federal Courts are not required to follow the laws of the State in which the cause arose. In Minnesota, as in many other states, the distinction between that class of cases where the action is founded upon injuries received through the wrongful act of a fellow servant in the same employ, and that wherein the relation of master and servant exists, has been abolished by statute (Gen. St. Minn., Chap. 34, Sec. 60d), so far as same relates to actions against railway companies. And as this class of cases form the larger portion of such litigation, the Court's decision becomes of great moment. Heretofore the Federal Courts in these States have invariably given their judgments upon all such cases with due regard to the statutory provision. Now, since it is decreed that the State statute is not obligatory upon the Federal Courts, the employee who seeks justice there for injuries received at the hands of his fellow servant, will be refused a hearing, notwithstanding the statute in question, which is a nullity, to that extent. While the suitor may of course institute proceedings in the Courts of his state, the larger portion of such litigation has long been commenced in the circuit court, when the facts justified the court in taking jurisdiction. On the whole the Court has given the legal profession something to cogitate upon, if indeed it may not be a question warranting the interference of Congress. Chief Justice Fuller and Justice Field dissent from the Court's opinion on

both points, and are particularly pointed in their expressions of opposition to the opinion of the Court upon the latter question.

THE MINNETONKA DAM CASE; AN IMPORTANT DECISION.—On May 18th last Judge Hooker filed an order in the matter of the proceedings to establish and maintain a uniform stage of water in Lake Minnetonka pursuant to the provisions of Chapter 381 of the Special Laws of 1891. Proceedings were for the purpose of obtaining the dam at Minnetonka Mills for the purpose of raising the stage of water in the Lake to a point between high and low water marks. Three assessors of benefit had been appointed by the Court in accordance with the Act and the questions arose upon the objections of certain property owners to the confirmation of their report, assessing the benefit at about $14,000.

The first objection raised was in effect that the improvement authorized by the statute was not of a character which would justify the levying of a special assessment upon real estate situate upon the shores of the Lake. It was conceded that the latter was a navigable body of water, but it was claimed that the improvement was generally and not specifically beneficial to the adjoining realty. After reviewing several authorities the learned Judge concludes upon this objection as follows:

> It seems to me that there can be no question but that the improvement of the navigation of the lake in question will be of great benefit to the property abutting upon the lake and in its immediate vicinity. If the water is allowed to diminish, so as to make it almost impossible to use the latter for purposes of navigation, the property abutting upon the latter will very largely depreciate in value, and it appears to me that the contemplated improvement is of a character which authorizes and furnishes a valid foundation for the levy of a special assessment for benefits upon real estate abutting upon or situated in the vicinity of Lake Minnetonka.

The second point considered was whether the act in question authorizing such assessment of benefits to be made by three freeholders, to be appointed by the Court, is void, as delegating the taxing power to other than municipal corporations; whether such power could be given to the assessors, without violating section 1 of article 9 of the State Constitution. In considering this question, the Court calls attention to the fact that practically the same question was passed upon by the Supreme Court in *re Dowlan, 36 Minn., 430.* In this case the provisions of the act considered, the Park Act for Minneapolis, being Sec. 5 of Ch. 281 of Special Laws 1883, were in the main the same as those of the Act in question, upon this point; and the power thus conferred upon the three appointees of

the Court was confirmed. The only difference in the acts is that in the Park Act the Park Board shall determine what percentage of the cost should be assessed upon the abutting property, while in this act the legislature have provided that the whole expense shall be so assessed. The Court stands upon the decision referred to and holds the act constitutional, remarking that:

If the Legislature in the Park Act had the right to designate that the Park Board shall designate the percentage which shall be assessed upon lands benefitted by such parks and parkways, then the Legislature had the right in the act in question to designate what amount of the cost of improvement should be so assessed, and they have designated that the whole expense incurred should be so assessed.

Upon the question of whether the fact that a small part of the lake was in Carver County would render the act objectionable to the constitutional provision that taxes shall be uniformly laid, the Court decides that the Legislature had a right to designate the territory over which the benefits of any particular local improvement are diffused; this having been done, the Court will not permit it to be questioned.

Upon the question of whether the establishment of a uniform stage of water between high and low water mark is objectionable and repugnant to the Constitution as taking private property for public use without just compensation, the Court considers that it is very much the same as in the case of a public highway; where, although the owner of abutting property holds the fee to the center of the street, yet such ownership is subject to the right of government to make such improvements in the highway throughout its full width as may be desirable or necessary for the public use. And the Court concludes, that, while the owner of land abutting upon the waters of a navigable lake owns the fee as far as the low water mark, such ownership is subject to the right of government to make such improvement as it sees fit in aid of navigation of such stream or lake, without condemnation of the land lying between extreme low and extreme high water mark; and that the extreme high water line is the limit beyond which government cannot go without compensation being given.

We regret that space will not permit us to set forth the full text of the decision, which covers some fifteen typewritten pages, and wherein these questions are elaborately discussed.

ALIMONY GRANTED IN A PECULIAR CASE.—An important holding was made in the case of *Johnson* v. *Johnson*, where the Court invokes the

aid of equity in order to do justice to the wronged party. The defendant, owning over $150,000 worth of property in this state, but residing in Illinois, obtained a divorce in that State by substituted service, of which his wife, the plaintiff here, had no actual notice. Defendant was subsequently re-married and was served with summons in this state in an action brought by wife number one for divorce and alimony. While the Court refused the divorce, it held the case open to determine the amount of alimony the wife (plaintiff) should be entitled to, on the theory that she had rights in the property in this State which ought not to be taken away by reason of the first divorce proceeding, although it was valid and binding as a divorce. Our Supreme Court has decided that after a bill for divorce is dismissed, the Court has no jurisdiction to afterwards allow counsel fees and expenses to the defeated party, which holding would seem to militate against the decision in question, yet that decision is supported by cases in Colorado, Wisconsin and Alabama, and it is to be hoped that it will not be disturbed in this State, where enough of fraud is practiced upon innocent parties in divorce proceedings.

LEASE OF MARRIED WOMAN FOR THREE YEARS; TO COMMENCE IN FUTURE. —In the case of *Horn* v. *Conradson*, lately decided in District Court for Ramsey County, Judge Otis holds that where a married woman gives a lease of real estate owned by her, her husband not joining therein, for the period of three years, the same to commence several months after execution, the lease is absolutely void.

It has long been the rule that a verbal lease for a year to begin in future is void, but this seems to be the first instance in which such a lease has been so declared. There is good reason for the holding, as the contrary would be the means of complicated titles and would be in effect subversive of the purpose of the statutory limitation of three years.

DIVORCE; JOINDER OF CAUSES; RELIEF:—In the recent case of Grant vs. Grant, 54 N. W. Rep. 1059, the Minnesota Supreme Court has made a ruling which will have an important bearing on the pleading and practice in divorce proceedings. In this case a cause for divorce absolute and one for a limited divorce were joined in the same complaint and relief demanded in the alternative. This the court held to be proper.

BOOK REVIEWS.

TIFFANY ON DEATH BY WRONGFUL ACT.—A Treatise on the Law Peculiar to Actions for Injuries Resulting in Death, Including the Text of the Statute and an Analytical Table of their Provisions. By FRANCIS B. TIFFANY, of the St. Paul Bar. 400 pages. St. Paul: The West Publishing Company. 1893.

As stated by the author in his preface, the purpose of this work is to treat of those questions of law which are peculiar to the various statutory civil actions maintainable where the death of the person has been caused by the wrongful act or neglect of another. It is another example of a tendency which seems to have to some extent taken possession of certain classes of legal writers, that of choosing as a topic a comparatively small portion of some general subject.

Confined as it is to the various statutory enactments upon the subject, the author very properly avoids the mass of generalities which usually figure in works of this sort, and closely adheres to the bearing of the statutory provisions. Many citations of cases, brought down to recent date, are made, in all about 1,300. These are, as usual, tabulated in order, and in that form take up about twenty pages of space. While tables of this kind are theoretically the proper thing, the practicing attorney rarely finds occasion for their use. Usually desiring to find cases on a given point, he will inevitably first find the statement of that point in the text, and finds the cases through the citations there made.

The analytical table of statutes upon the question under treatment is extensive and well arranged. All the recent statutes are there digested, and placed in a form which enables the practitioner to ascertain at a glance what the law is. The chapters bearing on the subject of Damages are especially full, particularly in the citation of cases, while the doctrines of the various courts as to what, in given cases, amount to wrongful acts or omissions are concisely and clearly stated.

Altogether, it is a work which will reflect credit upon its scholarly author, and be of particular value to those members of the profession who are engaged in prosecuting or defending actions for damages.

OUTLINE OF LECTURES ON THE LAW OF PRIVATE CORPORATIONS. By CHARLES B. ELLIOTT, L. L. B., Ph. D., Lecturer in the College of Law in the University of Minnesota. Published by the Author. 1893.

This work is a neat volume of about 125 pages, and contains what its subject indicates, an outline of the subject which Judge Elliott has for several years expounded for the benefit of the students in the Law at the State University. Every other leaf is blank, thus giving the student an opportunity to take an abundance of notes in connection with the lectures. No attempt has been made to set forth the statutory provisions on the subject, as the students have ready access to the statutes. All the general law on the subject is set out in a small space, and the author doubtless found it difficult to write so small a book on so large a subject. It will be a great assistance to the students and an immense improvement upon the old method of taking their own notes on the fly, as it were. The work is issued only for the use of the students, and is not intended for general circulation.

THE INFERIOR COURTS.

In this department it is our intention to publish the decisions on every new question arising in the District and Municipal Courts of the State, paying particular attention to questions of practice. While in this number there are no citations from Courts outside the cities of Minneapolis and St. Paul, with our next issue we will have many from outside districts, and intend to cover the whole State in a few months, when the citations will number over one hundred per issue.

ALIMONY: GRANTED WHEN DIVORCE DENIED:—Defendant obtained a divorce from his wife in another state where he resided, by substituted service; no provision being made for alimony. But subsequently the wife, a resident of this State, brings an action, founded on personal service on defendant, and asks alimony. Defendant is shown to possess property in this State in excess of $150,000. Held that although the request for a divorce will be denied, yet the case will be retained for the purpose of allowing the wife alimony; which was allowed in sum of $35,000.

Johnson v. *Johnson, Otis, J.*, Dist. Ct. Ramsey County.

CONSTITUTIONAL LAW: TAKING PRIVATE PROPERTY FOR PUBLIC USE WITHOUT COMPENSATION:—Chapter 381, Special Laws of 1891, authorizing the raising of the stage of water in Lake Minnetonka to a point much higher than before, but between low and high water mark, is not repugnant to the Constitution as taking private property for public use without compensation.

In re maintaining uniform stage of water in Lake Minnetonka, Hooker, J., District Court, Hennepin County. (See Notes.)

CONSTITUTIONAL LAW: DELEGATION OF TAXING POWER TO OTHER THAN MUNICIPAL CORPORATIONS:—Chapter 381, Special Laws of 1891, authorizing appointment by the District Court of three free holders as assessors of benefits accruing to owners of property adjoining the Lake by reason of the maintenance of a uniform stage of water, is not unconstitutional as a delegation of the taxing power to other than Municipal Corporations.

In re maintaining uniform stage of water in Minnetonka, *Supra*. (See Notes.)

CONSTITUTIONAL LAW: UNIFORM TAXATION:—The Legislature directed that the cost of certain improvements in Lake Minnetonka should be assessed upon benefitted property in Hennepin County alone; a small portion of lake shore being in Carver County. Held, that the Legislature has the right to designate over what territory the benefits of certain local improvements shall be assessed; that the act is not repugnant to the Constitution as violating the clause requiring that taxation shall be uniformly laid.

In re maintaining uniform stage, etc., *Supra*. (See Notes.)

COMPLAINT; ATTACHED EXHIBITS; WHEN SUFFICIENTLY ALLEGED:—Where a complaint on a bond sets out that a bond was made, executed and delivered "a copy of which bond is hereunto attached and hereby made a part hereof," it is a sufficient allegation of the contents of the bond, and not merely recital.

Toklo et al v. *McDermott, et al, Elliott, J.*, Munic. Ct. Minneapolis.

DIVORCE; JURISDICTION CONFERRED BY FRAUD; DIVORCE NOT A NULLITY:—Hus-

band and wife resided in Minnesota; went to Wisconsin for purpose of obtaining a collusive divorce; obtained it and came back; nine years after, husband having remarried and made a fortune, and died; wife number one claims estate on grounds that divorce was a nulity. Held, that, although it was a fraud on Wisconsin Court, yet as between parties it cannot be questioned in this proceeding.

Ellis Will Case, Otis, J., District Court, Ramsey County.

FORECLOSURE; SUIT TO RECOVER SURPLUS:—In 1873 defendant held a mortgage from plaintiff on a note bearing 7 per cent. after due, but with parol understanding that rate should be 12 per cent.; mortgage was foreclosed in 1881, after plaintiff had for years paid voluntarily 12 per cent. per annum. Suit to recover difference; *held*, that plaintiff cannot recover; on theory that money voluntarily paid upon a non-enforcible contract cannot be recovered.

Baldwin v. *Stimson, Otis, J.*, District Court, Ramsey County.

DIVORCE; SENTENCE TO STATE REFORMATORY NOT CAUSE FOR.—A sentence to the State Reformatory, although for grand larceny, is not a "sentence to the State Prison" within the meaning of the statute making such sentence a cause for absolute divorce.

Ecart v. *Ecart, Lochren J.*, District Court, Hennepin County.

DIVORCE OBTAINED IN FOREIGN STATE; VALIDITY.—Defendant, the husband, had obtained a divorce in Illinois, of which he was a resident, from his wife, a resident of Minnesota, by substituted service, and had there married again. *Held*, that the wife cannot be granted a divorce in this State on application, as that granted in Illinois is binding, at least as to husband.

Johnson v. *Johnson, Otis J.*, District Court, Ramsey County.

DEPOSITION; NOTICED FOR SAME DAY AS TRIAL; STRICKEN OUT.—Notice of the taking of a deposition in New York City on same day as case set for trial; party receiving notice did not appear in New York, but deposition was taken, and arrived in time to be offered at the trial. *Held*, that the deposition was improperly noticed and would not be received.

Burns v. *Provident Trust Society, Otis J.*, District Court, Ramsey County.

EQUITABLE ASSIGNMENT.—Where an account is placed in the hands of an attorney by the holder, under an agreement that out of the proceeds the attorney shall take a certain amount of money for his services, and that the balance should be by him applied to the payment of a pre-existing indebtedness of the client to the attorney, *held*, that as to attaching creditors, when money is collected, but not yet applied, the agreement is an equitable assignment of the whole claim to the attorney. *Davis* v. *Millar & Simpson* garnishee; *Mahoney J.*, municipal court, Minneapolis.

EJECTMENT; TO BE TRIED AS OF WHAT DATE.—Defendant in ejectment claimed under a lease which expired between commencement of the action and the time of trial; *held*, that the issues should be tried as of date of trial, and not as of date of commencement of action.

Alloway v. *Hall, Pond J.*, District Court, Hennepin County.

JUSTICE OF PEACE; POWER TO SET ASIDE JUDGMENT.—A Justice of the Peace has no power to set aside, vacate, or in any manner interfere with a judgment in his court after it is entered in his docket, even though he becomes satisfied that he had no jurisdiction over person of defendant; he then becomes a stranger to his judgment, except as to appeals.

State ex. rel. Williams v. *Hoglund, Canty J.*, District Court, Hennepin County.

JUDGMENT; DENIAL OF RECORD, GOOD.—Action on judgment of U. S. Circuit Court for Minnesota; answer, denial of record of such judgment; motion by plaintiff for judgment on pleadings.

Sandwich Mfg. Co. v. *Earl & Hanson; Canty J.*, District Court, Hennepin County.

SAME; ACTION ON; DEFENSE OF NO JURISDICTION IN ORIGINAL PROCEEDINGS.—In an action upon a judgment of the U. S. Circuit Court for Minnesota, defense that the Court did not have jurisdiction of the person of defendant in original proceedings; motion for judgment; *Held*, that such defense is not an attempt to impeach in collateral proceeding; that such an action is in a measure a continuation of the same action, to determine the validity of the proceedings had in such action.

Sandwich Mfg. Co. v. *Earl & Hanson; Canty J.*, District Court, Hennepin County.

LEASE; BY MARRIED WOMAN; TO BEGIN IN FUTURE:—A married woman gave a lease for a term of three years, her husband not joining therein; the lease was to begin several months after its date. *Held*, void.

Horn v. *Conradson, Otis, J.*, Dist. Ct., Ramsey County.

MEMBERS OF LEGISLATURE: PRIVILEGE FROM SERVICE OF SUMMONS IN CIVIL ACTIONS; WHEN WAIVED: — Defendant was a member of the State Legislature, then in session; appears by attorney and applies to the Court for an extension of time to answer, which was granted. Held, on motion to set aside service of summons, that defendant had waived his right to exemption from such service by so appearing.

Rhodes v. *Bjorge et al, Otis, J.*, Dist. Ct., Ramsey County.

MOTION TO STRIKE OUT:—Within the twenty days allowed for answer, defendant gives notice of motion to strike out portions of complaint; but serves no answer or demurrer; on argument, after expiration of the twenty days, plaintiff moves to dismiss, claiming defendant is out of court; defendant insists that if motion is overruled Court will extend time to answer, as in case of demurrer. *Held*, that motion to dismiss will be denied; but, as to whether Court may extend time in such a case, *quaere*.

Young v. *Hurst, Hicks, J.*, Dist. Ct., Hen. Co.

MANDAMUS; TO COMPEL JUSTICE TO ISSUE EXECUTION ON JUDGMENT; DEFENSE:—In mandamus to compel Justice of the Peace to issue execution on judgment, the question of whether the summons was properly served in original action may be made available by answer; and oral evidence will be heard upon the question of such service.

State ex. rel. Williams v. *Hoglund, Canty, J.*, Dist. Ct., Hen. Co.

MOTION TO VACATE NON-APPEALABLE ORDER; DENIED:—Where a motion is made to vacate an order for judgment, or other non-appealable order, it will be *denied*.

State ex. rel. Orr v. *Mills, Hicks, J.*, Dist. Ct., Hen. Co.

MANDAMUS: TO JUSTICE OF THE PEACE:—Mandamus will issue to compel a Justice of the Peace to expunge from his docket a false date of the entry of judgment. Same case.

SAME; COMPEL INSERTION:—The writ will not issue to compel a Justice of the Peace to insert, as the date of entry of judgment, a date more than three days after hearing, in cases tried without a jury, where date in docket, although within the three days, is shown to be false. Same case.

MILEAGE OF WITNESS; RESIDENCE IN ANOTHER STATE:—Where a witness, although a resident of the State of Wisconsin, is temporarily sojourning in Minnesota, and is there subpœnaed, mileage is to be allowed from the place of such temporary residence to the place of trial.

SAME; TEMPORARY AND PERMANENT RESIDENCE WITHIN STATE:—A witness permanently resided in Minneapolis, but was subpœnaed at a place far remote

from the place of trial, at which locality he was temporarily residing; *held*, that mileage should be allowed to and from the remote place of temporary abode.

Decisions by Otis, J., District Court., Ramsey County.

NOTARY PUBLIC; LIABLE FOR NEGLIGENCE IN TAKING ACKNOWLEDGMENT:—Notary took acknowledgment of parties to satisfaction of mortgage, which was forged, and certified that he knew the parties to be the persons described in the instrument. Upon the faith of that certificate the plaintiff was induced to loan money on the property and lost about $1,200 thereby. Held, that Notary is liable, also sureties on his bond, for full amount.

Building Society v. *Gillette et al, Brill, J.*, District Court, Ramsey County.

PROMISSORY NOTE; GIVEN BANK IN NAME OF CASHIER:—Complaint on promissory note made to order of "Geo. E. Maxwell, cashier," alleged to have been "made, executed and delivered to" the bank. *Held*, bad on demurrer; no connection between payee and plaintiff appears.

Flour City Nat. Bank v. *Bergstrom, et al, Canty, J.*, Dist. Ct., Hen Co.

SUMMONS; SUBORDINATE OFFICERS OF THE STATE LEGISLATURE, NOT MEMBERS THEREOF, NOT PRIVILEGED FROM SERVICE OF:—Where a summons in an action for damages was served upon the assistant sergeant-at-arms of the House of Representatives, a motion to set such service aside will be denied, as the privilege of exemption given to members does not extend to such officers, although acting in the name of and by the authority of the House.

Rhodes v. *Wells, et. al., Otis, J.*, Dist. Ct. Ramsey County.

SERVICE OF SUMMONS; WHEN COMPLAINT SHOULD BE FILED:—A summons was filed, and served on defendant; two days later, complaint is made and filed with the clerk; motion to set aside summons, ground, no action commenced. Motion *granted*, "on general principles."

Halton v. *Gallow, Smith, J.*, Dist. Ct., Hen. Co.

SUPPLEMENTAL PROCEEDINGS; EFFECT OF FILING SUPERSEDEAS BOND IN APPEAL:—Upon the filing of a proper supersedeas bond in the Municipal Court, where a transcript had been filed in the District Court and an order in proceedings supplemental to the execution had already been served on judgment debtor, the order will, on motion, be suspended to await result of appeal, the proceeding being left in the condition in which it then exists; but the order will not be vacated.

Taklo et. al. v. *McDermott, Hicks, J.*, District Court, Hennepin County.

SUMMONS; SERVICE OF BY READING IN JUSTICE COURTS:—Where a summons issued by a Justice of the Peace is attempted to be served by a proper officer, by reading the same to defendant, and at the same time the officer makes other statements which leads defendant to believe that it is some other person against whom suit is brought, although the summons is in fact read in full to the defendant, and he is the only defendant named therein; *held*, void.

State ex. rel. Williams v. *Hoglund, Canty, J.*, Dist. Ct., Hen. Co.

SAME; SAME:—In such a case, generally, that in making such service, the defendant must be made to understand the fact that he is the person against whom suit is brought; that in proportion as the defendant, from ignorance or other cause, appears to be unable to understand the nature of the proceedings, a corresponding degree of responsibility is devolved upon the officer to see that he understands what is meant by such reading. Same case,

USURY; PROMISSORY NOTE:—A note bearing no interest before and 10 per cent. after maturity, held, not usurious, as exceeding the rate allowed by law for default to pay.

Harrison et. al. v. *Keeling, Mahoney, J.*, Municipal Court, Minneapolis.

HON. ROBERT D. RUSSELL,

Judge District Court, Fourth District.

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LEGISLATIVE PRIVILEGES IN MINNESOTA.

FROM THE STANDPOINT OF THE LEGISLATOR.

BY RICHARD A. WALSH. ESQ.

Under the caption "Legislative Privileges in Minnesota" Mr. C. D. O'Brien discusses the proceedings of the special Joint Committee on Coal Combine, appointed by the concurrent action of the Senate and House of Representatives during the 28th Session of the Legislature of the State of Minnesota. As I had the honor of being a member of the Committee, I deem it my duty to present to your readers a statement of the facts, and we are confident that a *brief* review of the situation will satisfy the reader, that what the Committee did was not only in accordance with law, parlimentary usuage and precedent, but was the only mode of procedure, consistent with a proper discharge of our duty to our constitutents and the State.

The first question is, was the enquiry a proper one for the Legislature to undertake or was it usurping and invading the domain of the other Co-ordinate branches of our State Governments. It is true that chapter 10 of the laws of the year 1891 declared combinations to "fix the price or regulate the output of coal" unlawful and prescribed certain penalties therefor, and the enforcement of this statute was entirely within the

powers and duties of the Judicial and Executive arms of the State, but notwithstanding this law, the price of anthracite coal in Minnesota dur- the fall and winter preceding the meeting of the Legislature was abnormally high and *absolutely uniform.* To ascertain the reason for this unusal condition of affairs was undoubtedly the duty of the Representatives of the people, in order that remedial legislation, so urgently needed, might be enacted.

Mr. O'Brien talks of outrages; upon whom were they perpetrated? Everybody answers at once, upon the consumers of coal and not upon the coal barons or their servants.

As a result of our investigation a law was enacted at the last session which provided a punishment of ten years imprisonment and a heavy fine for persons convicted of the crime of conspiracy to defraud by unlawful combinations. All agree that for the wretches who fix the price of as prime a necessity as coal, at extortionate rates in a climate like Minnesota, no punishment can be too great.

Now, as to the exemption from the service of summons during the session of the Legislature, each State, except in so far as it has delegated its powers to the Federal Government, is a sovereignty and has the common law right of a sovereign, and among others there are granted to certain of its citizens by the sovereignty, on the ground of public policy, privileges not granted others, among them are exemption from jury duty, the wages of persons in the employ of the State are exempt from the process of garnishment, one class are exempt from being forced into the service of the United States in time of war, etc.

At common law in England members of parliament could not be sued with civil process during the session of the body to which they belonged, and this common law exemption became, and remains the law of each State of the United States until abolished by an express enactment to that effect.

"It has been said to be remarkable but true; that while by several successive statutes from the time of William III to the present, the boasted privileges of the British parliment are reduced to little more than exemption from personal restraint, yet our law remains unaltered and secures to the members of our legislature privileges which have not been enjoyed to the same extent by the English parliament for more than a century."

The reason for the rule is, that the administration of the government may not be interfered with or neglected by the embarrassments arising from the private affairs of those who are called into public service.

The members of the House of Commons would have enjoyed it if no King or House of Lords had been known in their Government. And surely the representatives of a Sovereign State are not less entitled to this privilege, though not confered by any positive law.

Now, as to the right of the Committee to send for books, papers, etc., we had served Mr. Rhodes, a witness, with a subpœna *duces tecum*, and he not only fails to produce the books or papers required of him, but absolutely denies their existence. Suppose Rhodes had brought the books, but had left them in an adjoining room and then denied the existence of the articles he had lately had in his possession, could it be contended for a moment, that the Committee being aware of the fact might not send the Sergeant-at-Arms to bring the books and papers from the adjoining room, and what difference is there in principle between this case and the one in question. The reader will remember that Rhodes did not admit he had the books in his possession and refuse to produce them. If he had the Committee could properly institute proceedings against him and thus compel their production, but under the circumstances they were powerless to do this, and must either send for the papers, or be content without their inspection, and thus be prevented from discharging their duty to the people.

The course taken by the committee was the only one open to them, and must be legal, because I assert that, that must be right which is indespensably necessary to the proper and effectual performance of the duty engaged in, yet I am aware and freely admit that the public benefits are not to be purchased by the violation of the sacred rights of individuals, but the reader will remember that the books taken by the Committee for inspection *were not the private property of Mr. Rhodes* in any sense, but belonged to the corporations who formed the coal combine, and by the provisions of Section 421 of Chapter 34 of the General Statutes of 1878, "the Legislature, or either branch thereof had full power to examine into the condition of any corporation in this State; and for that purpose any committee appointed by the Legislature, or either branch thereof, shall have full power to examine the vaults, safes, books, papers and documents belonging to such corporation, etc." Thus it appears that our Committee acted in pursuance of the express provisions of our statutes, and in accordance with precedents established in many previous investigations. For example, we were informed that the wheat investigation Committee (so-called) during the session of 1891, sent the Sergeant-At-Arms to Duluth for books, etc., and his authority was not questioned; but our local coal barons grow rich with the spoils of years of uninterupted plunder of the people, have grown insolent and intolerant of any restraint, and it is said that some of them have constructed castles on our great inland river, which rival, in many respects, those of the ancient baronical robbers on the Rhine.

Justice Littledale in the celebrated case of Stockdale vs. Hansard, in the 9th Ad. and E. page I., speaking of the House of Commons, says: "that it is the grand inquest of the Nation and may enquire into alleged abuses in any quarter, therefore it is necessary to the due performance,

both of its legislative and inquistorial functions, that it have the power of sending for and examining all persons *and things.*"

The case of Kilbourn vs. Thompson in the 103 United States Supreme Court Reports at page 168, referred to by Mr. O'Brien, is not in point, on any phase of the many questions that arose during the coal combine investigation.

The very able opinion written by Justice Miller, held in the case that a matter attempted to be investigated by one branch of Congress was one that was proper for the Judicial rather than the Executive branches of the Government, and in effect held that neither branch of Congress, except in special cases, had authority to imprison for contempt.

After our Committee had taken the books from the custody of Mr. Rhodes, and before they were examined, we reported the facts to both the Senate and the House, and thereupon both bodies, composed of many able lawyers "declared the seizure of the books both reasonable and proper, and not in conflict with any provision of our constitution."

Justice Littledale in the case of Stockdale vs. Hansard, supra, speaking of a resolution of the House of Commons said: "that the House ought not to be able merely by passing a resolution that they have power to do an act, illegal in itself, to thereby bind all persons whatsoever, and preclude them from enquiring into the existence of that power, for if this was true one branch of the Legislature would have power to overrule the law," but intimates that it would be different had it been enacted by both Houses and approved by the King; thus it would appear that the law passed at the last session, absolving members of the Legislature from liability for acts done in discharge of their legislative functions is valid, certainly if done under a misapprehension of the scope of their powers and not grossly irregular or malicious.

But the members of the Coal Combine Committee are not obliged to seek protection for any act of theirs in the provisions of this law, for I reiterate that what they did, and all they did, was perfectly proper and legal.

The people have become impatient and distrustful of legislative investigations because many of them give no light and are productive of no practical results. Such would have been the fate of the Coal investigation had we failed to secure and inspect the books of the Combine, but as a result of this investigation the public have been fully advised of the methods resorted to by the large coal dealers, to keep up extortionate prices for their commodity, and subsequent Legislatures and Congress will have an opportunity of enacting legislation that will effectually crush out the Coal and other like unlawful Combinations.

There is no thinking man but realizes the grave danger to our institutions from the formation of these trusts and combinations, and when the people—goaded almost to despair by their exactions, find that their Representatives, and the Courts of Law, are unable to grant them any relief,

our Government will be found to be on the verge of dissolution.

The Coal Combination is the leviathan, among the trust species, and has done much to spread the present black cloud of disaster over the country.

Let us hope that its power for evil may be reduced to the minimum by the enactment and enforcement of wise legislation.

NOTE AND COMMENT.

PRACTICE IN THE DISTRICT COURTS; UNIFORMITY OF RULING A NECESSITY.—Members of the bar encounter little that is as annoying and troublesome in their practice throughout the State as the lack of uniformity of holding upon common and ever recurring questions of practice. Not only are the holdings diverse among the different districts, but in the larger districts it sometimes happens that members of the same court differ in their views upon such questions, causing much uncertainty and misunderstanding.

We are glad to note that efforts are being made which bid fair to terminate this condition of affairs. In 1875 a statute was passed (Gen. Statutes 1878, Ch. 64, Sec. 37) containing the following requirement: "The Judges of the District Courts of the several Judicial Districts, shall, on the first Wednesday of July next, meet in general session at the Capitol, in the city of St. Paul, and adopt such general rules of practice in civil actions * * * as will secure a uniformity of practice throughout the State, as may be deemed necessary or just. The said Judges shall meet annually thereafter, at the same place, on the first Wednesday of July, to revise such rules and make amendments thereto; and the same shall go into effect from and after their publication."

The first meeting was held in accordance with the statute, but in the succeeding seventeen years the enactment has been permitted to be and remain a dead letter, mainly because no one took the initiative in calling the judges together. Some three weeks ago, however, Judge Henry G. Hicks, of the Fourth District, took an active interest in the matter and communicated with the various judges throughout the state upon the advisibility of assembling for the purposes indicated in the statutes. The idea met with the approval of the members of the judiciary and many indicated an intention to be present.

On the 5th day of July the meeting was called to order by Judge H. G. Hicks, of Hennepin county, and Judge Hascal R. Brill, of Ramsey, was called to the chair. Those present were, Judges Kelley, Egan, Willis and Brill, of Ramsey, Hicks and Smith, of Hennepin, Cadwell, of LeSueur, Searle, of Stearns, Brown, of Stevens, Buckham, of Steele, and Williston, of Goodhue.

There was a general agreement that something should be done to bring about uniformity of practice, and considerable discussion as to what subjects should receive attention. Judges Searle, Hicks and Buckham particularly urged the necessity of action, and cited instances of

adverse action upon similar points. Action was finally taken in the matter by the appointment of a committee to draft a set of rules to govern in all the districts, and report at a future meeting. The committee is composed of Judge Brill, chairman, and Judges Searle, Buckham, Williston and Hicks. It was then agreed that the report should be made at an adjourned meeting at the same place on Thursday, August 24th, next.

The committee are to meet with Judge Brill, at his chambers, St. Paul, on August 10th, next, and then draft their report. In the mean time all the Judges of the State are to be called upon to send in suggestions upon matters of interest to the committee.

It is expected that especial attention will be given to rules of practice in insolvency proceedings; and if there is any branch of the practice which needs this sort of attention it is this one, as scarcely two courts hold alike upon many essential points.

It is our intention to give our readers a full account of all the proceedings had, and to print the full set of rules, when they have been adopted.

CRANK LEGISLATION.—It would seem that there is one act, at least, passed by our last Legislature, which would seem to come within this title: Chapter 25, of the laws of 1893, being "An Act declaring it a misdemeanor on the part of employers to require as a condition of employment the surrender of any right of citizenship."

"The Act forbids any person, partnership or corporation from requiring or demanding from any servant or employe, on any condition whatever, the surrender in writing or by parol, or the abandonment or agreement to abandon any lawful right or privilege of citizenship, public or private, political or social, moral or religious, under a penalty of $100 fine."

Just what is intended to be covered does not appear; whether an agreement not to go to a theatre would be considered an abrogation of "a social privilege," or whether a contract to refrain from becoming intoxicated while employed would call down upon the head of the employer the vengeance of the law, as being an agreement in contravention of a "moral or religious right of citizenship," we are not informed. The editor of the labor department of a great daily recently mourned the fact that the act was so "uncertain and indefinite."

Considered as emanating from the champions of labor, it may be supposed that it was intended to punish those employers of labor who have found it necessary to require as a condition of employment a promise not to join certain labor organizations.

Viewed from a legal standpoint, the recognized "rights of citizenship" being those declared to be inalienable by the "Bill of Rights," it would be difficult for the legislature to create new privileges of citizenship for

the purpose of applying a remedy. If the right to join a society for self improvement should be considered as one guaranteed by the Constitution, the act would seem to be class legislation of the clearest type. At any rate, no one is compelled to seek employment where such a requirement is made, and if he does so and willingly, for a good consideration, i. e., his employment, foregoes these alleged rights, it is difficult to see how the State is in any way affected.

To say to an employer that he must not insist upon such a condition is to tell him that he must take into his employ those who, perhaps, have already injured him through the organization, and tie his hands to a certain extent in the enjoyment of his property. It would not be a strained construction which would place the act in a position in opposition to the Constitutional prohibition of depriving a man of his property without compensation. It would seem, also, that the act could not well apply to contracts of that nature in force at the time of its passage. Granting that it is valid, as to this class of contracts, the act would make them all absolutely *void*, as in contravention of the law. This would have the effect of releasing all parties from the already existing contracts, a proceeding prohibited by the Federal Constitution, as "impairing the obligation of a contract." This is too clear to require argument.

It is rumored that soon an attempt will be made in the City Courts to test the law, and that the initiative will be taken by representatives of the local labor organizations. It will be interesting to watch its progress, as such legislation is decidedly novel.

PRACTICE IN CASES WHERE VERDICT FOR DAMAGES SET ASIDE AS EXCESSIVE.—On May 22nd last, the Supreme Court of Minnesota set aside as excessive a verdict for $4,100 in favor of plaintiff in the case of Slette vs. Great Northern Railway, (55 N. W. Rep. 137). The verdict was for damages for personal injuries.

Subsequent to the filing of the decision, the attorneys for respondent moved, upon an order to show cause, that the court indicate the proportion of the amount of the verdict which should be considered excessive, and that the respondent be given an opportunity to remit such proportionate amount. The hearing was continued until it could come before the full bench, as it was a novel departure from the practice in such cases, and the first time such action had been sought in that court.

The Court finally made an order to the effect that the respondent be allowed 20 days after the mandate should be filed in the Court below in which to file in that Court a notice that he accepts the sum of $2,100, in full of the verdict; and in case the said acceptance is not filed within said time, that the original order therein should stand.

The respondent took advantage of the permission and saved thereby

much trouble and expense to both parties litigant. While the practice is novel it is certainly in accord with common sense, there being no good reason why the parties should go to trial again, resulting perhaps in another excessive verdict.

OUR LAW SCHOOL.—A little less than five years age the Regents of the State University determined to establish a department of law. A small room in the basement of the main building, formerly used only by a literary society, was the place where, on September 11th, 1888, Dean W. S. Pattee, fresh from the active practice of the law, met the small class which composed the pioneers of the department.

From the first, success to a remarkable degree attended the efforts of the faculty and the total enrollment for the first year was sixty-seven, while the roll of graduates contained three names. In the fall of 1889 the department moved into their new building, on the campus, where every facility for study and class work is afforded. The library, at first merely such books as the Dean brought with him, has assumed proportions which permit a wide range of study and research, and is being constantly added to.

The course of study for LL. B. is two years, covering thoroughly all the important subjects of the law, by lectures and quizzing. Lectures in the day course are from 2 to 4 p. m. daily and in the evening course from 7:15 to 9 p. m. Many who find it necessary to work during the day make use of the evening course, which gives LL. B. in three years. The graduate who leaves the parental care of Dean Pattee should, if he has made proper use of his opportunities, have a very good idea of the main body of the law, practical as well as theoretical. The objection that such study produces lawyers conversant with the theory alone is largely met by the institution of Moot Courts, in which all the ordinary statutory and common law actions are brought, tried, and determined and appealed, following in detail the requirements of the code.

The graduate department, established in the year of 1891, gives one year's advance work in Constitutional History and Jurisprudence, International law, General Jurisprudence, Minnesota Practice and Procedure and kindred subjects. In 1892, four received the degree of LL. M. in this department and five in 1893.

The attendance has rapidly increased from year to year, the enrollment for 1892-3 being 277, of which number 77 received their diplomas last commencement.

A large attendance is not the only thing that the faculty seek, nor is it upon that alone they deserve congratulation. Much hard work has resulted in advancing the standard of the work accomplished, often at the expense of numbers. The School has taken a place among the Law

Schools of the country and is beginning to draw students from a large number of states.

The corps of lecturers include the names of many well known practitioners, the students thus coming in contact with lawyers in active practice in the Courts; among them may be named Frank B. Kellogg, Esq., C. D. O'Brien, T. D. Merwin and Senator H. F. Stevens, of St. Paul; Judge J. O. Pierce, Judge Geo. B. Young, Judge C. B. Elliott, Senator John Day Smith and Selden Bacon, Esq., of Minneapolis. To these and other members of the State Bar much credit is due, but above and beyond them all is the Dean, whose hand directs and controls the whole institution and who works, day and night, for its success. The universal verdict of the hundreds of students who have come and gone is that there could not have been a wiser selection made than that made by the Board of Regents when Dean Pattee was called to preside over the baptismal ceremonies of the legal infant which has so astonished even its parents by its growth.

NOTES ON RECENT DECISIONS.

THE HENNEPIN COUNTY COURT HOUSE BONDS.—On June 30th the Supreme Court of Minnesota rendered a decision in the action brought by the Board of Court House and City Hall Commissioners for a writ of mandamus to compel Auditor Cooley, of Hennepin County, to countersign an issue of $1,000,000 in bonds for the completion of the new Court House and City Hall at Minneapolis, which has much of interest in it for those who have followed the working of the constitutional amendment prohibiting special legislation in certain cases voted upon last fall.

After deciding that "it is obvious that the case covered by the act of 1893 (the act in question) is not one to which a general law could have been made applicable," and that "such a law might have been general in form, if enacted, but, on necessity, would have been special in its operation and would have violated the constitutional inhibition as much as if it were special in form," the Court decides that the authorization by the act of 1893 of the issuance by the Commission, created by a prior act, of bonds in furtherance of the provisions of the former act, is contrary

to that part of the amended Sec. 33 of Article 4 of the constitution which prohibits the Legislature from passing any special law "regulating the affairs of any city, village, etc;" that the act is void and the relators are not entitled to the writ asked for. Upon that point the Court through Collins, J., say:

"This brings us to the inevitable proposition that if the act of of 1893 falls within any of the special prohibitions enumerated in the second paragraph of the section its validity cannot be upheld, and this remark would apply to the original law of 1887, had the existing provision in the constitution been in force when it was enacted. In this connection we have simply to inquire whether this law regulates the affairs of a county or city, and the statement heretofore made as to the nature of the original act and that of 1893, which was, in effect, nothing more than an amendment fully answers the inquiry. Under the law as it stood prior to the legislation of 1887 it was the duty of the county, through its officers, to provide a court house, if one is needed. But this could not have been undertaken jointly with the city. Borough of H. vs Sibley Co., 28 Minn., 518. And while our attention has not been called to any charter provision which would authorize the city officials to erect a city hall, their power to provide proper city offices could not well be doubted. Yet, by the act of 1887, the duty and power in these matters was taken away from the county and city officers and conferred upon a special board, without the approval of the people of either county or city. We need spend no time in demonstrating that when the legislature authorized and directed the issue and sale of the bonds of each of these municipalities and the erection of a public building for their joint use, to be paid for by taxes which were directed to be levied for that purpose, it attempted a very noticeable regulation of the "affairs" of a county and of a city.

The result of this litigation may prove very unfortunate in the present condition of the building in question, but under the constitutional provision the statute of 1887 could not have been lawfully enacted and that of 1893 is clearly within the prohibition we have discussed."

There is probably no subject that will demand and receive more careful consideration, during the next few years, at the hands of attorneys as well as legislators, as the question of the effect of this amendment. In the present case, since the Court declares that the object could not be attained by the passage of a general law, and holds the special law void as well, the Commissioners are placed in an anamolous position, which it would appear will require the rescinding of the amendment by a vote of the people in 1896. It is well that the Court has been given an early opportunity of giving an idea of what construction is to be placed upon the amendment.

In this connection it will be well to announce that we had mapped out a line of discussion upon the various phases of this question, and that in the subsequent issues several prominent attorneys will contribute articles upon the question.

CHIEF JUSTICE FULLER AND THE WORLD'S FAIR.—From the stir made by various religious bodies over the decision of the U. S. Circuit Court of Appeals upon the injunction case, in the matter of closing the World's Columbian Exposition on Sunday, one would be lead to believe that the Court in its decision had departed from all law and precedent and committed an outrage upon justice. But an examination of his verbal order denying the relief prayed for, viewed from a legal point of view, shows clearly that the decision was made upon well settled principles of equity. One of the fundamental principles upon which the applications for an injunction must always rest is some "irreparable injury or loss," for which the law courts can grant no relief. It seems that this was not claimed to be the case in this proceeding.

We quote the words of Chief Justice Fuller, who, with Judges Burns and Allen, composed the Court, upon the main question involved:

"The bill pleads that the defendants are usurping unlawful authority over the Exposition and grounds, and in virtue thereof assume to open the gates on Sunday in contravention of the acts of congress, notwithstanding such opening would be "of great injury and a grievous prejudice to the common public good and to the welfare of the people of the United States." It is not contended that any property interests of the complainant will be injured by the threatened action, nor is there any allegation of irreparable injury or probable loss by such action.

The decision of the court might interpose to protect the United States in its possession, but it is the local corporation that is in actual possession under the law of the state and of the ordinance of the South Park commissioners. The possession is recognized by the acts of congress as essential to the construction and administration of the Exposition by the corporation. In that construction the corporation has invested sixteen millions of dollars under circumstances that preclude the view that the United States have exclusive administration and authority in the premises. It is perfectly clear that congress never intended that the United States should become responsible for the construction of any of the buildings except its own or for the work provided for by the appropriation. Of course the government has a qualified possession, but we find nothing in this regard upon which to base an intervention of a court of equity on that ground.

It is sufficient to say that we cannot except this case from the ordinary rule which requires to the exercise of jurisdiction in chancery some injury to property, whether actual or prospective, some invasion of property or civil rights, some injury irreparable in its nature and which cannot be redressed at law. This is not such a case and the result is we hereby refuse the order and the case is remanded for further proceedings not inconsistent with these conclusions.

THE INFERIOR COURTS.

This department has received a warm welcome from members of the bar throughout the State, and, this issue much enlarged, will continue to expand and become more reliable as time goes on. Practice cases will receive most attention, while other important or interesting points decided in the lower courts will here find a place. An index will be furnished annually, or oftener, if necessary.

ACTION BY ASSIGNEE TO RECOVER MONEY FRAUDULENTLY PAID CREDITOR AS A PREFERENCE; COMPLAINT MUST SHOW STATUTORY AUTHORITY.—Plaintiff as assignee, seeks to recover of defendant, money alleged to have been paid him by insolvent just prior to assignment, on ground that said payment was an unlawful preference. *Held*, on demurrer, that complaint must show that the assignment was under the statute, or state such facts as would render such payment fraudulent at common law; neither being pleaded, demurrer was sustained.

Young, assignee, v. *Ulmer*, *Kelley, J.*, District Court, Ramsey Co.

ANSWER STRICKEN OUT AS SHAM:—In an action for liquidated damages the answer admitted the execution of the contract sued upon and its breach on the part of the defendant, but alleged "that prior to commencement of this action, defendant had a settlement with plaintiff, and paid all he owed plaintiff; was sworn to by attorney. Answer stricken out as sham.

Hall & Co. v. *Wedmark*, *Hicks, J.*, District Court, Hennepin County.

APPEAL FROM JUDGMENT OF JUSTICE COURT; NO BOND FILED; AFFIRMED:—Appellant served notice of appeal in Justice Court, but failed to file a bond in appeal; he also failed to cause return to be filed on or before the second day of the term. Upon the hearing judgment was affirmed.

Griswold v. *O'Brien*, *Hooker, J.*, District Court, Hennepin County.

APPEAL BOND; LIABILITIES OF SURETY THEREON, EFFECT OF FAILURE TO JUSTIFY:—Defendant Dannegger became surety upon a *super sedeas* bond in the appeal of defendant McDermott; notice of exception to sufficiency of sureties was duly served on McDermott's attorney; notice of intention to justify was given by him; but the sureties failed to appear and justify. The appeal was heard by the Supreme Court and the judgment appealed from was in all things affirmed.

Defendant answers a complaint on said bond, by setting up the fact that said notice of exception was given and that said sureties failed to justify. *Held* that said defense is unavailable, and that plaintiffs have judgment on the bond.

Taklo et al v. *McDermott et al*, *Elliott, J.*, Municipal Court, Minneapolis.

SAME; TAXATION OF COSTS IN ABOVE CASE.—Judgment being ordered for plaintiff for goods he demanded, and against plaintiff for the sum of $73.00 on counter-claims, both parties claimed costs. *Held*, that plaintiff should be allowed costs, to be deducted from defendant's judgment of $73.00, and that defendant's costs would not be allowed, as the plaintiff is the prevailing party.

ASSIGNMENT FOR BENEFIT OF CREDITORS, ALTHOUGH NOT FILED, GIVEN PREFERENCE OVER APPLICATION FOR RECEIVER:—Insolvent made deed of assignment on the 11th at 12 m.; an order to show cause why a receiver should not be appointed

was signed between 4 and 5 p. m., and served between 7 and 8 p. m. on the same day; the deed was filed on the day following, also bond of assignee. Motion for appointment of receiver denied.

In re app. for receiver for M. G. Phillips, Pond, J., District Court, Henn. Co.

ATTORNEY'S LIEN UPON JUDGMENT; NOTICE OF SAME NOT A BAR TO APPLICATION TO THE COURT FOR DETERMINATION AND ALLOWANCE OF FEES, FROM ASSIGNEE:—Petitioner had applied to court to determine and allow claim, as special attorney for assignee and for order for their payment by assignee; before the hearing of said petition, the petitioner served notice of claim of attorney's lien upon judgment debtor. Assignee moves to dismiss the petition, on ground that filing the lien was inconsistent with this application; that petitioner had security for his claim in said lien. Motion *denied.*

In re-assignment of———R. L. Penney, Russell, J., District Court, Hennepin Co.

COMPLAINT; SUFFICIENCY OF ALLEGATION OF INCORPORATION.—A complaint in action to recover on subscription to stock of a coporation was demurred to, the objection being that it did not show that the amount of capital stock had been fixed:—it did allege however, that plaintiff was "a duly organized and existing corporation under and by virtue of the laws of the State of Minnesota." *Held*, that this allegation means that all necessary requirements had been complied with.

Woods Harvester Works v. *Robbins, Kelley, J.*, District Ct. Ramsey Co.

COMPLAINT; ALLEGATION OF SUBSCRIPTION TO STOCK.—Complaint alleged that defendant made a subscription to the stock of a corporation "for value received;" on demurrer, *held*, sufficient as an allegation of consideration for said subscription.

Woods Harvester Works v. *Robbins, Kelley. J.*, District Ct. Ramsey Co.

COSTS; AN APPEAL FROM JUSTICE COURT:—Where the judgment of a Justice Court is affirmed or reversed by the District Courts, the prevailing party is entitled to tax $10.00 statutory costs.

Griswold v. *O'Brien, Hooker, J.*, District Court, Hennepin County.

COUNTERCLAIM; WHEN NOT PROPER IN REPLEVIN:—Plaintiff brings action in replevin to recover certain goods under mortgage lien clause of lease; defendant sets up as counterclaims, first, damages to her character and reputation by reason of the taking of said goods by the sheriff in this action; second, damages to household furniture by reason of leaks in the roof of the house occupied under said lease. Both counterclaims *held* bad on demurrer.

Slater v. *Dike, Elliott, J.*, Municipal Court, Minneapolis.

COSTS; WHEN ALLOWED DEFENDANT AS PREVAILING PARTY:—Plaintiff claimed judgment for $12.00, interest and costs; defendant tendered $6.00, interest and costs; the court found for plaintiff for $6 00, interest and costs, the amount tendered.

Plaintiff endeavored to tax costs of trial, which was *not allowed.* Defendant taxed his costs as prevailing party, including $5.00, statutory costs, from which taxation plaintiff appealed to court. Taxation *affirmed.* Elliott, J., Municipal Court, Minneapolis.

CREDITORS; WHEN CLAIMANTS BECOME SUCH WITHIN MEANING OF INSOLVENCY ACT:—Several creditors of insolvent petitioned the court to remove the assignee for cause. The application was refused, it appearing that the claimants had not yet filed their claims with the assignee and had them allowed; these steps being held to be necessary in order to give claimant the right to petition as a creditor.

In re assignment of Henry Hengen, Pond, J., District Court, Hennepin County.

CRIMINAL LAW; INTOXICATING LIQUORS; WHAT CONSTITUTES SALE OF.—One Fecht was steward of a club on salary; members hired rooms, bought liquors, and paid Fecht as steward, for them by the glass. *Held*, that the transaction was a sale and Fecht was guilty of selling liquor without a license.

State v. *Fecht*, *Egan*, *J.*, District Ct., Ramsey Co.

ESTOPPEL; DENIAL OF OWNERSHIP OF MORTGAGED PROPERTY.—Plaintiff brings action in replevin to recover possession of goods upon which he claims a lien for rent under a mortgage-lien clause in a lease; defendant admits execution of lease, but denies that she owned said property at the time of said execution. *Held*, that defendant is estopped to deny ownership by reason of admitting the execution of lease.

Slater v. *Dike*, *Elliott*, *J.*, Municipal Court, Minneapolis.

EVIDENCE OF VALUE OF HOUSE AND LOT: —Evidence of the value of a lot and also of the house thereon, separately, is not proper evidence of the value of both together.

Hahn v. *Barge*, *Canty*, *J.*, District Ct., Hennepin County.

GARNISHMENT; NOTICE TO DEFENDANT NOT SERVED IN TIME; GARNISHMENTS DISMISSED: — Garnishee summons was served upon each of thirteen garnishees on May 21st, the return day named being June 17th; the notice to defendant was served in each case on June 13th; it appearing that plaintiff had no good reason for not serving notice sooner, as he knew defendant's residence. Garnishees, appearing specially, moved for dismissal. Motion *granted*.

Holt v. *Bildsten and Garnishees*, *Russel*, *J.*, District Court, Henn. County.

JUDGMENT IN ACTION AGAINST PARTNERSHIP, WHERE ONE MEMBER IS SERVED; AGAINST WHOM ENTERED.—Co-partnership made defendant in an action; service made upon E. E. Smith a member of co-partnership; judgment was entered by default against E. E. Smith, personally, and against the firm as such. Defendant E. E. Smith moves to modify judgment by striking out the entry against him, leaving only the judgment against the firm as such. Motion granted.

Midland Lumber Co. vs. W. H. Smith & Son, *Hooker*, *J.*, District Ct., Hennepin Co.

JURISDICTION OF DISTRICT COURT ON APPEAL; WHERE CANNOT BE OBJECTED TO: —The question of whether the District Court obtained jurisdiction of an appeal from a judgment of the Justice Court which judgment has been affirmed, cannot be raised for the first time on taxation of costs upon that judgment.

Griswold v. *O'Brien*, *Hooker*, *J.*, District Court, Hennepin County.

JUSTICE OF THE PEACE; NOT LIABLE FOR COSTS ON APPEAL WHERE JUDGMENT WAS REVERSED AS VOID:—Plaintiff recovered judgment in a justice court, which on appeal, was reversed as being void on its face, rendered so by neglect of justice; on appeal, plaintiff appeared and contested as respondent. Plaintiff brings this action to recover from justice the costs paid by him on account of said reversal. *Held*, no cause of action.

Murray v. *Mills*, *Elliott*, *J.*, Municipal Court, Minneapolis.

MINOR; CANNOT DISAVOW AND BE RELEASED FROM CONTRACT WHOLLY EXECUTED BY HIM, AND PARTLY SO BY DEFENDANT:—Plaintiff being under 18 years of age, made a contract with defendants, whereby they were to furnish her certain instruction for the sum of $52.00, which was then paid. Before the term was completed, plaintiff became of age, left the school, and brought action to recover the money paid. It appearing that defendants were always able and willing to furnish the balance of said instruction, and that the contract was

wholly executed on part of plaintiff, *held*, that plaintiff could not recover anything.

Phillips v. *Curtis & Chapman*, *Elliott*, *J.*, Municipal Court, Minneapolis.

MUNICIPAL COURT JUDGMENTS; WHERE APPLICATION SHOULD BE MADE TO VACATE:—Sometime since the full bench, District Court, 4th Judicial District, passed upon the question of whether application to vacate a judgment of the Municipal Court, where transcript has been docketed in the District Court, should be made to the Municipal or District Court. It was then decided that the proper practice should be to have the application made to the Municipal Court. Subsequently upon a full hearing of the question in another case, Judge Smith held that such application, when made to the District Court, was proper.

ORDER FOR PUBLICATION; FILING OF RETURN OF SUMMONS NOT JURISDICTIONAL.—Where a summons in an action against a non-resident defendant had been returned by sheriff, but not filed in clerk's office, it is not necessary that the application for an order for publication of said summons should show that said return had been filed.

Corson v. *Shoemaker*, *et al*, *Canty. J.*, District Ct, Hennepin Co.

PERSONAL TAX JUDGMENTS; APPLICATION TO OPEN SAME, WHEN TO BE MADE:—Application was made to vacate a personal tax judgment, entered in 1884, in which the citation was served on defendant, on the ground that defendant had no property in this county subject to taxation. *Held*, that such application must be made within one year after entry of judgment, and upon showing of excusable neglect.

State v. *Clarke*, *Russell*, *J.*, District Court, Hennepin County.

POSSESSION OF BODY OF DECEASED; WISH OF DECEASED AS TO BURIAL PLACE:—Husband applies for *habeas corpus* against next of kin of deceased wife, to obtain possession of body of said deceased. It appeared from the evidence that the deceased had expressly desired that she be buried in Lakewood cemetery, while husband desired to convey the body elsewhere. *Held*, that expressed wish of deceased should govern.

State ex. rel. Hengen v. *Scott*, *Hicks*, *J.*, District Court, Hennepin County.

SAME; WHEN WAIVED BY HUSBAND:—The husband may waive his right to the possession of the body of his deceased wife, and does so by allowing the next of kin to buy a lot and pay for the grave with full knowledge of the facts.

Same case.

PRACTICE; COUNTER-CLAIM, IMPROPER IN ACTION; WHEN IMPROPRIETY WAIVED.—In an action of replevin defendant set up two counter-claims, which, although stating causes of action, would have been stricken out on motion as not being proper counter-claims in that action. Plaintiff interposed a general denial by way of reply. *Held*, that having joined issue upon said counter-claims by making said reply, plaintiff waived its right to object to the counter-claims on that ground, and in effect, agreed that the issues thus joined should be tried with the others.

New Eng. Furn. & Carpet Co. v. *Weiloff*, *Otis*, *J.*, District Ct., Ramsey Co.

PRACTICE; TAXATION OF STATUTORY COSTS FOR LABOR.—The facts upon which, under the statute, a party bases an application to tax five dollars as additional costs in an action for labor or services, need not be alleged in the complaint, but may be made to appear by affidavit.

Brice v. *Lee*, *et al*, *Elliott*, *J.*, Municipal Ct., Minneapolis.

SAME; SAME.—In order to tax the five dollars additional costs allowed in actions for labor or services, under the statute of 1891, it must be made to appear that payment had been demanded more than 30 days prior to the commencement of the action.

Knapp v. *Waugh*, *Elliott*, *J.*, Municipal Ct., Minneapolis.

PROCEEDINGS SUPPLEMENTED TO EXECUTION; MOTION TO SET ASIDE ORDER FOR, DENIED:—The sheriff had made a return of *nulla bona* upon execution, without making any actual demand upon the judgment debtor. A motion on behalf of judgment debtor, after an order in supplemental proceedings had been made and served upon him, to set aside said order and the said return of said sheriff upon the ground that no actual demand had been made upon him, the fact being practically admitted upon the hearing, was *denied*.

Hendrickson v. *Anderson*, *Russell*, *J.*, District Court, Hennepin County.

REPLEVIN; DEMAND FOR GOODS UNNECESSARY; MONEY JUDGMENT RENDERED.—Plaintiff brings action in replevin to recover goods of value of $300.00, or judgment for their value; defendant sets up counter claims, claiming that plaintiff had taken goods belonging to defendant, valued at $73.00, for which money judgment alone was asked. Both parties recover on their claims, and plaintiff is given possession of the goods he sought, and offers defendant the return of goods mentioned in counter-claims, which were refused. *Held*, that defendant could seek *money judgment*, without demand for goods, and plaintiff cannot insist upon acceptance of goods offered And *held* generally in a replevin action where property has not been delivered to the prevailing party and a return thereof is not demanded in complaint or answer, such party may have a money judgment against the adverse party, omitting alternative judgment for a return.

New Eng. Furn. & Carpet Co. v. *Weiloff*, *Otis*, *J.*, District Ct., Ramsey Co.

SPECIAL ATTORNEY FOR ASSIGNEE; HOW COMPENSATION DETERMINED:—Petitioner was attorney, specially appointed to bring certain actions for assignee; asks the court to determine the amount of his compensation and to direct assignee pay the same; assignee objects, claiming that attorney's claim should be filed with assignee regularly. Motion to dismiss on that ground denied.

In re-assignment of———*R. L. Penney*, *petitioner*, *Russell*, *J.*, *District Court*, *Hennepin County*.

SUBSCRIPTION TO STOCK WHEN BECOMES BINDING TO CORPORATION;—Upon demurrer to complaint in an action by a corporation upon a subscription to its stock, it was objected that the corporation had not accepted the subscription, that such subscription was a mere offer, and that the contract was never completed. *Held*, that, since it appears that the board of directors acted upon the subscription in making call and authorizing suit, the corporation would be bound to have issued the stock, and the contract is complete.

Woods Harvester Works v. *Robbins*, *Kelley*, *J.*, District Ct., Ramsey Co.

SUMMONS, DEFECTS IN; WHAT NOT JURISDICTIONAL.—Motion to set aside a judgment by default, on the ground that the copy served was not a true copy of said summons, in that no number of days was stated within which answer might be made, and no demand for judgment appeared. Motion denied, defects not being jurisdictional. (See 55 N. W. Rep., 127.

Folds vs. Snyder, *Elliott*, *J.*, Municipal Ct., Minneapolis.

SUPPLEMENTAL PROCEEDINGS; EXTENT OF EXAMINATION OF THIRD PARTY:—An order was made requiring a third party to appear before a referee in supplemental proceedings, and disclose relative to the debtor's property; upon the hearing the witness was asked questions relative to a supposed fraudulent transfer of property of the debtor to the witness; touching upon the question of consideration for such transfer, witness refused to answer all questions put to him. *Held*, that witness was guilty of contempt and that the questions were proper ones.

Ankeny v. *Buffington*, *Pond*, *J.*, District Court, Hennepin County.

WITNESS FEES; TAXED BY DEFENDANT, WHEN WITNESS CALLED BY PLAINTIFF:—Plaintiff and defendant both subpœnaed the same witness; plaintiff placed him upon stand; defendant obtained, upon cross examination, the evidence he would have brought out on direct had witness been called by him, defendant; defendant prevailed. The clerk taxed the witnees fee for the defendant, and plaintiff appealed to the court. Clerk's taxation *affirmed*.

N. W. M. & Tile Co. v. *Turnblad*, *Elliott, J.*, Municipal Court, Minneapolis.

HOW THEY LIKE IT.

We take the liberty of inserting here a few of the many kind words received upon the issuance of our first number, and this opportunity to thank those who have already accorded our venture support to an extent beyond our expectations.

DISTRICT COURT, ELEVENTH JUDICIAL DISTRICT.
Counties of St. Louis, Carlton, Lake and Cook.

DULUTH, MINN., June 1st, 1893.

The Law Journal Pub. Co., Minneapolis, Minn.

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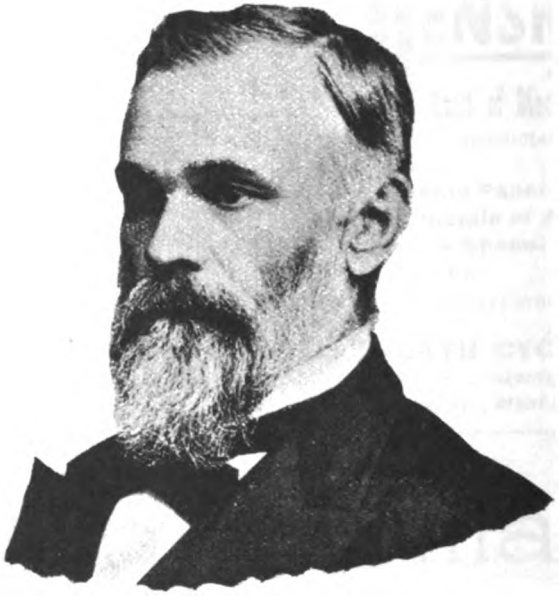


HON. JAMES GILFILLAN,
Chief Justice, Supreme Court of Minnesota.

THE

MINNESOTA LAW JOURNAL

JULY, 1893.

A CHAPTER ON ANCIENT PUNISHMENTS.

COMPILED BY THE EDITOR.

Punishment for offences against human law, has ever differed according to the conditions of those over whom authority was sought to be assumed. It is here our purpose only to call to notice some few instances where what would now be considered "cruel and unusual" punishment has been inflicted by authority of the State.

From the time when the scriptural injunction that "he who sheds the blood of man, by man shall his blood be shed" to the present the punishment for murder has been almost invariably that of death. Under the Twelve Tables of ancient Rome the penalty was death, while he who killed his father or mother was considered as deserving of a special and more dishonorable death than ordinarily awaited the homicide, and he was sewed in a leather sack, together with a live cock, dog, viper and ape, and thus accompanied, thrown into the sea. Under the Republic, homicide was punished by confiscation of all goods of perpetrator and his imprisonment on an island; amounting to banishment for life. But later, under the Empire, the death penalty was re-instituted. Common people were disposed of by being thrown to the beasts, furnishing amusement for the frequenters of the Coliseum, while the penalty for parracide was made that of burning to death. These punishments obtained till the fall of the Empire. Very little or no distinction was made between the degrees of homicide, with the exception of parracide.

The ancient Goths of Sweden and Denmark had a custom which required that in case a murderer was not found within a certain time the

whole *vill* or neighborhood should pay the penalty which was in the form of a heavy fine.

The early Anglo-Saxons punished homicides by mutilation and payment of a series of fines, for a first offense, and death for the second. Aside from the above penalty, their entire criminal system was based upon three different species of fines. *Wer* was the price or value set upon a man, according to his rank and attainments in life; *bot* was the sum which should be paid to the injured party as compensation for the injury done, and in cases of homicides, to be paid to relatives, in addition to above penalties; and *wite* was a fine to be paid to the king or immediate lord. Both of the latter were graded in amount according to the gravity of the offence. In homicide the *wer* was usually the measure of the *bot*, thus compelling the culprit to pay the price of the victim as well as receive other punishment. For many more injuries to the person a certain sum was set as *bot*; as "if the great toe be struck off, let 20 shillings be paid as *bot*; if the second, 15 shillings; if the middle most, 9 shillings; the fourth 6 and the little toe, 5 shillings." *Alfred, 64.*

In the times of Canute, the matter of the degree was left largely to those who might be said to constitute the Court, under a law which reads: "Let his hands be cut off, or his feet, or both, according as the deed may be; and if he have wrought still greater wrong, then let his eyes be put out and his nose and his ears and his upper lip be cut off, or let him be scalped; whichever of these, those shall counsel whose duty it is to counsel thereupon, so that punishment be inflicted, and also the soul be preserved."

In later English history the death penalty was almost entirely set aside in favor of mutilation, fine and imprisonment by William the Conqueror. Subsequently, death by hanging and the ax was the usual penalty, although in the tenth year of the reign of Richard first a woman was sentenced to be burned to death for homicide. For several centuries the homicide was sentenced to death without benefit of clergy. In 1487, by 4 Hen. VII., c 13, every person who was found guilty of a clergyable offense shall be branded on his thumb, if for murder, with the letter *M*, a *T* if for theft; the purpose appearing to be to prevent the culprit from again praying clergy upon a second offense. Benefit of clergy, with all its attendant evils, was totally abolished in 1827 by 7 and 8 Geo. IV, c 28.

On the effect of this privilege in cases of homicide, Justice Stephens says: "Till 1487 any one who knew how to read might commit murder as often as he pleased, with no other result than that of being delivered to the ordinary to make his purgation. That this should have been the law for several centuries seems hardly credible, but there is no doubt that it was. Even after 1487 a man who could read could meet with no other penalty than that of being *M* branded on the brawn of his thumb, and if he was a clerk in orders he could until 1547 commit any

number of murders apparently without being branded more than once." Stephen, Crim. Law, 463.

In the Reign of George the second, an act was passed which was intended to make the punishment for murder more severe than that for other capital crimes. It provided that the execution should take place the next day but one after the conviction, in the meantime the culprit being fed on bread and water; and that the body after death, should either be dissected or hung in chains. This was subsequently, by 4 Wm. IV., c 26, s. 2, repealed, but it was provided that the body should be buried within limits of the prison; this is now the law.

In 1870, the 33 and 34 Victoria, c 23, s 1 abolished the corruption of blood and forfeiture of property which from the earliest times had been made additional punishments in cases of treason and felonies.

Adultery furnishes a curious example of the different degrees of punishment applied at different times. Under the ancient Roman law, adultery included all the various sexual crimes. The penalty exacted by the State was much less severe than the authorized acts of the relatives as against the *particeps criminis*. The legal punishment was "relegation" to an island, the woman losing half her dower and a third of her goods and the man half of his goods. But the father had the right to kill both his married daughter and her paramour, if taken in his, or her husband's house; but it seems that under any other circumstances the right did not exist, and it must be exercised at once upon discovery of the offense, or it was lost. And it seems that if the father killed the man and spares his daughter, he was guilty of murder of the former.

Under the Roman mode of procedure, when a woman was charged with adultery, her own, her husband's and her father's slaves could be and usually were tortured; the usual forms of which were the rack, barbed hooks and cords compressing the arms.

Constantine condemmed the man alone to death, while Justinian had the offending wife whipped and imprisoned in a convent for life.

In early Anglo-Saxon days, Canute provided that the woman should "forfeit the nose and ears." Later, the common law gave only an action for damages to aggrieved party. Under the Commonwealth it was made capital (Scobel's acts, ii page 12), but was not so under Restoration; indeed since then it has not been punished in England *at all*, it being a mere offense against morals which is left to the Ecclesiastical Courts to deal with. In 1633 a woman was condemmed in these Courts to pay a fine of £2,000 for adultery; while a clergyman charged with same offense swore he was not guilty, and five other parsons swore they believed him to speak truly, whereupon the same Court "pronounced him to have purged himself," and set him free. In Scotland at various times this offense has been capital, but is now same as England. Much later the Ecclesiastical Courts imposed upon one Hesketh a sentence consisting

of a fine of £1,000, to do penance in York and Chester Cathedrals and a parish church, to be imprisoned until he gave security in the sum of £1,332 for the performance of the order, and to pay the costs.

Treason, under an old Roman law was known under the names of *perduelio* and *laesa majestas*, and included all attempts at resistance of public authority, or any sort of disrespect shown the Emperor, as well as levying war against the State. Under the Twelve tables it was punishable by flogging to death; under the Republic by exile and subsequently simply by death.

The early Anglo-Saxons punished as treason, "plotting against a lord," "fighting in a church or in the King's house," and "harboring exiles;" and the penalty was mutilation and death. Under William the Conqueror the death penalty was almost altogether superceded by mutilation alone. Subsequent to the Restoration treason was punished, in men, by hanging, drawing and quartering; in women by their being drawn at the tail of a horse to the place of execution and burnt to death. These methods were in vogue up to the time of Henry VIII, and that monarch kindly altered the burning to *boiling to death*, and during his reign three or four actually suffered death in this manner. It was repealed by 1 Edw. c 6.

In 1283, David, last native prince of Wales, convicted of treason, was hanged, drawn and quartered, and had his intestines burnt. Either high or petty treason, which last included the killing of a husband by his wife, or of a master by his servant, was until 1790, where the culprit was a woman, punishable by burning at the stake; it was abolished in that year by 30 Geo. III, c 48. In practice, however, the woman was strangled before being burned.

Until 1790 also, a blow given to anyone in the King's Court or Palace or the Court at Westminister, where the King was supposed to be present in the person of his judges, was punished by amputation of the hand and whipping, and the pillory, in discretion of the Court.

By 25 Hen. VIII c. 22, it was made treason not to believe Mary illegitimate and Elizabeth legitimate; three years later, by 28 Hen. VIII, c. 7, it was treason to believe either legitimate; and by 35 Hen. VIII c. 1, it was equally treasonable not to believe either legitimate. The act of 33 Hen. VIII, c. 21 made it treasonable for any queen to conceal her antenuptial incontinence; an act directed against Catharine Howard. Treason in England was never clergyable.

In Ireland. by 10 Hen. VII c. 21, murder was treasonable and by a later statute, arson also.

In Scotland, in 1826, willful fire raising and kidnapping were treason and punished by death. In 1540 Robert Leslie was summoned to appear and be tried for treason after his death, a not unusual proceeding, and his bones were exhumed and presented at the bar. The act of 1542,

c. 13, confined this most revolting procedure to cases of the most heinous kind of treason. Treason is still punished, in addition, by attainder of blood and forfeiture, but that portion of the penalty has been done away with in England.

The usual procedure in Rome was to torture the one accused, and his wife might be tortured also.

Early in the reign of Queen Victoria two boys fired a pistol at the Queen; whether loaded or not was unknown. One was regularly acquitted on the ground of insanity, and though undoubtedly sane, was confined in criminal lunatic asylums for over thirty years. Down to 1870 the punishment for treason, as it stood on the books, was drawing on a hurdle to place of execution, hanging, beheading and quartering, the parts to be at the disposal of the crown; since then, simply hanging.

By the ancient Roman law, a thief taken in the act must be beaten with rods and adjudged as the slave of the person robbed. If he was a slave, he was to be whipped and flung over the Tarpein rock into the river. Later, stealing of a horse, ox, of not less than four pigs or ten sheep, was supposed to be deserving of the mines for life; if the thief was armed, of death. The larceny of 9 sheep seemed not otherwise than meritorious.

The more ancient Greeks punished larceny with death, but later by a fine. In the early Saxon law, the *wer* was to be paid to the king on conviction and the culprit was to suffer mutilation in addition, and for the second offense, death. In the time of Ethelston, one who was above 12 years of age and was taken in the act of stealing more than 8 pence in value, should suffer death. Under the law it seems that anyone could kill the thief on sight. Death continued to be the punishment for larceny down to Henry I., when it was displaced by mutilation, and in 1779 branding and all mutilation were abolished (19 George III., c 74, s 3). Up to the beginning of the 18th century, theft of more than a shilling by one who could not read was a capital crime. In 1832 the death penalty for stealing horses, cattle, sheep, etc., was abolished (2 and 3 William IV., c 72). Other offenses were gradually taken out of the capital column so that now the death penalty is only imposed in cases of *treason, murder, piracy with violence and setting fire to dock yards and arsenals.*

Coke quotes authorities for the statement that during the 12th and 13th centuries incest was punished by *burying alive* and burning. It was in 1650 a capital crime, but since the restoration has been, as Blackstone says, "left to the feeble coercion of the spiritual courts." These courts at times seemed controlled by sudden spasms of virtue, as when one Moreland, for "excessive drinking and habitual swearing," was fined £500 to the king, forced to acknowledge his penitence at his parish church and to pay costs. In 1634 Richard Parry was fined £2,000 for making a disturbance in church by "causing the sexton to apprehend a person during divine service; rising after receipt of sacrament and say-

ing 'Some devil is in my knee,' and saying to the rector 'I am a better preacher than thou and I care not a straw for thee.'" As late as 31 Henry VIII., c 14, heretics were to suffer death by burning. It was a maxim of the Roman law that torture of slaves was the most efficacious method of obtaining truth. Code i-3-8. They could be tortured as accused or as witnesses, and in civil as well as in criminal cases; but "slaves belonging to the inheritance shall only be tortured in actions relating to the inheritance." Torture was until 1708 a common means in Scotland of obtaining evidence; the rack, boot and artificial prevention of sleep were the means used. "The privy council was accustomed to extort confessions by torture; that grim divan of bishops, lawyers and peers sucking in the groans of each undaunted enthusiast in hope that some imperfect avowal might lead to the sacrifice of other victims, or at least warrant the execution of the present." Hallam, Const. Hist. iii, p. 436.

NOTE AND COMMENT.

MEMORANDA; THEIR VALUE IN THE CASE AND OUT OF IT—PREPARATION OF CASE:—We have had called to our attention time and time again cases wherein several orders would be on file in a cause in terms short and sweet, but absolutely unintelligible to the lawyer who is seeking to ascertain just what point the court decides. Frequently "the said motion is hereby denied with $10 costs" means very little to even the attorneys in the case, except that one prevails and the other is defeated. Half the time the defeated party does not know and has no means, save asking the judge, of obtaining any knowledge as to which of several points raised and argued on the hearing, was decisive against him.

Many times a practitioner is investigating a point of law or practice and hears that it was decided so and so in a certain case. He gets the files, and if there is a written order filed, very frequently meets the difficulty above mentioned, and is forced to find judge or attorneys; and in the latter case runs the risk of obtaining a distorted view of the decision. In some of the districts the attorneys draw all the orders on ordinary hearings and they are signed without question. Although this may satisfy the attorneys in the case, it precludes the possibility of the judge making a minute of the questions raised and of his reason for his decision.

Frequently, also, attorneys are satisfied, even upon a difficult question to take the verbal order of the court, as if they alone were concerned in the decisions. It would be considered by the bar at large a valuable improvement if all orders were directed by the rules to be made in writing, and filed the day made; for, quite often, although in fact a written order is made, it is never filed in the case, the respective attorneys being satisfied with the situation as it is.

It would seem that it is most proper for the court to draw its orders itself, except in mere *exparte* matters. Although this might occasion some considerable expenditure of labor *in toto*, yet it would give the court the opportunity of appending to its order a few words of explanation so that the record will show just what was done. A great many times motions are changed on the hearing, and a mere denial or granting of the relief sought will not show the question at issue. If the court made the order and attached a brief memorandum, "he who runs" could read and understand.

Another question to which our attention has been called by members

of the bar is that of making up a settled case. It is provided by Rule XXXIX, District Court, that cases may be prepared in narrative form, while this has been modified in the Second District by additional Rule VII, requiring that "a case shall not be made in narrative form, but shall be in the form of "question and answer as at the trial." Objection is made to both these rules, the claim being made that two-thirds of the evidence taken is usually not subject to objection and that there is no reason why parties should be put to the expense of printing in form of question and answer all of the unobjected testimony in the case. Generally, in reducing such matter to narrative form, three or four or more questions and answers are expressed in a few words, while to express the same in form of "question and answer as at trial" would require every word to be reproduced in order to make sense. In one case which has been brought to our notice it made a difference to the party, a man of no means, of about $100 in preparing and printing his case, after a long trial in court.

Another reason urged against such a rule is that the already overworked supreme bench should not be compelled, in doing justice to the parties and themselves, to wade through all this matter, and extract the facts from poorly put questions and semi-intelligent answers. With 50 per cent more work before them than they had five years ago, they should be relieved of this labor, and the preparation of the case in concise, narrative form, is the work of the attorney in his office. The Supreme Court of Wisconsin has on several occasions publicly rebuked attorneys for loading up the record in this manner, and unnecessarily increasing the work of considering a cause. It is suggested that *may* be changed to *shall*.

MYSTERIES OF A JUSTICE COURT DOCKET.—Before one of the local city justices had been in office a week, there appeared this entry upon his docket:

"STATE OF MINNESOTA, In Justice Court,
COUNTY OF HENNEPIN, City of Minneapolis.
Before————————J. P.
George Cheesbro,.....Plaintiff,
vs.
Lizzie Thome, ...Defendant."

For all that appears it might have been a breach of promise suit, an action in replevin or an application for a writ of *ne exeat*; whatever the trouble proved to be, our friend the justice deserves much encouragement as well as commendation, for the following entry, made down the page, explains his success in acting as a court of conciliation:

"Apr. 13, '93. Married, 11:30 a. m. ————J. P."

WHY IS THE LAW THE ONLY SCIENCE WHICH DOES NOT MAKE ANY PROGRESS.—The Honorable Lyman Trumbull, President of the Illinois State Bar association, in the course of an address delivered recently before that body, for the report of which we are indebted to the *American Law Review*, made some pertinent suggestions upon this interesting subject. He says, in part:

"All around us in every direction are the evidences of progress save in the science of law. It is true that absolute justice, like truth, is the same at all times and everywhere, but are there no means of improvement in the way of arriving at justice and truth? Why should the science of jurisprudence stand still, while progress is made in all other directions? Is it because judges and lawyers, in the administration of justice, have been taught to rely upon precedents in determining what is right or wrong, rather than upon their own reason and sense of justice? Precedents are only useful as aids in arriving at what is right, and should not be followed because they have been set in former times, unless founded upon right and justice. In the ordinary practice of law, the first thing a lawyer looks for, and the judge wants to know, is the authorities—that is, how some court at some former time, somewhere decided a somewhat similar case, and when that is found, if favorable, the lawyer regards his case as won, and the court is very apt to agree with him. Not only in the trial courts, but in those of last resort, briefs of counsel are chiefly made up of references to long extracts from decisions of other courts, and the opinions of the judges are not much better. This hunting of precedents for everything tends to weaken the reasoning faculties and dwarf the human intellect.

What is wanted to advance the science of law are lawyers and judges who have convictions of their own, capacity to discern the right and justice of a cause, and give a reason for the faith that is in them, without groveling among the musty books of antiquity and citing a long list of cases, many of which have little application to the matter under consideration, and were decided under different circumstances. If we would have great lawyers and great judges, they must be men of original ideas, capable of reasoning from principle, and not mere copyists. What we need are leaders, not followers. There was a time when lawyers and judges did not have thousands of reported decisions to refer to and were compelled to think, argue and decide cases upon principle. Coke, Bacon, Mansfield and others who laid the foundations of English jurisprudence, were compelled to decide cases as their sense of justice and right dictated, and the great judges of modern times like Marshall, Taney, Miller, Kent, Gibson, and our own Caton, were original thinkers, who generally decided cases upon principle, giving reasons of their own for their conclusions, rather than copying from others.

This deference of judges to what are called authorities, is so great that

it often leads to the observance of absurd rules, and the doing of the grossest injustice."

A BEAUTIFUL EXAMPLE OF EDITORIAL WRATH.—In commenting upon the decision of Justice Woolsen, of the United States Circuit Court for the southern district of Iowa, in the case of Ellis vs. St. Louis & C. R'y. Co., the waxned editor of the *American Law Review* grows warm in righteous indignation over the recognition by the Federal courts of a "*general law*," to be administered by them without regards to the law of the states wherein the contract was made or cause arose.

The case was one in which the receiver of a railroad company, appointed by the Federal courts, was sued in the Federal courts, and that cause applied to a contract limiting the company's liability for loss of live stock to $100 per animal, a rule which was in direct opposition to that held by the Supreme court of Missouri, the state where the contract was made. The Federal court *held* the limitation void, while the settled law of Missouri is that it is valid. The comment referred to is in part as follows:

It seems then, that, even to relation to contracts made and to be performed wholly within the boundaries of a single State, there is one kind of law in case an action thereon is brought in the court of the State, and that there may be another kind of law in case an action is brought thereon in court of the United states.

That other law is called "the general law." Now we ask any Federal judge to explain where he gets that "general law," and we have put this question before without eliciting even the breath of an answer. Is it the law of Iowa? That cannot be, for that is as much local law as is the law of Missouri. Is it the aggregation of the laws of all the States surrounding Missouri, or any number of them, shaken up in a bag together, pulverized, generalized, turned into hotchpot? What kind of law would such a process make? It is then this and only this; the law made by the judicial legislation of the Supreme Court of the United States. Now, we admit that judges have the power to legislate, in the sense of making new rules of law founded on conceptions of reason and justice to meet new exigencies.

But while we fully admit and affirm this power of judicial legislation, we demand to know from what source, within the constitution of the United states, the Federal judges have acquired any power to make a "general law" which shall govern contracts made and to be performed wholly within a State? No such source of power is found in any analogy, even the remotest, to the power of Congress over interstate commerce, and in this fact lies the enormity of the proposition and the baldness of the usurpation. In the case under consideration, for instance, the

learned Federal judge admits that he applies to a Missouri contract a rule of law made by the Supreme Court of the United States which is directly opposed to the Missouri law. But the Congress of the United States itself could not have made such a law, because the subject of it does not relate to interstate commerce nor to any matter which is committed by the constitution to the control of the Federal government. Nay, this "general law," which has been made for the State of Missouri by the Supreme Court of the United States, contrary to her own law, cannot even be repealed or amended by an act of Congress, because no power has been conferred upon Congress by the constitution to legislate upon such a subject; and therefore if Congress were to attempt to abrogate any rule of this "general law," the court that made the rule would be constrained to hold the repealing legislation void.

If a rule of "general law" could be created and applied in such an instance, the entire law for the United States can be gradually built up by that court,—and this without any power on the part of Congress either to appeal it or amend it. And yet we call ourselves a self-governing people; and yet the American bar boasts of its independence.

THE LATE JUSTICE BLATCHFORD.—Again has death made felt its hand within the circle of that most august tribunal the world knows, the Supreme Court of the United States, and this time it is Mr. Justice Blatchford who yields to the grim destroyer.

Justice Blatchford was a native of the State of New York, having been born in New York City on the 9th day of March, 1820. His descent was from English stock, his grandfather having been a prominent dissenting minister and his father, Richard M. Blatchford, who was born in Connecticut about the close of the last century, having been a prominent and successful lawyer.

The future justice entered Columbia at 13, and graduated in 1837, at the age of 17. He then became private secretary to William H. Seward and so continued until he became of age in 1841. Having the previous year been admitted to the bar, he began the practice of law with his father. From 1845 to 1854 he practiced law in Auborn, as the partner of Governor Seward. Returning to New York on the dissolution of this firm, he founded the firm of Blatchford, Seward & Griswold. During the years which followed, he became, by untiring industry and devotion to his profession, a thoroughly competent and skilled practitioner, being especially equipped in international and maritime law.

On May 3, 1867 he was appointed United States District Judge for the Southern District of New York; and since this district included New York City, the amount of international and admiralty matter which, mostly as a result of the war, came then into his hands for settlement.

would have overwhelmed one less capable and earnest in his work. In 1872 he was appointed Circuit Judge of the Second Circuit and for ten years he worked day and night over the ever increasing business of the court over which he presided. Here he became particularly well versed in patent law, and has been since considered an authority on that subject.

In 1882 he was called up higher, and received at the hands of President Arthur the place on the Supreme Bench left vacant by the death of Justice Hunt. Since that time he has labored earnestly and industriously and, with the late Justice Miller, was one of the hardest working men on the Bench. It is said that he exhibited at times the rare quality of over-ruling himself without hesitation or ill humor when convinced of his previous error. He gave the best twenty-five years of his life to the service of his country, and is deserving of a grateful remembrance.

NOTES ON RECENT DECISIONS.

WAIVER OF JURY TRIAL NOT BINDING AS TO ISSUES ARISING UPON SUBSEQUENT AMENDMENT.—In the recent case of McGeagh vs. Nordberg, (55 N. W.,) the Minnesota Supreme Court decide that where, as in the municipal court of Minneapolis, failure to demand a jury and pay the fee, upon the calling of the calendar on general term day works a forfeiture of the right of trial by jury, when the issues are subsequently changed by amendment the party still has the right to demand such trial upon payment of the fee required. In this case the appellant failed to make it appear by the record that he had tendered the fee at time of making the demand on the amended pleadings, and the point was thus rendered unavailable as error.

CRIMINAL LIABILITY OF TRIBAL INDIANS WITHIN A STATE.—The recent case of State vs. Campbell, (55 N. W. Rep,, 553) decided June 1st last by the Supreme Court of Minnesota, brings to notice the peculiar position which the tribal Indian occupies relative to the criminal law of the state wherein he may reside, and of the United States. In this case, a half-breed Indian, not sustaining tribal relations, and a full-blooded Indian who did, were convicted in the State Court for adultery, committed by them within the reservation. Upon the certification of the case to the Supreme Court for decision, that Court, through Mitchell, J., decides that the State has power to provide for punishment of all crimes committed upon a reservation by any person, not a tribal Indian, and, further, that as to the tribal Indian, the State has no power to punish him for crime committed upon such reservations, the reasoning being that such Indians, as "wards of the nation," are subject to the control of Congress alone; following the decision of the Supreme Court of the United States in the case of United States vs. Kogama, 118 U. S. 375, 6 Sup. Ct. Rep. 1109.

This last mentioned decision affirmed the constitutionality of the Act of March 3d, 1885, extending the punishment for certain crimes so as to include Indians. The Section referred to is as follows:

"That immediately upon and after the date of the passage of this act, all Indians, committing against the person or property of another Indian or other person any of the following crimes, namely: *Murder, manslaughter, rape, assault with intent to kill, arson, burglary, and larceny.* * * * * * within the boundaries of any state of the United States, and with-

in the limits of any Indian reservation, shall be subject to the same law, tried in the same courts and in the same manner, and subject to the same penalties as are all other persons committing any of the above crimes within the exclusive jurisdiction of the United States." (*23 U. S. Statutes, Ch. 341, Sec. 9, page 385.*

In United States vs. Kogamao, supra, the Court place the authority of Congress to exercise exclusive jurisdiction over tribal Indians, not upon any right of sovereignity over territory, not upon the clause in the constitution empowering it to "regulate commerce among the various Indian tribes" but upon "the broad ground that Indians, while preserving their tribal relations, residing on a reservation set aside for them by the United States, are the wards of the general government, and under its protection, and as such are the subject of Federal authority." Thus it would appear that the objection to the right of the State to punish for crimes committed within its borders is complete, so far as territorial questions are concerned. But the tribal Indian has an exemption from all State authority, for acts committed upon the reservation, at least, and can be punished only through United States law, or in other words, under Section 9, above quoted. By this Section we note that the United States has provided punishment for the commission of only *seven* crimes: *Murder, manslaughter, rape, assault with intent to kill, arson, burglary* and *larceny.* It therefore follows that, for the commission by such Indians of numerous other crimes, at least when within the reservation, no punishment is provided by the United States and the State has no power to punish. Under such conditions there seems to be no punishment possible in cases of *adultery, assault,* except with intent to kill, *abduction, bribery, bigamy, conspiracy, counterfeiting, kidnapping, embezzlement, compounding a felony, forgery, train wrecking, perjury,* and the long list of *misdemeanors.*

Upon this point, Judge Mitchell says: "If they are thus under the control of Congress, that control must be exclusive. It would never do to have both the United States and the State legislating upon the same subject. By the Act of 1885, presumably, Congress has enumerated all the acts which in their judgment ought to be made crimes when com-committed by Indians in view of their imperfect civilization. For the State to be allowed to supplement this by making every act a crime on their part which would be such if committed by a member of our more highly civilized society would be not only inappropriate, but also practically to arrogate the guardianship over these Indians which is exclusively vested in the general government."

Since the State has no power to punish on account of the *personal exemption* of such Indians from its authority, it matters little whether the act is committed within a reservation or in any portion of the State, territorial jurisdiction having no relation to the act and its punishment,

so long as the Indian committing it retains his "tribal relations." It becomes an interesting query, then, as to whether the acts enumerated in the act of 1885, supra, when committed outside of the reservation in a State, by such tribal Indian, temporarily absent from such reservation, are punishable at all. Manifestly, under State vs. Campbell, they would not be, as they are "wards of the general government," and "under the *exclusive control* of Congress," and, since Section 9 of the Act of 1885, supra, declares the seven acts crimes only when committed "within the limits of any Indian reservation," and the other criminal laws of the United States which might be applicable are based wholly upon territorial juridiction by the Federal Government, it would seem that any of said seven crimes, when so committed are not punishable by any power; and the same remark would seem to apply to all the other offenses, heretofore mentioned.

STREET RAILWAY COMPANIES; WHAT ARE THEIR RIGHTS ON THE PUBLIC STREETS AS AGAINST A PERSON DRIVING THEREON?—On June the 27th last the Supreme Court of the State of Minnesota, in the case of *Lucius E. Watson vs. Minneapolis Street Railway Company*, not yet reported, gave a clear, concise and controlling answer to the above question.

Watson was driving a team on 11th *Avenue So.*, in Minneapolis, and there was another team ahead of him; both were heavily loaded. They slackened up at Washington avenue to let some electric cars pass, and, having a clear road, started across. It appears that Watson, when partly over, heard some one warn him to look out for the car, and turning, saw a car on the Interurban line about fifty feet distant, coming at a rapid rate. His evidence was to the effect that the motoneer was looking another way, and made no effort to stop the car, while he made all possible effort to get off the track. He was struck and severely injured, for which the trial jury allowed him a verdict of $6,000. After denial of a motion for a new trial, the defendant appeals.

The Court holds that "as high a degree of care at a street crossing is required of those in charge of an electric street car as those who may be driving other vehicles."

Further, that "a street railway car has no priority of way at a street crossing with respect to other vehicles; and when the driver of such another vehicle, approaching the street railway track to cross it, sees a car approaching, at such a distance that will permit him, apparently, to make the crossing safely, he has a right to attempt it, and it is not negligence *per se* in him to attempt it without looking a second time."

And that "upon much traveled streets in a city it is negligence to run an electric car over a crossing at a high and dangerous rate of speed."

"It is also negligence to run an electric car over a street crossing, the

person having charge of the car not being on the look-out, nor having the car under control so as to avoid a collision."

These extracts show that the court places the rights of the street railway companies and the general public upon exactly the same footing, and requires the same degree of care to be exercised by those in charge of a street car as would be required from one teamster on the road as respects another. Except as to the fixity of lines upon which the cars run, there is recognized by the court no difference between the two cases. It is looked upon as a very radical utterance by many, but is certainly a good example of the way the courts are called upon to declare what the law is under absolutely new conditions, and amounts almost to judicial legislation. It is certainly in accord with common sense and reason, and may have the effect of lessening the deplorable loss of life occasioned by the frequent carelessness and negligence of the street railway employes. As it now stands, the one who approaches the crossing first, with a reasonable expectation of getting across safely, has an absolute right of way, irrespective of the other.

JUDGE KELLY ON COONS.—The following, being in form of a memorandum to a decision by Judge Kelly, in the District Court, St. Paul, in the case of Paulson vs. Logan, needs no explanation: "The complaint states that the defendant wrongfully and negligently kept and harbored two racoons which, it is alleged, were "ferocious, vicious, noxious and useless wild animals," and that by reason of defendant's negligence in both harboring them and in lack of due and proper care, they became ravenous and attacked and injured the minor daughter of plaintiff. A great deal depends upon how these animals must be classed; whether *ferae naturae*, strictly speaking, as the lion, tiger or wolf. In that case the owner keeps such animals at his peril and no notice or knowledge of its viciousness need be proved. But if they are *mausuetae naturae*, once wild but domesticated, such as horses, dogs, cattle, etc., the notice of the viciousness of the animal must be brought home to the owner. Therefore, to meet the doubt, I refuse to strike from the answer where the pleader has set out the particular school of good manners in which these animals have been reared. As it is stated in the complaint that they were "useless,"—if that be material—the counter allegation that they were kept as pets for amusement of defendants' customers and for defendants' profit is likewise material. On the whole case I deem it just to leave it as it is."

EXTRADITION; FUGITIVE FROM A STATE MAY ON RETURN TO THE STATE FROM WHICH HE FLED, BE TRIED FOR ANY OFFENSE COMMITTED IN

SUCH STATE AGAINST THE LAWS THEREOF.—The Supreme Court of the United States recently set at rest a long mooted question arising from our inter-state relations, upon the particular questions of extradition from one state to another, and trial for an offense other than that for which the fugitive was extradited. The case is that of Lascelles vs. the State of Georgia, (13 Sup. Ct. Rep. 687) and arose out of the following state of facts: The plaintiff in error, Lascelles, was in New York State, was indicted for various offenses by the grand jury of one of the counties of Georgia, and upon proper request for extradition was delivered to the Georgia authorities. While he was awaiting trial, the grand jury returned against him another indictment, for forgery, a different offense than the one stated in the extradition papers. He was tried and convicted, urging that it was unlawful to try him for any other than the crime named in the extradition papers; and upon appeal to the Supreme Court of Georgia, the order of the Court below was affirmed and the same objection overruled. The case is then appealed to the Supreme Court of the United States.

Justice Jackson in delivering the opinion of the Court, says in part:— "The only question for determination, the simple federal question presented by the record, complained of by plaintiff in error, is whether a fugitive from justice who has been surrendered to another State of the Union by another State thereof upon requisition charging him with a specific crime, has, under the Constitution and laws of the United States, a right, privilege or immunity to be exempt from indictment and trial in the State to which he is returned for any other or different offense than that designated and described in the extradition proceedings under which he was demanded and restored to such State, without first having an opportunity of returning to the State from which he was extradited.

"The sole object of the provision of the Constitution and of the Act of Congress to carry it into effect is to secure the surrender of persons accused of crime, who have fled from the justice of the State whose laws they are charged with violating. Neither the Constitution nor Act of Congress providing for the rendition of fugitives upon proper requisition being made, confers, either expressly or by implication, any right or privilege upon any such fugitives, under and by virtue of which they can assert, in the State to which they are returned, exemption from trial for any criminal act done therein No purpose or intention is manifested to afford them any immunity or protection from trial and punishment for any offense committed in the State from which they flee. On the contrary, both the Constitution and the Statutes extend to all crimes and offenses punished by the laws of the State where the act is done."

It is interesting to note that in the case of State of Minnesota vs. Ham, where the facts coincided exactly with the above case, an order was filed

by Judge Kelly, of the Ramsey County District Court, shortly before the announcement of the above decision, wherein the learned judge discusses the same questions, as relates to the State and United States Constitutions, and comes to the same conclusion arrived at by the Court in the Lascelles case.

THE INFERIOR COURTS.

BOND; EXECUTION BY PRINCIPAL; WHEN UNNECESSARY:—Bond of a notary, sued upon, was signed by sureties simply, and *not* by principal, but was regularly approved and filed by the Governor; evidence shows that the sureties expected principal to sign, but he failed to do so. *Held*, that the sureties were not liable, as there had been no delivery of the bond as to them. Also, that the bond would be good, if they had delivered it without the expectation of the principal's signing it.

Martin v. *Hornsby et al*, *Kerr*, *J.*, District Court, Hennepin County.

COMMON COUNCIL OF ST. PAUL; POWER TO INCREASE PAY OF POLICEMAN:—Under charter of St. Paul, a policeman being named therein and being thereunder a "salaried officer," the common council have power to decrease but not to increase his compensation. *Galvin* v. *City of St. Paul*, *Kelly J.*, Dist. Ct., Ramsey Co.

CONTRACT TO ANSWER FOR DEBT OF ANOTHER; RECOMMENDATION DOES NOT AMOUNT TO.—The defendants, proprietors of a business college, gave to one Tomebeck a writing in the following terms:

"The bearer, Mr. Tomebeck is one of our students and a young man of perfect reliability. He can be depended upon to fulfill any contract he makes" signed by defendants and addressed by them to plaintiff, marked "voucher for Mr. Tomebeck." Plaintiff relied upon it solely, made a sale on credit, Tomebeck failed to pay, and suit brought on this writing, against defendants. *Held*, that plaintiff could not recover. *Jerrems* v. *Rickard, et al*, *Mahoney, Judge*, Municipal Court, Minneapolis.

COSTS ON DISMISSAL; NOT ALLOWED WHERE DEFENDANT NOT SERVED OR APPEARING:—In an action wherein summons and complaint has been filed and served on co-defendant, but not on the defendant, who had never appeared in action in any manner, and was dismissed by plaintiff, defendant attempted to tax $5.00 costs, as on dismissal. This was taxed by clerk, but on appeal to Court, clerk's taxation was over-ruled.

Same v. *C., St. P., M. & O. Ry. Co.*, *Kerr, J.*, District Court, Ramsey Co.

COUNTER-CLAIMS; HELD IMPROPER IN AN ACTION:—Wife sued on promissory note given to her; defendant answered, admitting execution of note, but alleging that it was given in wife's name to avoid the husband's creditors; defendents then sets up four counter-claims, being causes of action against husband of plaintiff. *Held*, on demurrer, to state no counter-claim in this action.

Carlson v. *Hedman*, *Brill*, *J.*, District Court, Ramsey County.

FORECLOSURE OF MORTGAGE BY BUILDING SOCIETY.—An ordinary building and loan society, incorporated under the Statutes, may foreclose a mortgage in the same manner, by advertisement, as any other corporation or person.

Chase v. *Peoples Saving & Loan Ass'n*, *Canty*, *J.*, District Court Hennepin County.

GARNISHMENT; WHAT SUFFICIENT NOTICE TO DEFENDANT.—A Garnishee was regularly served and appeared for disclosure: he was also attorney for defendant, and for defendant had already put in an answer. No notice was served on defendant and garnishee moves to dismiss on that ground. Motion de-

nied, as notice to garnishee, he being defendants attorney, was sufficient notice to defendant.

First Nat. B'k of Aberdeen v. *Engle and Dodge, Gar., Kelly J.*, Dist. Ct.. Ramsey County.

GARNISHMENT: AN ORDER FOR JUDGMENT IS PROPER SUBJECT OF.—Defendant Dahl had obtained an order for judgment against Todd et al, and next day Todd was served with garnishments by three creditors of Dahl; disclosures were had and motions made on behalf of garnishing creditors of Dahl for judgments against Todd, et al, garnishees. This motion was opposed by Dahl on ground that an order for judgment in an action is not subject of garnishment by creditor of the plaintiff in such action. *Held*, that objection is unavailable, and creditors are entitled to judgment.

Moore v. *Dahl and Todd et al, Gar. Canty J.*, District Court, Henn Co.

SAME: PROPER PRACTICE ON PART OF GARNISHEES TO PROTECT THEMSELVES IN CASE AS ABOVE:—In above case garnishees also opposed motion for judgment on ground that Dahl, plaintiff, as against them, might go on and enter judgment and that they would be forced to pay the amount twice. The Court *held*, that the garnishees, defendants in first action, should make proper application to Court for a stay, pending determination of garnishment proceedings as to whom the money should be paid, Dahl, plaintiff or garnishing creditors.

SAME CASE, GARNISHMENT: ATTORNEY'S CLAIM FOR SERVICES: SHOULD BE MADE UPON REGULAR INTERVENTION.—In above case upon disclosure certain attorneys appeared as claimants, stating that they were attorneys for Dahl in original case, and claimed lien for fees. Court *held*, that the claimants should regularly apply for permission to intervene, under the statutes, and that a mere claim upon disclosure was ineffectual. *Same case*.

JOINDER OF PARTIES; WHO MAY BE JOINED IN CERTAIN CASES.—Plaintiff held notes secured by mortgage of two first defendants, who sold property to defendant Lawton, who "assumed and agreed to pay" the incumbrance. Plaintiff brings suit against the makers of the note, joining Lawton, under the covenant of assumption between him and mortgagor. *Held*, that promise of Lawton to pay was not to plaintiff but to the other defendants, and defendant's general demurrer to complaint should be sustained.

Freeman v. *Lawton, et al, Kelly J.* Dist. Ct. Ramsey Co.

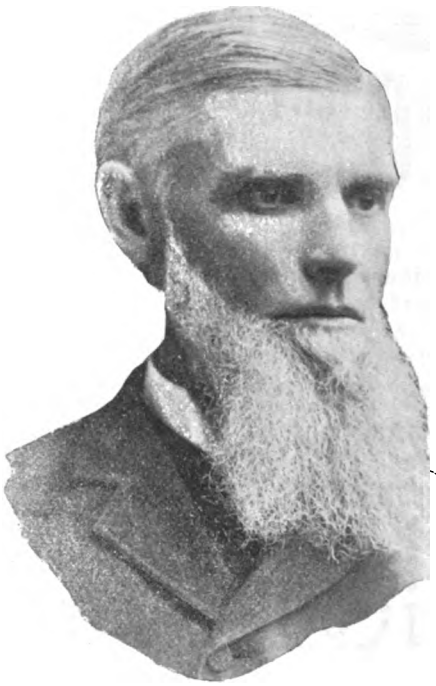
MOTION TO STRIKE OUT; WHEN NOT PROPER:—Plaintiff moved to strike out certain portions of answer of one defendant, the plaintiff urging that said portions did not constitute a defense. *Held*, that such motion is only proper where irrelevant or redundant matter is sought to be stricken out and not when matter pleaded simply fails to constitute cause of action or defense.

Rhodes v. *Walsh et al, Kerr, J.*, District Court, Ramsey County.

MOTION TO STRIKE OUT AS SHAM; WHEN DENIED:—When on a motion to strike out an answer consisting of a general denial, it is necessary for the Court to hear argument, inspect pleadings and files in another action in this Court, and in another action in the Municipal Court, the motion will not be entertained.

Sellick v. *Coummers, Kelly, J.*, District Court, Ramsey County.

SERVICE OF PAPER ON ATTORNEY; WHAT CONSTITUTES A "CONSPICUOUS PLACE" IN HIS OFFICE.—In the District Court for Hennepin County it has been held that papers and notices are properly served upon an attorney at his office in his absence, by slipping them through the letter slot in his office door.



HON. WILLIAM MITCHELL,
ASSOCIATE JUSTICE SUPREME COURT
OF MINNESOTA.

THE

MINNESOTA LAW JOURNAL.

AUGUST, 1893.

Code of Rules

FOR THE

District Courts of Minnesota.

ADOPTED BY THE DISTRICT JUDGES AT A MEETING DULY CALLED FOR THAT PURPOSE AT THE CAPITOL, IN THE CITY OF ST. PAUL, ON THE TWENTY-FOURTH DAY OF AUGUST, A. D., 1893, IN ACCORDANCE WITH THE TERMS OF CHAPTER FORTY-FOUR OF THE GENERAL LAWS OF 1875.

OFFICIAL PUBLICATION.

BY ORDER OF THE

District Judges and Secretary of State.

PART I, GENERAL RULES OF PRACTICE.
PART II, RULES IN INSOLVENCY PROCEEDINGS.

PART I.

GENERAL RULES OF PRACTICE.

RULE I.

All bonds shall be duly proved or acknowledged in like manner as deeds of real estate, before the same shall be received or filed.

No practicing attorney or counselor at law shall be received as a surety on any bond or undertaking required in an action, whether he be the attorney of record in the action or not, except where such bond or undertaking shall be executed on behalf of a non-resident party.

RULE II.

The qualifications of sureties must be as follows:

Each must be a resident and freeholder of this state, and worth the amount specified in the bond or undertaking above his debts and liabilities, and exclusive of his property exempt from execution, except where the statute otherwise provides. Whenever a judge or other officer approves the security to be given in any case, or reports upon its sufficiency, he must require the sureties to justify by affidavit.

RULE III.

Garnishments shall not be discharged under section 198, chapter 66, General Statutes 1878, nor attachments under section 157 of the same chapter, without notice of the application therefor to the adverse party.

RULE IV.

On process or papers to be served, the attorney, besides subscribing or endorsing his name, shall add thereto his place of residence and the particular location of his place of business by street, number, or otherwise; and if he shall neglect to do so, papers may be served on him through the mail, by directing them according to the best information that can conveniently be obtained concerning his residence.

This rule shall apply to a party who prosecutes or defends in person, whether he be an attorney or not.

RULE V.

All copies of papers served shall be legible, and if not legible may be returned within twenty-four hours after service thereof, and the service of an illegible paper so returned shall be deemed of no force or effect.

RULE VI.

In all cases of more than one distinct cause of action, defense, counter claim, or reply, the same shall not only be separately stated, but plainly numbered; and all pleadings not in conformity with this rule may be stricken out on motion.

RULE VII.

The attorney or other officer of court who draws any pleading, affidavit, case, bill of exceptions or report, decree or judgment, exceeding two folios in length, shall distinctly number and mark each folio of one hundred words in the margin thereof, or shall number the pages and the lines upon each page, and all copies, either for the parties or court, shall be numbered and marked, so as to conform to the originals. And if not so marked and numbered, any pleading, affidavit, bill of exceptions, or case, may be returned by the party on whom the same is served.

RULE VIII.

Notices of motion shall be accompanied with copies of the affidavits and other papers on which the motions are made, provided that papers in

the action of which copies shall have theretofore been served and papers other than such affidavits which have theretofore been filed, may be referred to in such notice and read upon the hearing without attaching copies thereof. When the notice is for irregularity, the notice shall set forth particularly the irregularity complained of; in other cases it shall not be necessary to make a specification of points, but it shall be sufficient if the notice state generally the grounds of the motion.

RULE IX.

Whenever notice of a motion shall be given, or an order to show cause served, and no one shall appear to oppose the motion or application the moving party shall be entitled, on filing proof or admission of service, to the relief or order sought, unless the court shall otherwise direct. If the moving party shall not appear or shall decline to proceed, the opposite party, upon filing like proof of service, shall be entitled to an order of dismissal.

RULE X.

Upon motion or order to show cause, the moving party shall have the opening and the closing of the argument. Before the argument shall commence, the moving party shall introduce his evidence to support the application; the adverse party shall then introduce his evidence in opposition; and the moving party may then introduce evidence in rebuttal or avoidance of the new matter offered by the adverse party. On hearing such motion or order to show cause, no oral testimony shall be received.

RULE XI.

Orders to show cause will only be granted when a restraining order is necessary, or some exigency is shown which would cause injury or render the relief sought ineffectual if the moving party were required to give the statutory notice of motion. If on the hearing it appear that there was no such ground for the order, it may be discharged or the hearing continued in the discretion of the court. Such order must be accompanied by a notice setting forth the grounds on which the relief asked is sought as in other notices of motion.

RULE XII.

Motions to strike out or correct any pleading under section 107 of chapter 66, General Statutes 1878, must be heard before demurring to or answering such pleading, and before the time for demurring to or answering such pleading expires, unless the court, for good cause shown, shall extend the time for demurring to or answering such pleading to permit such motion to strike out or correct such pleading to be heard.

RULE. XIII.

SPECIAL TERM CALENDAR.—The clerk in each county shall keep a

special term calendar, on which he shall enter all actions or proceedings noticed for special term according to the date of issue or service of notice of motion. Notes of issue of all matters for special term shall be filed with the clerk one day before the term. And no case shall be entered on the calendar unless such note of issue shall have been filed.

RULE XIV.

FILING PAPERS FOR SPECIAL TERM.—So all affidavits, notices, and other papers, designed to be used in any cause at special term, shall be filed with the clerk at or before the hearing of the cause unless otherwise directed by the court.

RULE XV.

All orders, together with the affidavits and other papers upon which the same are based, which orders are not required to be served, shall within one day after the making thereof be filed in the office of the clerk, by the party applying for such orders. Orders required to be served shall be so filed within five days after the service thereof.

RULE XVI.

Whenever any party to an action fails to file any pleading therein as required by section 80 of chapter 66, General Statutes 1878, the action shall, upon the application of the adverse party, be continued to the next general term of said court, and if both parties fail to so file their pleadings, the action shall be stricken from the calendar.

RULE XVII.

APPLICATION FOR ORDER WITHOUT NOTICE.—Any party applying to any judge or court commissioner for any order to be granted without notice, except an order to show cause, shall state in his affidavit whether he has made any previous application for such order, and if such previous application has been made upon the same state of facts, every subsequent application shall be refused. When an application made to any judge for the approval of any bond or undertaking, or for an order to show cause, or any *ex parte* order, is refused, the application shall not be renewed before another judge without leave.

RULE XVIII.

No order extending the time to answer or reply shall be granted, unless the party applying for such order shall present to the judge to whom the application shall be made an affidavit of merits, or an affidavit of his attorney or counsel that from the statement of the case made to him by such party he verily believes that he has a good and substantial defense, upon the merits to the pleading or some part thereof.

RULE XIX.

In an affidavit of merits, the affiant shall state that he has fully and

fairly stated the case and facts in the case to his counsel, and that he has a good and substantial defense or cause of action on the merits, as he is advised by his counsel after such statement, and verily believes true, and shall also give the name and place of residence of such counsel.

RULE XX.

In all cases where an application is made for leave to amend a pleading or for leave to answer or reply after the time limited by statute or to open a judgment and for leave to answer and defend, such application shall be accompanied with a copy of the proposed amendment, answer or reply as the case may be, and an affidavit of merits and be served upon the opposite party.

RULE XXI.

In cases where service of any order or notice is required to be made, if the party directed to make the service and the person upon whom service is to be made, reside in the same city, village or town, the service shall be personal. In all other cases such service shall be by mail, or in such other manner as the court may direct.

RULE XXII.

Proof of personal service shall be made by the affidavit of the person making the service. The affidavit shall fully set forth the time, place and manner of service, and that the person upon whom the service was made was to the affiant well known to be the person, co-partnership, or corporation, agent or attorney upon such whom service was directed to be made.

If such service be made by mail, the proof thereof shall be (substantially) in the following form, to-wit:

STATE OF MINNESOTA, } ss
County of }

I, , of (street and No., if any) in the.....of.....in said county, of lawful age, being first duly sworn, on my said oath say, that at said.....on the.....day of.....18..., I did then and there deposit in the post office within and for said..... .....a true copy (or in case more than one service was made, true copies) of the.....hereto attached, which copy was (or, which copies each were) properly enveloped, sealed, postage paid thereon and directed to the following named persons, co-partnerships, or corporations respectively in said order named, at the places respectively as follows, to-wit:

One to.....at No.....Street, in the.....of..... .....in the State of.....

One to.....at No.....Street, in the.....of.....,in the State of....."

Proof of service shall in all cases be filed in the office of the clerk within five days after the making thereof,

Provided that the written admission of service by the attorney of record in any action or proceeding shall be sufficient proof of service.

RULE XXIII.

Orders for publication of summons in actions for divorce will only be granted upon an affidavit of the plaintiff stating facts showing that personal service cannot well be made.

RULE XXIV.

All divorce cases shall be tried at general term in all counties wherein three or more general terms of court are appointed to be held during any one year.

RULE XXV.

In cases where a sale of real estate upon execution or foreclosure by advertisement is sought to be enjoined, the application for an injunction shall be heard and determined upon notice to the adverse party either by motion or order to show cause.

The application shall be made immediately on receiving notice of the publication of the notice of sale. And no injunction in such case shall be allowed *ex parte*, unless the rights of the applicant would otherwise be prejudiced, nor unless a satisfactory excuse is furnished showing why the application was not made in time to allow the same to be heard and determined upon notice before the day of sale.

And in all other cases, if the court or judge deem it proper that the defendant or any of several defendants be heard before granting the injunction, an order may be made requiring cause to be shown at a specified time and place why the injunction should not be granted.

RULE XXVI.

In every case where no special provision is made by law as to security, the court or officer allowing a writ of injunction or *ne exeat*, shall require an undertaking or bond on behalf of the party applying for such writ, in not less than two hundred and fifty dollars, executed by him or some person on his behalf, as principal, together with one or more sufficient sureties, to be approved by the court or officer allowing the writ, and to the effect that the party applying for the writ will pay the party enjoined or detained such damages as he may sustain by reason of the writ, if the court shall eventually decide that the party was not entitled to the same.

RULE XXVII.

When a demurrer is overruled with leave to answer or reply, the party demurring shall have twenty days after notice of the order, if no time is specified therein, to file and serve an answer or reply, as the case may be.

RULE XXVIII.

A change of venue or place of trial will not be granted unless the party applying therefor use due diligence to procure the same within a reasonable time after issue joined in the action and the ground for the change shall have come to the knowledge of the applicant. Nor will a change be granted where the other party will lose the benefit of a term, unless the party asking for such change shall move therefor at the earliest reasonable opportunity after issue joined, and he shall have information of the ground of such change. In addition to what has usually been stated in affidavits concerning venue, either party may state the nature of the controversy, and show how his witnesses are material; and may also show where the cause of action or defense or both of them arose; and these facts will be taken into consideration by the court in fixing the place of trial.

RULE XXIX.

In cases where the trial of issues of facts is not provided for by section 216, of chapter 66, of General Statutes of Minnesota, if either party shall desire a trial by jury, such party shall, within ten days after issue joined, give notice of a motion to be made upon the pleadings, that the whole issue or any specific question of fact involved therein, be tried by a jury. With the notice of motion shall be served a distinct and brief statement of the questions of fact proposed to be submitted to the jury for trial, in proper form, to be incorporated in the order, and the court or judge may settle the issues, or may refer it to a referee to settle the same. The court or judge may, in his discretion, thereupon make an order for trial by jury, setting forth the question of fact as settled, and such questions only shall be tried by the jury, subject however to the right of the court to allow an amendment of such issues upon the trial in like manner as pleadings may be amended upon trial.

RULE XXX.

Commissions to take testimony without this State may be issued on notice, and application to the court, or judge thereof, either in term time or in vacation. Within five days after the entry of the order for a commission, the party applying therefor shall serve a copy of the interrogatories proposed by him, on the opposite party. Within five days thereafter the opposite party may serve cross inter-

rogatories. After the expiration of the time for serving cross interrogatories, either party may within five days give five days' notice of settlement of the interrogatories before the court, or judge thereof. If no such notice be given within five days, the interrogatories and cross interrogatories, if any served, shall be considered adopted. Whenever a commission is applied for, and the other party wishes to join therein, interrogatories and cross interrogatories to be administered to his witnesses may be served and settled or adopted within the same times and in the same manner as those to the witnesses of the party applying. After the interrogatories are settled, they must be engrossed by the party proposing the interrogatories in chief, and the engrossed copy or copies be signed by the officer settling the same, and must be annexed to the commission and forwarded to the commissioners. If the interrogatories and cross interrogatories are adopted without settlement, engrossed copies need not be made, but the originals or copies served may be annexed and forwarded with the commission.

RULE XXXI.

Should any or either of the commissioners fail to attend at the time and place for taking testimony, after being notified thereof, any one or more of the commissioners named in the commission may proceed to execute the same.

RULE XXXII.

In taking the deposition of a witness when the deposition is completed, the witness shall sign his name or make his mark at the end thereof as well as upon each piece of paper on which any portion of his deposition is written and the commissioner or commissioners shall annex to the commission a certificate, showing the time or times and place of executing it, which certificate may be substantially in the following form:

I,.....commissioner named in the within and above written commission, do certify that the said commission was executed, and the testimony of.....was taken before me at.....in.....on the..... day of.....18..., at...o'clock in the .....noon and was reduced to writing by myself, (or by deponent, or by..... a disinterested person in my presence and under my direction).

That the said testimony was taken by, and pursuant to the authority and requirements of the said commission, upon the interrogatories.... .....annexed and herewith returned. The said witness, before examination was sworn to testify the whole truth, and nothing but the truth, relative to the cause specified in said commission, and that the testimony of said witness was carefully read to (or by) said witness (by me) and then by him subscribed in my presence.

A. B. Commissioner.

And shall also state whether any commissioner not attending was notified of the time and place of the taking of the deposition. The commissioner or commissioners shall annex the deposition, with such certificate, to the commission, seal them up in an envelope, and direct to the clerk of the court of the county in which the action is pending. They may be transmitted by mail or private conveyance. The clerk, on receipt of the same, shall open the envelope, and file it with the commission and deposition, marking thereon the time. They cannot be taken from his custody except upon the order of the court, or of a referee appointed to take proofs or try any issues in the cause. The clerk shall produce them in court to be used upon the trial of the cause, upon the request of either party.

RULE XXXIII.

All objections to the manner of taking, or certifying, or returning depositions shall be deemed to have been forever waived unless the party objecting thereto shall make it appear, to the satisfaction of the court, that the officer taking such depositions was not authorized to administer an oath then and there, or that such party was, by such informality error or defect, precluded from appearing and cross examining the witness; and every objection to the sufficiency of a notice, or to the manner of taking, or certifying, or returning such deposition, shall be deemed to have been forever waived, unless such objections are taken by motion to suppress such deposition, which motion shall be made within ten days after service of such notice, in writing, of the return thereof.

RULE XXXIV.

PAPERS ON FILE WITH THE CLERK.—RECEIPT FOR.—No papers on file in a cause shall be taken from the custody of the clerk, except by the judge for his own use, or a referee appointed to try the action. Before a referee shall take any files in said action, the clerk shall require a receipt therefor, signed by the referee, specifying each paper so taken.

RULE XXXV.

DISMISSALS BEFORE REFEREES.—On a hearing before referees, the plaintiff may dismiss his action, or his action may be dismissed, in like manner as upon a trial, at any time before the cause has been finally submitted to the referees for their decision, in which case the referees shall report according to the fact, and judgment may thereupon be perfected by the defendant.

RULE XXXVI.

REFEREES' REPORT—WHEN FILED.—Upon a trial of issues by a referee, such referee shall file his report in the clerk's office, upon his fees being paid or tendered by either party.

RULE XXXVII.

There shall be two calls of the calendar. The first shall be preliminary, the second peremptory. All preliminary motions, except motions for continuance, shall be made on the first call. The cases shall be finally disposed of in their order upon the calendar on the second call. Where, upon the preliminary call, or at any time afterwards, no response is made by either party to a case, the case shall be stricken from the calendar unless otherwise directed by the Court.

RULE XXXVIII.

MOTIONS FOR CONTINUANCE.—All motions for continuance shall be made on the first day of the term, unless the cause for such continuance shall have arisen or come to the knowledge of the party subsequent to that day. And in all affidavits for continuance on account of the absence of a material witness, the deponent shall set forth particularly what he expects and believes the witness would testify to were he present and orally examined in court.

RULE XXXIX.

In jury trials of civil actions where a full panel is called in the first instance, challenges shall be made alternately, first by the defendant and then by the plaintiff.

RULE XL.

On the trial of actions before the court but one counsel on each side shall examine or cross-examine a witness, and one counsel only on each side shall sum up the case to the jury, unless the judge who holds the court shall otherwise order.

Upon interlocutory questions, the party moving the court, or objecting to the testimony, shall be heard first; the respondent may then reply by one counsel, and the mover rejoin, confining his remarks to the points first stated and a pertinent answer to the respondent's argument.

Discussion on the question shall then be closed, unless the court requests further argument.

At the hearing of causes before the court, no more than one counsel shall be heard on each side, unless by permission of the court.

The defendant, in opening his case to the jury, shall confine himself to stating the facts which he proposes to prove.

In cases where the affirmative of the issue to be tried is upon the defendant, the defendant's counsel shall open the case to the jury and have the closing argument, as though his client were the plaintiff.

RULE XLI.

The points on which either party desires the jury to be instructed must be furnished in writing to the court before the argument to the jury is begun or the same may be disregarded. All exceptions to the charge and refusals to charge, shall be taken before the jury retires.

RULE XLII.

It shall not be necessary to call either party, or that either party be present or represented when the jury returns to the bar to deliver their verdict.

RULE XLIII.

Upon the rendering of a verdict of a jury or the filing of a decision by the court in any case, no stay of proceedings, after the first, will be granted without notice to the counsel or consent of counsel for the opposite party.

RULE XLIV.

Costs and charges to be inserted in a judgment, shall be taxed in the first instance by the clerk upon two days' notice. And an appeal therefrom may be taken to the court within ten days after such taxation by the clerk, but not afterwards. Such appeal shall be taken by notice in writing, signed by the appellant, directed to and served upon the adverse party and the clerk, and shall specify the items from which the appeal is taken. When such appeal is taken, either party may bring the same on for determination before the court on notice, or by any order to show cause. On such appeal the court will only review the items objected to, and upon the grounds specified before the clerk.

RULE XLV.

Judgments, and copies to annex to the judgment roll, shall in all cases be signed by the clerk, and no other signature thereto shall be required.

RULE XLVI.

Where a party is entitled to have judgment entered in his favor by the clerk, upon the verdict of a jury, report of referee, or decision or finding of the court, and neglects to enter the same for the space of ten days after the rendition of the verdict, or notice of the filing of the report, decision or finding, (or in case the same has been stayed, for the space of ten days after the expiration of such stay,) the opposite party may cause the same to be entered by the clerk upon five days' notice to the adverse party of the application therefor.

RULE XLVII.

In case of trials by the court or by referees, the time for serving a case or bill of exceptions shall be computed from the date of service of notice of filing the report, decision or finding. The party procuring a case or bill of exceptions, shall cause the same to be filed within ten days after the case shall be settled, or the same or the amendments thereto shall have been adopted, otherwise it shall be deemed abandoned.

RULE XLVIII.

Transcripts of the stenographic reporter's minutes shall be made in

the exact words and in the form of the original minutes. The proposed case shall not be made in narrative form, but shall be in the form of question and answer as at the trial. The party procuring the transcript shall, at or before the time of serving the proposed case or bill of exceptions, file the same with the clerk for the use of parties and the court, and the failure so to file said transcript shall be deemed good and sufficient reason for extending the time within which proposed amendments may be served by the opposite party. After the settled case or bill of exceptions has been filed in the clerk's office, the stenographer's transcript may be withdrawn.

RULE XLIX.

If during the progress of the term a juror does not appear and answer when called by the court the clerk shall make an entry of the default of such juror, and deduct from his time of service the day upon which such default shall have occurred, unless the court for good cause shall excuse such absence.

RULE L.

In cases where no provision is made by statute or by these rules, the proceeding shall be according to the customary practice, as it has heretofore existed in the several District Courts of the State.

IN INSOLVENCY PROCEEDINGS.

RULE I.

Any creditor proving his claim against the insolvent may file, in the office of the clerk of the court, a written notice, stating that the person, or co-partnership, or corporation therein named is by such creditor authorized to appear and act for him, in any and all proceedings in the matter of the assignment or receivership in such notice specified, a copy of which notice shall, by the person so filing the same, be served upon the assignee or receiver. All orders or notices made after the serving of such notice, which are directed to be served upon such creditor shall be served upon the person, co-partnership, or corporation in such notice named, and no further service thereof shall be necessary.

RULE II.

No sale in gross of the assigned property shall be made, except upon petition to the court setting forth fully the facts relied upon to authorize such sale, of which alleged facts proof shall be made in such manner as the court may direct, and obtaining from the court an order authorizing such sale. No such sale, except of perishable property, shall be made, save upon notice, given in such manner as the court may direct, to such creditors of the insolvent as have then proved their claims, and also to such persons as in the schedule of the insolvent are named as his creditors.

No such sale shall be consummated until after report to, and confirmation by, the court.

RULE III.

No assignee or receiver shall make conveyance of any real estate covered by the assignment and sold by him until after confirmation of such sale by the court.

RULE IV.

The assignee or receiver making application to the court for any order declaring a dividend, or for the allowance of the account of such assignee or receiver, or for limiting the time for the filing of releases, shall file a summary statement, showing the amount of moneys then received by such assignee or receiver, the amount of the expenses of the trust then incurred and a general description of the assigned property then remaining in his hands, with the estimated value thereof.

RULE V.

Orders limiting the time for filing releases shall not be made until after the time for filing claims has expired, nor until the assets have been reduced to money, or such progress has been made towards the same that it appears approximately how much will be realized therefrom, and the assignee or receiver shall serve with such order a copy of the summary statement provided for by rule IV.

RULE VI.

Each assignee or receiver shall keep a list of all claims presented to him against the insolvent, which list shall contain the name and residence (with street number if known or appearing) of the creditor presenting the claim, the amount of such claim, the date of the presentation thereof, the amount thereof allowed, the amount thereof disallowed, the name and residence of the agent or attorney (if any) of the creditor presenting such claim, and such remarks, memoranda or explanation as he may deem necessary in connection therewith. All preferred claims shall be designated by the word "preferred." A copy of such list shall be filed in the office of the clerk of the court within five days after the expiration of the time for filing claims.

Such list shall be substantially in the following form:

District Court, ... *County, Minnesota,* ..... *Judicial District.*

In the matter of the insolvency (or receivership) of .....

List of claims against said insolvent filed with ..... Assignee / Receiver

No. of Claim	Name of Creditor.	Residence	If Known, No.	If Known, Street	Amount of Claim.	When Presented M	When Presented D	When Presented Y	Amount of Claim Allowed	Amount of Claim Disallowed	Agent or Att'y presntg claim and residence.	Remarks

RULE VII.

An appeal to the court may be taken by the insolvent from the action of the assignee or receiver allowing any claim against such insolvent. An appeal may also be taken by any creditor whose claim has been allowed by the assignee or receiver, from the action of such officer allowing the claim of any other creditor of the insolvent.

RULE VIII.

All such appeals shall be taken within twenty days after filing the list of claims provided for in Rule 6, and shall be so taken by serving written notice thereof upon the assignee or receiver, and upon the creditor from the allowance of whose claim the appeal is taken. Such notice, with proof of the service thereof, shall within five days after such service, be filed in the office of the clerk of the court, and if not so filed, the appeal shall be deemed and held to be abandoned. Such appeals shall be tried as civil actions.

If such appeal be not noticed for trial and placed upon the calendar by the appellant at the first general term of the court appointed to be held within the county, not less than twenty days after the taking of the appeal, the adverse party may have the same entered upon the calendar during that, or some succeeding term, and have such appeal dismissed, or the action of the assignee affirmed.

RULE IX.

Upon any appeal, the pleadings shall be the same as in civil actions. The first pleading shall be the complaint of the claimant, which shall be filed in the office of the clerk of the court, and a copy thereof served upon the adverse party, within five (5) days after service of the notice of appeal. If subsequent pleadings have not been made before the first day of the term, the court shall fix the time within which the same shall be be made.

RULE X.

The assignee or receiver shall, so soon as he shall have converted all of the assigned property into money and after the expiration of the time limited for filing releases, make to the court a full report and account of all moneys received, and expenses incurred by him in the execution of his trust; which expenses shall be itemized, and which report and account shall be filed in the office of the clerk of the court.

Upon the filing of such report and account, the court, upon application of the assignee or receiver, or of any creditor whose release shall have been filed, or if releases are not required, then upon application of any creditor whose claim shall have been proved, shall appoint a time and place for the hearing of such report and account, of which notice shall be given as the court may direct, to the insolvent, and to such

creditors as have filed releases, or if no releases are required, then to such creditors as have filed proof of their claims.

Upon such hearing, the court shall disallow or reduce the amount of any item of such expenses which shall be found to have been unnecessary or unreasonable in amount.

When such account is adjusted and allowed, the assignee or receiver shall forthwith distribute the net amount then remaining in his hands, *pro rata*, and in proportion to their respective claims, among the creditors entitled to the same, subject to the approval of the court.

RULE XI.

The assignee or receiver shall take duplicate receipts for all disbursements made by him, which receipts shall be plainly marked, the one "Original," the other "Duplicate," and which "Original" receipts shall be filed in the office of the clerk of the court. No order discharging any assignee or receiver shall be made until after such original receipts are so filed.

RULE XII.

The fees allowed receivers and assignees shall not exceed, in ordinary cases, 10 percent upon the amount received by them up to $1,000; 5 per cent of the amount in excess of $1,000 and not exceeding $5,000, and 2 per cent upon the amount received in excess of $5,000. The allowance for attorneys, for all services in ordinary cases, shall not exceed $50 where the estate does not exceed $1,000; $100 where the estate does not exceed $2,000; $150 where the estate does not exceed $4,000, and $200 where it exceeds $4,000. No allowance will be made to the assignee, or his attorney, for drawing the deed of assignment or for making the inventories or schedules thereunder. All such attorney's fees shall be itemized, showing fully each particular service rendered and the sum claimed as compensation therefor.

RULE XIII.

Applications for the discharge of assignees or receivers, or for the allowance of their accounts, whether final or otherwise, shall be made upon notice thereof, which shall be published in a newspaper of the county, once in each week for at least three successive weeks, prior to the day of hearing and which shall be served by mail upon the insolvent and upon all creditors entitled to participate in the distribution of the estate, at least twenty days before the time so named for such hearing. Such applications and accounts must be filed before notice is given.

RULE XIV.

Applications by creditors for leave to file claims or releases after the time limited by the court therefor has expired, must be made upon affi-

davit filed, excusing the default, and upon notice of such application served personally upon the assignee or receiver, and by mail upon all creditors who have filed their claims and releases, at least ten days before the hearing.

RULE XV.

Proof of Claims and Releases shall be substantially in the following forms respectively:

PROOFS OF CLAIM.

STATE OF MINNESOTA, COUNTY OF..... } ss DISTRICT COURT, Judicial District.

In the matter of the Assignment of
.....
.....
.....
Insolvent

Proof of Claim of
.....

State of..... } ss
County of..... }

On this.....day of.....A. D. 18..., before me personally came.....who being by me first duly sworn on his oath doth say, (that he is one of the members of the firm of.....which said firm is, and at all times herein mentioned or referred to, was composed of this affiant and).....
that at and before the making of the assignment in this matter by the above named insolvent.....
[*Insert names of insolvents.*]
.....he, was (or they as such co-partners were and now) is (are) justly and duly indebted unto the said.....
[*Name of creditors.*]
in the sum of.....dollars and .....cents, with interest thereon from and after the.....day of.....18..., for.....
.....
[*Here insert the true cause and consideration of the indebtedness.*]
which said sum and interest is due over and above all payments, counter-claims and set-offs whatever. And deponent says that for the said indebtedness the said.....ha....not nor

ha....any person by.....order, or for.....use or benefit had, or received any manner of satisfaction of security whetever.

That a bill of the items of such merchandise so sold and delivered, (or a copy of said promissory note, or other written evidence of such indebtedness) (varying statement as the facts may be) is hereto attached and hereby made a part hereof.

Subscribed and sworn to before me this
.....day of.....A.D. 18.. } .....
.....

RELEASE OF CLAIM.

STATE OF MINNESOTA, County of..... } ss DISTRICT COURT, Judicial District.

In the matter of the Assignment of
..... } Release.
.....
Insolvents.

Whereas, under and by virtue of an act of the Legislature of the state of Minnesota, approved March 7, 1881, entitled, "an act to prevent debtors from giving preference to creditors, and to secure the equal distribution of the property of debtors among their creditors, and for the release of debts against debtors"; and the several acts amendatory thereof, the above named insolvents did on the.....day..... A. D. 18...make unto.....an assignment of all their property, and estate, for the equal benefit of all of their creditors; and whereas the undersigned.....
[*Insert names of creditors.*]
creditors of the above named insolvents as such creditors, have, under said act, proved .....claim against said insolvents, which claim has been allowed by said assignee as and for a just claim against said insolvents.

Now, therefore.....
[*Insert names of creditors*].
the said creditors in consideration of the benefits to.....of the provisions of the said act do hereby release to the said insolvents and debtors, said .....all claims and demands upon said claim so proved, save and except only such as may be paid to .....as dividends or otherwise, under the provisions of the said act and assignment.

In Testimony whereof.....have hereunto set.....hand and seal this.....day of.....A. D. one thousand eight hundred and.....

Executed and delivered in presence of } .....Seal.
..... } .....Seal.
..... } ....Seal.
.....Seal.

State of..... } ss
County of..... } Be it known that on this.....,.....
day of.....A. D. 18...before me personally came.....
.....the signers and sealers of the foregoing instrument and acknowledged the same to be.....own free act and deed.

.....

RULE XVI.

All rules of practice in so far as the same are applicable, shall govern proceedings in insolvency.

NOTES ON RECENT DECISIONS.

THE GEARY ACT; WHAT TO DO WITH THE IMPORTS.—The courts have found some difficulty in administering the Geary Act relative to the actual disposition of Chinese found to have no right to remain here, the act failing to make provision for the means of deportation. In the case of Ny Look, Judge Lacombe, of the Circuit Court of the United States for the Southern District of New York, finding no authority for imprisonment of the culprit for an indefinite length of time, ordered that he be discharged from immediate custody, remarking that "This order will presumably be sufficient warrant for his future removal, when some proper officer appears, charged with the duty, and clothed with the authority, so to remove him."

Government Contractors' Bonds; Not Actionable in Certain Cases. —In the case of Union Railway Storage Co. vs. McDermott, *et al.*, 55 N. W. Rep. 606, the Minnesota Supreme Court considers the liability of sureties on a bond given by a contractor to the United States Government to secure the performance of a contract for public building. The bond is that which is used on all government work, under regulations prescribed by the War Department, and contains a condition that the contractor should perform all the covenants, conditions and agreements contained in the contract, to which it specifically referred, "including the covenant that the said McDermott shall be responsible for and pay all liabilities incurred for labor and material in fulfillment of said contract." Plaintiff, in reliance upon this clause in contract and bond furnished material, for which McDermott failed to pay, and brought suit against sureties for the amount due. The court holds that although there is a promise in the bond in favor of plaintiff to guarantee payment of such a debt, yet there is no consideration for such a promise and that such a plaintiff is a stranger to the contract and bond. This is important as being the first case in which this bond has been passed upon, because of the fact that all government work is carried on under

such bonds, and doubtless material men in large numbers have relied upon the liability of the sureties in furnishing material to the contractor. The court expressly distinguishes cases relating to all official or statutory bonds of like nature, such as probate bonds and bonds authorized by the mechanics' lien law.

Railway Company vs. Baugh applied, and Railway Company vs. Ross distinguished.—In the case of the New York and N. E. Railway Co. vs. Hyde, recently decided by the Circuit Court of Appeals, First Circuit, (56 Fed. Rep. 158,) the questions arising in the above cases are discussed and applied or distinguished.

The defendant was employed by plaintiff as a day yard clerk or car clerk, and his duties took him into the switching yards, where he was injured through the carelessness of an engineer and trainmen in the same employ. It was contended they were all fellow servants and that defendant could not recover. This contention was met by one that they worked in separate departments, though in same employ, and were thus not fellow-servants. The Court, *Colt, Putnam and Nelson, J. J.*, hold that the weight of authority favors the allowance of no distinction in such a case on account of their being employed in separate departments; that they are fellow-servants. The court says further, "The supreme court has also decided, in Railway Co. vs. Baugh, that an engineer temporarily in charge does not stand as a vice-principal, as the conductor was said to in Railway Co. vs. Ross, 112 U. S. 377, 5 Sup. Ct. Rep., 184, and has undoubtedly reaffirmed Randall vs. Railroad Co., 109 U. S. 478, 3 Sup. Ct. Rep. 322. The result is that Railway Co. vs. Ross must be regarded as exceptional, based on the supposed peculiar relations, powers and duties of a train conductor, and has no application to this case at bar; while Railway Co. vs. Baugh, *supru*, directly reaches it."

THE CHINESE EXCLUSION CASE; FONG YUE TING VS. UNITED STATES; THE DISSENTING OPINIONS.—We cannot refrain from giving such of our readers who have not seen the text of the opinions given in the above the benefit of a few quotations from the dissenting opinions of Mr. Chief Justice Fuller and Mr. Justice Field. In the course of his opinion Mr. Justice Field, who has always heretofore upheld the Chinese exclusion acts, says:

"The moment any human being from a country at peace with us comes within the jurisdiction of the United States, with their consent,—and such consent will always be implied when not expressly withheld, and in the case of the Chinese laborers before us, was, in terms, given by the treaty referred to,—he becomes subject to all their laws, is amenable to their punishment, and entitled to their protection. Arbitrary and despotic power can no more be exercised over them, with reference to their persons and property, than over the persons and property of native-born citizens. They differ only from citizens in that they cannot vote, or hold any public office. As men having our common humanity, they are protected by all the guaranties of the constitution. To hold that they are subject to any different law, or are less protected in any particular, than other persons, is, in my judgment, to ignore the teachings of our history, the practice of our government, and the language of our constitution. Let us test this doctrine by an illustration: If a foreigner who resides in the country by its consent, commits a public offense, is he subject to be cut down, maltreated, imprisoned, or put to death by violence, without accusation made, trial had, and judgment of an established tribunal, following the regular forms of judicial procedure? If any rule in the administration of justice is to be omitted or discarded in his case, what rule is it to be? If one rule may lawfully be laid aside in his case, another rule may also be laid aside, and all rules may be discarded. In such instances a rule of evidence may be set aside in one case, a rule of pleading in another; the testimony of eye-witnesses may be rejected, and hearsay adopted; or no evidence at all may be received, but simply an inspection of the accused, as is often the case in tribunals of Asiatic countries, where personal caprice and not settled rules prevail. That would be to establish a pure, simple, undisguised despotism and tyranny with respect to foreigners resident in the country by its consent, and such an exercise of power is not permissible, under our constitution. Arbitrary and tyrannical power has no place in our system.

"I utterly dissent from, and reject, the doctrine expressed in the opinion of the majority, that "congress, under the power to exclude or expel aliens, might have directed any Chinese laborer found in the United States without a certificate of residence to be removed out of the country by executive officers, without judicial trial or examination, just as

it might have authorized such officers absolutely to prevent his entrance into the country." An arrest in that way, for that purpose, would not be a reasonable seizure of the person, within the meaning of the fourth article of the amendments of the constitution. It would be brutal and oppressive. The existence of the power thus stated is only consistent with the admission that the government is one of unlimited and despotic power, so far as aliens domiciled in the country are concerned. According to this theory, congress might have ordered executive officers to take the Chinese laborers to the ocean, and put them into a boat, and set them adrift, or to take them to the borders of Mexico, and turn them loose there, and in both cases without any means of support. Indeed, it might have sanctioned towards these laborers the most shocking brutality conceivable. I utterly repudiate all such notions, and reply that brutality, inhumanity, and cruelty cannot be made elements in any procedure for the enforcement of the laws of the United States.

"There is no dispute about the power of congress to prevent the landing of aliens in the country. The question is as to the power of congress to deport them, without regard to the guaranties of the constitution.

"The punishment is beyond all reason in its severity. It is out of all proportion to the alleged offense. It is cruel and unusual. As to its cruelty, nothing can exceed a forcible deportation from a country of one's residence, and the breaking up of all the relations of friendship, family and business there contracted. The laborer may be seized at a distance from his home, his family and his business, and taken before the judge for his condemnation, without permission to visit his home, see his family, or complete any unfinished business.

"There are numerous other objections to the provisions of the act under consideration. Every step in the procedure provided, as truly said by counsel, tramples upon some constitutional right. Grossly it violates the fourth amendment, which declares that "the right of the people to be secure in their persons * * * against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the * * * persons * * * to be seized."

Chief Justice Fuller says in part, relative to the procedure:

"It directs the performance of a judicial function in a particular way, and inflicts punishment without a judicial trial. It is, in effect, a legislative sentence of banishment, and, as such, absolutely void. Moreover, it contains within it the germs of the assertion of an unlimited and arbitrary power, in general, incompatible with the immutable principles of justice, inconsistent with the nature of our government, and in conflict with the written constitution by which that government was created, and those principles secured."

NOTE AND COMMENT.

INTERNATIONAL COURT OF APPEALS.—The decision a few days ago of the vexed questions arising out of the Behring sea dispute in a manner satisfactory to both England and the United States, again calls to mind the fact that the establishment of an international court of appeals by most of the civilized nations of the world is not only possible but extremely probable. That decision and the events leading up to it are the grandest victories, not only for peace, but for law. And it is easy to conceive that the great powers, instead of calling together from their own and friendly countries a body of men more or less prejudiced at the outset, to pass upon a particular dispute, will agree upon a body chosen for life, representative in its nature, and in which the civilized world may see the realization of the hope of ages, universal peace. Reviewed from a financial point of view, if the establishment of such a court should have the effect expected, disarmament of the standing armies would result and hundreds of millions per annum be saved.

It has been reported that Ex-President Harrison will give his idea of the constitution and procedure of such a court in the course of lectures which he intends giving at the Leland Stanford University this fall, and it is to be hoped that Congress will listen to his recommendations and that this country shall be the one to propose the establishment of a tribunal which would be the greatest the world has ever seen.

THE NEW RULES.—So many changes which are important have been made by the adoption a day or two ago of the New Code of Rules, that space will not permit a discussion of their effect this month. But in the next issue we shall give the comments of others with our own upon the radical changes made. It is important that the new rules be carefully studied, particularly as they take effect at once.

BOOK REVIEWS.

GENERAL STATUTES OF MINNESOTA.—Third edition, revised and corrected, with references to and including the General Laws of 1893. Originally compiled and annotated by JNO. F. KELLY, of the St. Paul Bar, and revised and brought down to date by L. S. COTTON, of the St. Paul Bar. 2 volumes; 1,900 pages. St. Paul, Minn: Brown, Treacy & Co., 1893. $10.00 per set.

This is a revision and correction to date, of the well known and well received Kelly Statutes, in which the annotations are brought down to and including vol. 49, Minnesota Reports, with references to the General Statutes passed since the publication of the first edition in 1891. The publishers have evidently spared neither time nor expense in bringing the statutes down to date properly, and a frequent revision cannot but be helpful to the attorney who has heretofore been compelled to look through several sets of books before finding what the law is. The explanatory notes are full and accurate, and the amendments indicated with precision and clearness. The order is the same as heretofore, by section, volume one containing all laws of a general nature not remedial, and volume two the remedial statutes. The publishers are at least to be commended for their enterprise in making so complete a revision so soon after the publication of the original edition.

INFERIOR COURTS.

We desire to announce that, beginning with the September number, reports of decisions on points of practices will include those made in the Duluth District and Municipal Courts, and that subsequently other distrtcts will be included as rapidly as possible.

We take pleasure in stating here that arrangements have been made to have reports to this department made from Washington, Cook, Winona and other counties, in time for the next issue of the Journal. Practitioners are cordially invited to send in notes on any thing which will interest the profession.

ERRATA: On page 37, No. 2, paragraph headed "Same; taxation of costs in above case", should have followed report of case of *N. E. Furn. & Carpet Co.* v. *Weiloff*, on page 41.

AFFIDAVIT OF ATTACHMENT: DEFECTIVE JURAT AMENDABLE.—In an affidavit for attachment, no date was named in the jurat. It being shown, on motion to dismiss, that the person making the affidavit, actually swore to it on a given day. *Held*, that plaintiff could amend by inserting true date.

Phœnix, assignee, v. *Smith, Nethaway, J.*, Municipal Court, Stillwater.

ATTORNEY FOR MUNICIPAL CORPORATION; CANNOT BE REMOVED ARBITRARILY: —Plaintiff was elected village attorney of defendant for one year; served two or three months and was removed by simple resolution of the common council; sues for services for full year. Defense

of removal, *held not good*, as such an officer cannot be removed without cause, charges preferred and a hearing had.

Johns v. *Village of New Brighton*, *Twohy, J.*, Municipal Court, St. Paul.

APPLICATIONS FOR APPOINTMENT OF RECEIVER; ATTORNEY MAY SIGN SAME.—In making a petition for the appointment of a receiver, the names of the petitioning creditors need not be signed by the creditors themselves, but may be signed by their respective attorneys.

In re-app. for receiver for Strom, et al., *Canty, J.*, District Court, Hennepin County.

CAPACITY TO SUE; ALLEGATION OF INCORPORATION HELD SUFFICIENT:—Plaintiff alleged in its compiaint that it was a corporation, "duly organized under the laws of the United States of America." Upon demurrer, on ground that complaint failed to show capacity in plaintiff to sue, *held*, sufficient.

Second Nat'l Bank of Winona v. *Clark et al.*, *Twohy, J.*, Municipal Court, St. Paul.

CONSTITUTIONAL LAW; DRAWING JURORS FROM PART ONLY OF JURISDICTION.—The Municipal Court of Stillwater has jurisdiction over the whole of Washington County, but the act directs that jurors shall be drawn from the city only. *Held*, to be constitutional in the case of *Mathews et al.* v. *Holler, by Nethaway, J.*, Municipal Court, Stillwater.

CRIMINAL LAW; POWER OF DISTRICT COURT TO COMMIT FOR INSANITY.—One Peters was indicted for murder; refused to plead, claiming, by his attorney, that he was mentally incapable of understanding the nature of the proceedings against him. Court ordered trial of this fact, and jury found him then insane. He was remanded to the Probate Court for examination, and there pronounced sane. Whereupon the District Judge ordered his committment for insanity of his own motion.

State v. *Peters*, *Williston, J.*, District Court, Washington County.

DISMISSAL OF ACTION; WHERE PLAINTIFF CANNOT DISMISS, AFTER APPEAL DECIDED.—Defendant demurred to complaint and demurrer sustained; plaintiff appealed and order was affirmed, there being twenty days to amend complaint. Mandate was filed, and after expiration of twenty days, plaintiff entered dismissal on the register. Defendants move to expunge entry and for judgment on the merits, which was granted, it being held that plaintiff's right to dismiss was lost and that judgment nust be final against him.

Union Ry. Storage Co. v. *McDermott et al.*, *Russell, J.*, District Court, Hennepin County.

EXEMPTION FROM LEVY; PERSON HOLDING MONEY LEVIED UPON CANNOT HOLD SAME AS AGAINST LEVY ON THE GROUND THAT IT IS EXEMPT:—Judgment was duly rendered against an employe of defendant; levies were made at various times upon funds in hands of defendants, the amounts of which were regularly disclosed. Upon refusal to turn over money, sheriff sued defendants for same. *The* answer set up the fact that the money, in each instance, was due the employe (judgment debtor) as wages, for work done within 30 days previous to the issuance of the execution. On demurrer, held to be no defense, and judgment ordered.

Chappel v. *C. W. Hackett Hardware Co.*, *Twohy, J.*, Municipal Court, St. Paul.

EXEMPTION LAWS OF OTHER STATES; (SEE PERSONAL PROPERTY).

GARNISHMENT; MONEY PAYABLE IN INSTALLMENTS, HELD SUBJECT TO:—Defendant sold land to garnishee; who agreed to pay $15 per month until full amount is paid. Plaintiff serves garnishment after first payment only has been made. *Held*, that the court would order on this disclosure, that all future payments be directed to be made to plaintiff, and that the amounts were due for purpose of garnishment.

Burns & Shaw v. *Frick & King, garnishee*, *Twohy, J.*, Municipal Court, St. Paul.

HOMESTEAD; PROCEEDS OF, HELD SUBJECT TO GARNISHMENT:—Defendant sold homestead to garnishee, who was to pay therefor in installments. On disclosure and subsequent hearing, defendant by affidavit showed an intention to re-invest proceeds in another homestead. *Held*, that the proceeds were subject to garnishment by a judgment creditor of defendant.

Burns & Shaw v. *Frich & King, garnishee; Twohy, J.*, Municipal Court, St. Paul.

LIABILITY OF AGENT FOR LOSS WHERE SERVICE VOLUNTARY:--Plaintiff purchased a ticket from defendants, paid therefor, and requested defendants to send said ticket to Germany for him; this was done, but ticket was never received by person to whom it was sent. Plaintiff sues defendants for value of same. *Held* that the services performed in sending away the ticket being purely voluntary and without consideration, plaintiff cannot recover.

Schultz v. *Broberg, et al., Twohy, J.*, Municipal Court, St. Paul.

NOTICE OF APPEAL; SERVICE OF IN JUSTICE COURT: WHEN NOT GOOD.—Notice of appeal was attempted to be served on an attorney who appeared in the case, by leaving a copy thereof with his clerk in his office, in his absence. Motion made to dismiss appeal, and motion *granted*. General provisions of chapter 66 as to service of notice on attorneys, *held*, not to apply.

Long v. *La Bell, and Flynn, garnishee, Smith, J.*, District Court, Hennepin County.

PERSONAL PROPERTY OWNED IN ANOTHER STATE; WHEN MAY BE ATTACHED IN THIS STATE.—Defendant was a resident of Wisconsin and was temporarily in this state; plaintiff was resident of this state. Plaintiff attached horses of defendant in Washington County; exempt by the laws of Wisconsin. *Held*, that the property could be levied upon and taken here, although the owner was resident of a state wherein property was exempt; that the *locus* of the property was that of the owners' person and not of his residence.

Phœnix, assignee, v. *Smith, Nethaway, J.*, Municipal Court, Stillwater.

PRACTICE; ATTACHMENT; EXEMPTION OF PROPERTY NOT GROUND FOR DISSOLUTION OF.—Where property claimed to be exempt be levied upon under writ of attachment, the fact that it is exempt cannot be taken advantage of on motion to set aside the attachment, but should be determined in an action for the purpose, against those wrongfully taking the property.

Phœnix, assignee, v. *Smith, Nethaway, J.*, Municipal Court, Stillwater.

PREFERRED CREDITOR; PROCEDURE TO OBTAIN PAYMENT: CLAIM OF STATE OF MINNESOTA.—The attorney general obtained an order to show cause why the assignee of the insolvent bank should not pay forthwith to the state the amount of money due it on deposit, as a preferred creditor. *Held*, that the application is premature, as the payment should not be made until the final settlement of the estate: one reason being to then ascertain whether there will remain enough to pay the claim and the cost of administration.

In re-assignment of State Bank, Smith and Pond, J J., District Court, Hennepin County.

ASSIGNMENT; SECURED CLAIMS; CLAIM OF STATE, SECURED BY BOND.—On the above application it appeared that the state was protected by a sufficient bond, and the court held that the state would, in any event, have to exhaust its remedy against the sureties before it could be permitted to participate in the distribution of funds of estate. (Same case.)

RECEIVER; APPLICATION FOR CANNOT BE AMENDED, WHEN.—When an application has been made for the appointment of a receiver, an application by the petitioners to amend their petition by adding thereto other and different matters

than those originally set up, will be denied.

In re-app. for receiver for Strom & Davidson, Canty, J., District Court, Hennepin County.

RECEIVER; AN ALLEGATION OF INSOLVENCY ALONE NOT SUFFICIENT TO SUPPORT PETITION FOR.—Where petition for appointment of a receiver simply shows that the debtor is insolvent, such statement is not sufficient to warrant the appointment, unless some other act, as enumerated in the statute, shall have been done or threatened.

In re-app. for receiver for Strom, et al., Canty, J., District Court, Hennepin County.

SAFETY DEPOSIT VAULTS; PROCEEDURE TO OBTAIN POSSESSION OF PROPERTY IN SAME, WHEN OWNER IS INSOLVENT.—One Wheeler made an assignment and left the state. He had property in a box in a safety deposit company's vaults, together with papers belonging to others. Assignee applied to court for direction, and the court ordered assignee, the trust company owning the vault and the insolvent to show cause why the lock of said box should not be forced and the contents removed in the presence of all parties. On the hearing no precedent for such action was produced, but the court made the order and it was carried out.

In re-assignment of Wheeler, Williston, J., District Court, Washington County.

JUDGE FREDERICK HOOKER

JUDGE DISTRICT COURT, HENNEPIN COUNTY, MINNESOTA.

DIED SEPT 11, 1893.

THE

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OUR NATIONAL BAR ASSOCIATION.

BY WILLIAM S. PATTEE, LL. D.,

DEAN, LAW DEPARTMENT, UNIVERSITY OF MINNESOTA.

The annual meeting of the National Bar Association is becoming each year an event of increasing importance. In connection with this annual gathering are now two auxiliary sections of great promise for good for both the profession and the country at large. The first is the section having under consideration the matter of uniform legislation, and the second considers the matter of legal education throughout the United States,

At the last meeting in Milwaukee, Wis., on the 1st inst., there assembled delegates from nineteen different states to consider the question of uniform legislation. A vigorous effort is made to have represented at the next meeting one year hence every state in the Union, when definite action will be taken looking toward the passage of uniform laws by the several state legislatures, respecting the subjects of Marriage and Divorce, Conveyances of Real Estate, including Acknowledgements, and also respecting the sealing and attestation of deeds and other instruments, the execution of wills, and the probating of foreign wills, also days of grace and presentment of bills and notes,

a uniform standard of weights and measures, and various other subjects, uniformity in which throughout the several states would greatly facilitate business and diminish the delays and perplexities now incident to our diverse and ever changing legislation.

Committees have been appointed to make investigations along these various lines, to ascertain wherein uniformity in legislation would be beneficial and to report such bill as in their judgment would secure these beneficial results. These bills will be considered by the entire convention at its next session, and after thorough discussion and deliberation, such proposed enactments as promise useful results will be presented to the several state legislatures for adoption. That there is an opportunity in this direction for vast improvement requires but a moment's reflection upon the delays, hindrances, and trouble that result from unnecessary diversities of our state laws.

A similar body of investigators, who are in a way attached to the National Bar Association is composed of gentlemen especially engaged in legal education. This branch of the association was organized at its last meeting. During the last decade the increase in the number of law schools, and in the number of students attending them has been phenomenal. The object of this auxiliary section is to consider the best methods of instruction and hence the best means for improving the bar.

It is easily discernable that, as the branches of legitimate business multiply, and the more complex commercial life becomes, the greater demand there is for an accurate, thorough and extensive knowledge of jurisprudence.

The lawyer is not now found in the court room only, but he is found in the railroad management, in the credit department of large commercial establishments, in the offices of title insurance companies, at the head of trust companies, in the trusteeships and assigneeships of crippled enterprises, at the head of large collection agencies, and in a multitude of positions where his legal learning is demanded, but where it may be, the art of practice is not especially necessary. Business is constantly seeking guidance along the lines of lawful action, and hence the growing demand for men who possess clear and accurate knowledge of the law of the land Especially is this true in a republic, where, not only along the lines of private enterprises, but also within the scope of political action, men ought to see what can and what cannot be judici-

ously attempted by means of human enactments. This increasing demand for legal learning, and efforts to discover the best possible methods of teaching it, are a most hopeful sign. It shows a growing respect for, and an increasing reliance upon the law by many, in times when some would put it to defiance.

The nearer they get to fundamental truths of jurisprudence the more clearly men see their duty, the more clearly they see how they ought to act toward one another in human society.

And in troublesome times, when from a superficial glance it may appear that men are losing respect for law, it is not uninteresting to know that all over these United States, law schools are springing up, and thousands and thousands of America's youth are receiving instruction in the rudiments of law which binds men together in civil society, and that they are imbibing a hearty respect and a tranquilizing reverence for those fundamental truths.

Thus the National Bar Association with its adjuncts more or less closely attached, is an organization of great power and usefulness. It merits the aid of the profession, and the respect and good will of society at large. Through it valuable investigations are made, and profound truths expressed and emphasized.

EXTRA TERRITORIAL EFFECT OF THE APPOINTMENT OF A RECEIVER IN INSOLVENCY PROCEEDINGS.

The question is often propounded, how far and to what extent does a decree of a court appointing a receiver in one state affect real property situate in another, especially when the insolvent, receiver, and all interested parties are residents of the state wherein the decree is made.

From the earliest cases commencing with Watts vs. Waddel, 6 Peter, 400, and Booth vs. Clark, 17 How., U. S., 322, down through an almost unbroken line of cases to the late case of Filkins vs. Nunnemacher, 51 N. W. Rep., 79, the courts have uniformly held that such a decree would have no extra territorial effect beyond the state wherein it was made.

McCulloch vs. Roderick, 2 Ohio, 235. Rogers vs. Allen, 3 Ohio, 488. Osborn vs. Adams, 18 Pick., 245. Hutchinson vs. Pascine, 16 N. J. Eq., 167. Page vs. McKee, 3 Bush, 135, S. C. 95 Amer. Dec., 201. Burnley vs. Stephenson, 24 Ohio, 478. Weiner vs. Weiner, 32 Va., 890, S. C., 3 Amer. St. Rep., 126. Schouler on Ex. & Admrs. (2ed) Sec. 19.

I desire to discuss this question very briefly as it must be, more particularly as to decrees appointing receivers under our insolvent laws, being Chapter 30, General Laws 1889, and how far these decrees apply to real property situate outside of this state and owned by the insolvent.

In other words, can a receiver appointed in the state of Minnesota, by one of its courts, under our insolvent laws, maintain an action to set aside a deed of real estate executed by the insolvent in the state of Minnesota prior to the appointment of a receiver? All parties being residents and within the jurisdiction of the court when the action is commenced. Our insolvent law to all intents and purposes is a bankrupt act, the property of an insolvent is in *custodia legis.*, and administered by the court and under its direction. It has so been held by our Supreme Court and the Supreme Court of Wisconsin. Wendell vs. Lebon, 30 Minnesota, 234. In Re Mann, 30 Minnesota, 60. Bennett vs. Denney, 33 Minn., 530. Simon vs. Mansar, 33 Minn., 412. McCluer vs. Campbell, 71 Wisconsin, 350.

The appointment of a receiver or an assignment by an insolvent, it makes no difference which, are in the eyes of the law as laid down by the case just cited, involuntary acts of the insolvent. Justice Mitchell, in speaking for the Supreme Court Indiana, in the case of Catlin vs. Wilcox, 24 N. E. Rep., 250, after treating upon the right of a receiver appointed in one state to maintain an action in another to recover possession of real property claimed to be owned by the insolvent, in which actions were allowed in some cases to be prosecuted by comity says, "The principles above stated are applicable only to transfers or assign-"ments of property which rest essentially on contracts and are vol-"untary in the sense that they are the product of a will acting without "legal compulsion.

"Property in a foreign state that has passed from assignor to assignee "by a voluntary deed, and not by proceedings *in invitum* by process of "the law, is distinguished by like property in the hands of a receiver by "operation of law or by assignment made under legal compulsion. As-"signments of the latter class are held inoperative upon property not "situate within the territory over which the laws which make or compel "the debtor to make them have dominion.

"Involuntary assignments which are made under foreign laws have "no operation outside of the state under whose laws they were made, "while a voluntary assignment is a personal common law right possess-"ed by every owner of property, and may operate in one state as well as "in another. All the authorities agreed that where an assignment is "made under compulsion of law, or where property is taken *in invitum*, "the transfer will not be regarded as voluntary. Nor will it be effectual "beyond the jurisdiction in which it was made." The Supreme Court of Florida have adopted the same rule in the case of Walters vs. Witlock, 9 Fla., 86. Our Supreme Court in the case of Jenks vs. Luddon, 34 Minnesota, 482, in the case where plaintiff, an assignee under our insolvent laws, endeavored to restrain Luddon, the defendant, a resident of Minnesota and a creditor, from enforcing an attachment against the property of the insolvent in Wisconsin, uses this language: "In view of these facts, it is evident that, even if defendant were en-"joined, there is no probability, at least no certainty, that these lands "would become available as assets under the assignment." In using

this language our Supreme Court has left it rather uncertain whether it had in contemplation a sale of the same by non-residents under the process of a foreign court, and thereby placing the property beyond the administration of the assignee, or whether the property did not actually pass by the assignment. In view of the authorities it would seem that our Court in using that language above quoted intended to be understood as holding that there was no certainty that the property passed to the assignee by virtue of the assignment made in Minnesota. In the case of Filkins vs. Nunnemacher, *supra*, the question was whether the receiver appointed by the court of Illinois had any power or right to maintain an action in the Wisconsin courts to set aside transfers of real estate made by the insolvent, situate in Wisconsin. Justice Winslow in speaking for the court, said: "This court has already considered "and decided this precise question in McCluer vs. Campbell. In that "case the question was whether an assignment of property made by "order of court pursuant to the bankrupt act, the assignee being in ef- "fect an officer of the court, the assigned property being in *custodia legis* and administered by or under the jurisdiction of the court, had any extra territorial effect, it was held that it did not. This conclusion is founded on sound policy. The reason plainly is that the court cannot endow its officers with power beyond its own jurisdiction. "The stream cannot rise higher than the fountain head." Therefore, by his appointment in Illinois, the plaintiff acquired absolutely no right or interest in any property owned by Fredrickson in Wisconsin. In the case of Simpkins vs. Smith, 50 Howard (N. Y.), 56, the court say: "So far as the property of the New York Gold Mining Company, of Colorado, lay within the state, the appointment of a receiver would doubtless vest the title in the receiver, but as to real property outside of the jurisdiction, the appointment can have no such effect, either in law or equity." As to the same effect are the cases of Smith's Appeal, 104 Penn. St. 381. Rawne vs. Pierce, 110 Ill., 350. Weider vs. Maddock, 66 Tex., 372. Woods vs. Parsons, 27 Mich., 159. City Insurance Co. vs. American Bank, 68 Ill., 348. Warton on Conflict of Laws, section 275 and 390 b. Cooley vs. Scarlet, 38 Ill., S. C. 87 American Dec. 298. Johnson vs. Kimbo, 3 Head (Tenn.) 557 S. C., 75 American Dec. 781, Story on Conflict of Laws, section 543. Note to Molyneux vs. Seymour, 76 American Dec.

665. In Re Page, etc., 31 Minn. 136, vol. 3. Note 3, page 572, Amer. & Eng. Encly. of Law.

It will be noticed in examining the cases cited, the courts lay great stress upon the distinction between voluntary and involuntary assignments, holding the one to be the free act of the insolvent and the other the involuntary act of the insolvent, performed under compulsion or fear of punishment. In the one case the insolvent voluntarily conveys his property as he would in the execution of a deed or other instrument. In the other case he conveys to the assignee through fear of punishment provided for in the insolvent laws.

Under the laws of this state, he has no discretion to exercise after he is insolvent. If execution, garnishment or attachment is levied upon his property, he is required to make an assignment. A person conveying by reason of punishment or by compulsion, acts involuntary and nothing passes by the transfer except such property as might be within the jurisdiction of the court, having the power to administer the estate, or having the power to appoint a receiver thereof.

In view of the authorities above cited, the courts of this state would have no power or jurisdiction to decree a transfer of real estate situate in a foreign jurisdiction, unless there were some privity of contract existing between the parties to the action; then and only then it would act upon the contract and not upon the property itself, the property would be collateral to the real issue in the cases and a decree would only require a fulfillment and performance of the contract relation between the parties to the action. The reasoning of the cases will more strongly appear, when it is applied to cases to set aside deed of land which are located outside of the jurisdiction in which the action is pending.

It might be said that the courts in such cases, might by its decree compel the absolute purchaser to reconvey back to the receiver, the property purchased or transferred to him by the insolvent. That would be assuming an inconsistent position. In one breath the plaintiff says in his pleadings: "That the conveyances were made without consideration and with intent to cheat and defraud insolvent's creditors, and in the next breath in the pleadings asked the court to require a reconveyance of the property which he claims the defendant has no title to." This might be done, but the authorities Oakey vs. Bennett, 11 Howard

(U. S.), 33; Cockwell vs. Dickens, 3 Moon P. C., 98-134; See King vs. Davis, 2 Rose 97 S. C. D; 230 Story on Conflict of Laws, Section 543, seems to hold that it can only be done in cases where there is some contract relationship between the parties to the action. Harrison vs. Harrison, L. R. Ch. 8, 342. Mosley vs. Barrows, 52 Texas, 404. Clompton vs. Brooks, 37 Ark., 482. Paschel vs. Acklin, 27 Texas, 175. Barbett vs. Pool, 23 Texas, 517.

The question is very tersely stated and distinction made by the court in the case of Hutchinson vs. Paschine, *supra*. In that case the court says, "The judgment in this case that the deed was void was a judgment as to the title of lands in this state, which the Kentucky court had no jurisdiction to make, and it had no jurisdiction to decree a conveyance or delivery of possession founded on that judgment. This differs from a case of *contract* to convey lands, which is a *personal* obligation to be determined by any court having jurisdiction to the parties. Bayus Ex. vs. Grundy, 9 Peters (U. S.), 275-89. See also Peck vs. Carey, 27 N. Y., 9." The same rule prevails in England. Cockerill vs. Dickens, 3 Nrovdy, P. C., 98, 134. Selkrig vs. Daviss, 2 Rose on Bankrupt Londonm 1871, page 110. Frane and Germany have adopted the same rule, Warten's Conflict of Laws, section 799 and cases cited.

From this brief article and examination of the authorities it would leave one to believe, that the courts are unanimous in holding that an involuntary assignment or an order appointing a receiver under our insolvency law, has no extra-territorial effect. It is to be hoped that at no far distant day, our Supreme Court may have an opportunity to set at rest in this state, this much mooted question. Until then, we must be content with the rule as laid down by other courts, which in my mind establish the principles that an order appointing a receiver has no extra-territorial effect. In this I may be wrong, because no member of our profession can always be right upon every question of law that may arise during his professional career.

J. C. NETHAWAY.

Stillwater, Minnesota, August 24th, 1893.

NOTE AND COMMENT.

THE NEW CODE OF RULES FOR THE DISTRICT COURT. — We regret that neither time nor space permitted a proper notice of the changes made in the rules in the August issue, in which they appeared in full. However, since that time we have been enabled to obtain the opinions of a large number of members of the bar in various portions of the State, and to give a summary of the result.

To the change in Rule I, whereby an attorney is prevented from going on a bond, whether in the case as attorney of record or not, no objection has been heard from any source. It simply amounts to extending the attorney's exemption a little farther.

In Rule IV, the attorney is required to add to his name, his place of business and place of residence, on all process or papers to be served. This provision is a good one, preventing an attorney from being "absent" completely when an answer is to be served. Rule V is also a necessary addition.

Rule VI, requiring separate statement and numbering of distinct causes of action, etc., is a much needed requirement. Comment upon the case of Godfrey vs. Dressler in this issue furnishes a good illustration of its necessity.

Rule X reverses the former order in which parties shall be heard upon an order to show cause; the moving party to open and close. The old rule was a dead letter, anyway. The latter part of the rule, as to reception of oral evidence, is believed to cover more ground than allowable, for there are certainly many motions and orders upon which the court must receive oral evidence.

Rule XI, is the old "exigency" rule, and in addition it provides that where the exigency fails to appear, the motion can be continued, instead of dismissed, in the discretion of the court.

Rule XV if this rule had a penalty attached to failure so to file orders it would do an immense amount of good, and as it is, it is about useless. Only the other day we had occasion to examine the files in fifteen dif-

ferent actions wherein the calendar docket showed orders made, and but one order had been filed in the whole number. We have heretofore pointed out the evil of permitting attorneys to carry orders, etc., around in their pockets, but unless the court will strike from the files, of its own motion, some such orders, filed a week or two late, the rule will be useless.

Rule XXII, in requiring return of service to show that affiant "well knew that the person served was the person upon whom such service is to be made," may have a good effect in increasing the care taken to ascertain identity of party served, but to honestly comply with it will be found simply impossible in many cases. How can the clerk in a a law office be expected to "well know" the personal identity of every party upon whom he serves papers? The provision that such proof of service "shall be filed with clerks within five days after the making thereof" has no penalty attached to it and is already disregarded.

Rule XXIII, requiring plaintiff to make affidavit for publication in divorce cases is an excellent one.

We find that in the Fourth Judicial District, about the only one affected by it, Rule XXIV, causing all divorce cases to be tried at general term, comes in for considerable criticism. Many consider that such cases are not different than any other default which needs to be proved up, and some declare that the rule is opposed to the statute and is void. However, the general opinion seems to support the judges, and to be to the effect that it is a good thing, that parties can wait three months as well as not, if their cause is an honest one, while it may, by giving more publicity, reduce the number of fraudulent divorces granted.

Rule XLIII provides that no stay of proceedings, after the first, shall be granted without notice. This is a valuable rule and should be strictly followed. Heretofore counsel could almost invariably obtain additional stays on request. We know of one case where the judge granted *four* additional stays consecutively, simply because no one opposed it, we presume. This is one of the favorite methods of making the "delays of the law" odious, and 'tis well done away with.

The change which meets with the most determined opposition is that part of Rule XLVIII which provides that "The proposed case shall

not be made in narrative form, but shall be in the form of question and answer as at the trial." This provision has been the rule in the Second District for some years.

The objections to this provision are chiefly that it increases unnecessarily the cost of an appeal, and clogs up the record with a mass of immaterial matter which the court above ought not to be expected to be forced to go through. In objecting to the cost, the attorneys cannot be said to be actuated by selfish motives, as it is much easier for them to use the words and form of the reporter's transcript, transfer them bodily to the proposed case, than to condense the record into narrative form. It is, of course, somewhat easier for the judge to simply compare the case and the transcript, but it is regarded as questionable whether the benefit gained at all approximates the increased cost to those who appeal and the loss to those who, by reason of this rule, cannot afford to appeal. While *theoretically* it may be the proper way to present a record to the lower court, it certainly is not the *practical* way to present the same record to the appellate court. The almost unanimous opinion at the bar seems to be that it should rather be "must be" than "shall not be," in narrative form.

In the fifteen new insolvency rules, there are a large number of excellent provisions, such as permitting notice of retainer filed to compel all notices, etc., to be served on attorney instead of claimant; that no order limiting time for filing releases shall be made until such progress has been made as to permit making an approximate statement of amount to be realized; and providing a form for assignee's list of claims received. Appeals by all parties are allowed and clearly and fairly regulated. The attorneys seem to see no reason for the reduction of allowances for fees of attorneys in assignments, but it is believed that each will be passed upon on its own merits as before.

Many other valuable changes are made in these rules, which we regret space will not permit reference to. On the whole the changes are beneficial, especially so in view of the fact that the rules are now uniform in all of the Districts of the State.

A Good Sample of Much Needed Reproof.—In this case of *Godfrey* vs. *Dressler*, in the Ramsey County District Court, Judge Kerr administered to the attorneys in the case a rebuke that should have a

good influence upon others than those in the case, whose pleadings are "undecipherable."

It was in the form of a memorandum and is in part as follows: "It is difficult to determine which is more obnoxious to objection as a pleading, the answer or the demurrer. Much of the answer demurred to might have been and doubtless would have been stricken out, had the proper motion been made.

"The labor of deciphering from the answer what separate defences are attempted to be set up is thrown upon the court, and to a large extent the results are unsatisfactory. The demurrant seems to have no definite idea in his mind upon the subject. He picks out segregated portions here and there, some of them connected and some of them disconnected with the other portions of the answer. He excuses himself on the ground that the defences were not separately stated and numbered, but for this, also, he had his remedy by motions. In some instances it is impossible for the court to determine just where the portion demurred to begins and ends;—for instance, in the third separate answer, the part demurred to is said to end at the word "defendant" in the 12th and 13th folios of the answer, whereas the word "defendant" occurs *seven* times in said folios."

Law School of the University of Michigan.—We are in receipt of a neat paper bound volume, of forty pages, containing this year's announcement of the Department of Law, Michigan State University. A glance through it shows that last year's attendance reached a total of six hundred and thirty-nine, including senior, junior, and special classes and resident students; while of that number three hundred and nineteen were seniors. The great reputation of this school seems to draw students from all over the United States, while Japan, the Bermudas, Manitoba and England send their representatives. Whether the fact that the junior class is smaller than the senior by more than forty members is an indication that fewer young men are embarking upon this highway to fame is not certain. It is certain, however, that the large number of graduates does not necessarily mean the ranks of the active profession are increased by that number, as very many graduates never actually settle down to the active practice of the law.

JUSTICE COURTS, "AS THEY IS RUN."—One of the older members of the Hennepin County bar tells us of an experience he recently had in one of the courts of Justice of the Peace. It seems our friend was plaintiff's attorney in a small suit, and that the defendant requested a continuance, which was granted. When the time came around, the defendant did not appear, and the plaintiff's attorney said that he would take no advantage of his absence, and the case could be held open. Subsequently the parties agreed outside that no defense should be made and the plaintiff's attorney went to the office of the Justice with his client to prove it up. Upon his announcing to his honor the purpose for which he came, he was greeted with the remark, "Why, you have judgment in that case already." Turning to his docket, the Justice showed a nice little judgment, entered in due form and signed and sealed several days previous. But the attorney protested that he had not been there and that the case had not been proved up. Finally, the Justice remembered how it was and said, "Now, I'll tell you how that happened. One day as I was sitting here by the desk, a sudden gust of wind blew all my papers out of the window, and I only recovered part of them. When I got back, I opened my docket and made up my mind that you and your client had just been in and that my memorandum of his evidence was one of the papers lost this way; so I entered your judgment for you. But, of course, if you weren't here, I must *scratch out the entry* and hear your evidence and enter a new judgment." And this he did.

JUDGE FREDERICK HOOKER. For the First time in many years death has broken in upon the membership of the District Court of Hennepin County. On September 11th last, it laid its hands upon Judge Hooker, and the place he for six years occupied in the minds and hearts of the bench and bar of this state knows him no more.

Born in New York State in 1845, a school teacher in his early years, he was admitted to the bar in 1870, and first practiced at Warren, Pa. Soon after he came to Minneapolis, and was a member of several firms here, until 1888, when he was appointed to the newly created judgeship, to which office, in 1890, he was elected for a full term of six years.

Personally Judge Hooker was genial, kindly, and possessed to a large

degree of the courtesy which makes the judge, more than any other, beloved by those with whom he comes in contact. With a high idea of what the bench and bar should be, he praised and censured with the same unfailing good humor. For these and many other good qualities he will be long remembered by those who were wont to sit beside or plead before him.

JUDGE ROBERT JAMISON.—On the 19th of September the Governor appointed the Hon. Robert Jamison, of Minneapolis, to the judgeship in the Fourth District left vacant by the death of Judge Hooker.

Judge Jamison is a native of this State, having been born in Red Wing, in 1859. After graduating at the State University and being admitted to the bar in 1881, he settled in Minneapolis and took up the practice of the law. For two years the Assistant County Attorney of Hennepin County, in 1888 he was elected to the County Attorneyship. Since 1890 Mr. Jamison has been a member of the firms of Penney & Jamison and Penney, Jamison & Hayne, which last has become one of the leading in the city. In politics a republican, Mr. Jamison was chairman of the State Central Committee of that party in the last campaign.

In all ways Judge Jamison is well fitted for the position he now holds, and doubtless has a long and useful career before him.

JUDGE CANTY'S SUCCESSOR. Some speculation is being indulged in at this early date as to who shall fill the vacancy created by the elevation of Judge Canty to the Supreme Bench. It seems to lie between Frank C. Brooks, of Brooks & Hendrix, and Judge Stephen Mahoney, of the Municipal Court. Both these gentlemen are eminently fitted for the position, and, as it is generally understood that the political complexion of the appointee is to be democratic, they both possess the necessary qualifications in that direction. It seems probable, too, that Judge Canty may resign Dec. 1st, following the example of Justice Dickinson, of the Supreme Court, and that the appointments will be made at that time.

THE AMERICAN LAWYER.—There comes to us each month a copy of this interesting periodical, which is destined, it would seem, to be the organ of all state and national bar associations, and a magazine which

every busy lawyer in the country can ill afford to be without. Published in New York City, edited by Frank C. Smith, LL. B., and covering over sixty pages of space each monthly issue, it gives a digest of all important decisions of the previous month, quoting many opinions in full, personal notations of removals, etc., among members of the bar, rough notes, able editorials upon interesting points, and complete reports of the proceedings of the variuos State Bar associations, as their meetings occur. The low figure at which it is published, one dollar per annum, ought to assure to the publishers a large list all through the country. It fills a field occupied by no other journal and should be well received.

NOTES ON RECENT DECISIONS.

CIRCUIT COUTR; JURISDICTION AS AFFECTED BY ASSIGNMENT OF CAUSES OF ACTION. Judge Shiras, in the Circuit Court of the United States for the Northern District of Iowa, recently passed upon the question of whether the jurisdiction of that court is affected by the fact that plaintiff is assignee of some of the notes upon which action is brought, and himself holds another which makes the aggregate amount sued for over $2,000. He holds that the provisions of the judiciary act of August 13th, 1888, that the Circuit Court shall not have jurisdiction of any suit on a promissory note, etc., in favor of any assignee thereof, unless the suit might have been prosecuted in that court if no assignment had been made, refers only to the requirement as to citizenship of the parties, and not to the sum in dispute. As the assignor was a resident of a third state, the statutory requirement as to citizenship would have been complied with had he brought suit, and the assignee was

held to be properly in court. The case was that of *Chase et al. Sheldon Roller Mills Co., 56 Fed. Rep., 625.*

CITIZENSHIP BY MARRIAGE. "Revised statutes of the United States, Section 1994, which provides that an alien woman, by marriage with a citizen, shall become a citizen, does not authorize an inference that Congress intended to enclose the converse, that a citizen woman, by marriage with an alien, should become an alien; and hence the Federal Courts could have no jurisdiction on the ground of divorce citizenship of a suit by such woman against a citizen of Louisiana."

Thus says Judge Billings, for the court in the case of Cornitis vs. Parkerson, *et al.*, in the U. S. Circuit Court for the Eastern District of Louisiana, 56 Fed.Rep., 556. Aside from its interest as an unusual endeavor to manufacture citizenship to suit the emergency,it is so from the fact that it grows out of the massacre of the Italians in New Orleans two years ago. The opinion is exhaustive and learned, and from it it would seem that the question is an new one.

HOW FAR MAY A PARTY BE ALLOWED TO GO IN DISCREDITING HIS OWN WITNESS? This question is for the first time definitely settled in Minnesota in an able and exhaustive opinion upon the subject, handed down on August 21st last, by Justice Dickinson of the Supreme Court. It is worthy of especial notice since the court appreciates the fact that "the weight of authority is in favor of excluding" evidence of that nature.

The plaintiffs in the court below "called the defendant's wife as a witness in their behalf. Her testimony tended to refute the claim of the plaintiffs. After a preliminary examination of the witness, as to former contradictory statements made by her, the plaintiffs were allowed to show that she had made a statement of the fact to one of the plaintiffs materially different from her testimony. The case justified the conclusion of the court that the plaintiffs were surprised by her testimony". While the court says that, "perhaps, the weight of authority is in favor of excluding such evidence," yet they say "we feel that, in holding it to be within the discretion of the court to receive it, we are justified, not only by reason, but by a sufficient array of authorities."

Upon the reasonableness of the position taken the court says: "One has not all the world from which to choose the witnesses by whose testimony he must prove his case. He has not the freedom of choice that one has in the selection of an agent. He can only call those who are supposed to know the facts in issue. He is entitled to have their testimony placed before the jury, not as the statements of his agents or representatives by which he is to be concluded, but as the testimony of witnesses whose credibility he cannot be expected to vouch for, but which the jury are to determine", and in conclusion, "We deny that, by calling a witness to the stand, a party becomes responsible for his credibility in any such sense that he is absolutely precluded, when surprised by adverse testimony, from showing that the witness had made statements of the facts contrary to his testimony. It is at least within the discretion of the court to allow this." The conclusion of the court means simply that a corrupt or purchased witness shall not hereafter be permitted to wreck a good case with impunity. The objection that it opens the door to frauds, when one is surprised by testimony unfavorable to his cause, is untenable, as, if the witness has in fact made contrary statements of the fact, no one can be prejudiced by having the truth told to their jury, theoretically, at least.

We consider the decision an important one in that it takes the more liberal view, and adopts, by decision of court, the rule which the Legislatures of many States have placed in the statute law, as a necessary and proper step in the way of bringing the law of evidence more nearly to the standard of exact justice. It is to be regretted that Chief Justice Gilfillen should not have given his views on the subject in his dissent from the opinion of the court. The case is that of *Selover et. al. vs. Bryant* (*56 N. W. Rep., 58*), and the appeal was taken from an order denying a motion for a new trial, made by Judge C. B. Elliott in the Municipal Court of Minneapolis.

Promissory Notes; effect of additional promise to pay "with exchange." In the case of Hastings vs. Thompson, 55 N. W. Rep., 968, in an opinion by Mitchell, J., the Supreme Court of Minnesota thoroughly review the question of the effect of a provision in an ordinary promissory note to the effect that it shall be payable "with current exchange"

on some city other than than the place of payment. Judge Mitchell says that "if the question was authoratatively settled in the leading commercial states of the Union, or in the federal courts, we would be inclined to follow their decisions; but we have been unable to find that the Supreme Court of the United States, or of either Mass., N. Y., or Penn., has ever passed upon the question." After reviewing many authorities, the court's conclusion is that "It seems to us that within the spirit of the rule requiring precision in the amount to be paid, a provision for the payment of the current rate of exchange in addition to the principal sum named does not introduce such an element of uncertainty as deprives the instrument of the essential qualities of a promissory note." The court decides against what it finds to be the opinion of a greater number of authorities in favor of the reasonable rule.

INFERIOR COURTS.

ATTORNEY; DECEASE OF CLIENT TERMINATES AUTHORITY TO ACT.—A judgment of $8,800 in plaintiff's favor was affirmed by the Supreme Court, but before *remittitur* was filed, plaintiff died. His attorneys filed *remittitur* and entered judgment. Same set aside, as attorneys had no authority to do any act after death of plaintiff; that the action abated until taken up by legal personal representatives of the deceased.

Cooper v. *St. Paul City Railway Co.*, *Otis, J.*, District Court, Ramsey County.

COSTS; WHAT TAXABLE ON AFFIRMANCE, AFTER TENDER.—Defendant, in Municipal Court of Waseca, offered judgment for $22 and costs, on trial, which offer was accepted. Plaintiff taxed $10 costs, and defendant appealed. *Affirmed.*

Kanke v. *W. & St. P. Ry. Co.*, *Buckham, J.*, District Court, Waseca County.

COSTS; GIVEN RESPONDENT WHEN TENDER MADE OF AMOUNT OF JUDGMENT APPEALED FROM.—Plaintiff recovered a judgment in a Justice Court for a certain amount, which, with costs, was tendered him. The plaintiff refused the tender and appealed; judgment affirmed. *Held*, an appeal from clerk's taxation of costs, that respondent was entitled to $10.00, statutory costs.

Baker v. *Schacht*, *Twohy, J.*, Municipal Court, St. Paul.

CHARGE OF VENUE; WHEN PROPERTY IS NOT SO INVOLVED AS TO PREVENT.—Plaintiffs sued for return of commission paid for a loan, to be obtained on plaintiff's real estate by defendant; defendant having failed to obtain same. Defendant, a resident of Ramsey County, demands change of venue to that county. *Held*, that such a contract is not sufficiently connected with plaintiff's ownership of the real estate to prevent change of venue being taken, under statute requiring trial to be had in county where property is situate.

Reidel, Schroeder & Co. v. *St. Paul Inv. Ass'n*, *Russell, J.*, District Court, Hennepin Co.

COMPLAINT ON ACCOUNT; HELD GOOD AS COMMON LAW *indebitatus assumpsit.*—A complaint on an account read in part as follows: "That defendant is indebted to the plaintiff for goods sold and delivered to him at his instance and request between July 1, 1890, and May 31, 1891; that same became payable on May 31, 1891; and had not been paid, nor any part thereof," etc. *Held*, on demurrer, *good*, as a complaint on open account.

Pioneer Fuel Co. v. *Hager*, *Kelly*, *J.*, District Court, Ramsey County.

CHARGE OF VENUE; APPLICATION FOR IN REPLEVIN ACTION ON GROUND THAT PROPERTY WAS TAKEN IN ANOTHER COUNTY, IN WHICH COUNTY ALSO DEFENDANT RESIDED, DENIED.—Plaintiff brought replevin in Ramsey County; the alleged unlawful taking took place in Wadena County, where defendant resided. Because of these two facts, defendant asked change to Wadena County. *Denied.* But, on showing that twelve witnesses, who lived at Wadena, would testify for defendant and but six for plaintiff, who lived at Stillwater, change of venue was granted "for convenience of witnesses and to subserve the ends of justice."

Weyerhauser v. *Foster*, *Kelly*, *J.*, District Court, Ramsey County.

COSTS AND DISBURSEMENTS; WHO THE PREVAILING PARTY.—In an action in claim and delivery, the verdict was for plaintiff for part of the goods, valued at $100, and for defendant for remainder, valued at $50. Both sought to tax costs and disbursements. The clerk taxed plaintiff's and refused to tax defendant's, and, on appeal, such taxation was *affirmed.* Defendant was in no sense the prevailing party.

Hall v. *St. P. & D. R. R. Co.*, *Kelly*, *J.*, District Court, Ramsey County.

DENIAL OF CORPORATE EXISTENCE OF DEFENDANT; WHEN NOT AVAILABLE.—Defendants were sued as a corporation of Kansas; service made on agent and default judgment entered. Defendants moved to set aside judgment on ground that they were co-partners and not incorporated. Motion *denied*, as such an objection can be taken by answer alone.

Dieckhoff v. *Fox & Co.*, *Kerr*, *J.*, District Court, Ramsey County.

DENIAL OF KNOWLEDGE OF TRANSFER OF NOTES, GOOD.—Defendant denied any knowledge of alleged transfer of notes sued upon. On motion to strike out answer as *sham*, held *good.*

Paget v. *Zelct, et al.*, *Brill*, *J.*, District Court, Ramsey County.

EVIDENCE; CHANGING TERMS OF CONTRACT BY PAROL.—One of defendants admitted the indorsement by him of a note in the firm name, and offered to show that it was verbally agreed at the time that such indorsement should not involve any personal liability on part of such defendant; not permitted, as seeking to change terms of written contract by parol.

Swenson v. *Storage*, *et al.*, *Brill*, *J.*, District Court, Ramsey County.

GARNISHMENT; AFFIDAVIT FOR MUST STATE JURISDICTIONAL FACTS.—An affidavit for garnishment simply stated the affiant, one of the plaintiffs, believed that certain persons had money, etc., in his hands, etc. Garnishee moved dismissal and motion granted. Facts as to issuance of summons, existence of cause of action must appear by the affidavit.

Grotto & Son v. *Hondo & Cook*, *garnishee*, *Elliott*, *J.*, Municipal Court, Minneapolis.

GARNISHMENT; AFFIDAVIT FILED TWO DAYS LATE.—Affidavit for garnishment was filed two days after service of summons, and on special appearance by garnishee, the service of the summons was set aside, no jurisdiction having been obtained.

Field v. *Holmes & Hastings*, *garnishee*, *Pond*, *J.*, District Court, Hennepin County.

LOTTERY; OFFER OF REWARD HELD VALID CONTRACT.—A lottery company published an offer of a reward to any person who would present a ticket issued by them, which was not promptly paid when presented. Plaintiff presented such ticket, was refused reward and brought suit. Demurrer interposed by defendants, and such offer and acceptance *held* to be a good contract.

Dieckhoff v. *Fox & Co.*, *Kerr, J.*, District Court, Ramsey County.

MECHANIC'S LIEN; HELD SUBORDINATE TO A RECORDED CONTRACT OF SALE, CONSIDERATION FOR WHICH REMAINING UNPAID.—One of defendants held a contract of sale from owner of real property, which contract specified times at which payments were to be made, and was recorded. Plaintiff's claim arose for material furnished subsequent to the recording of this contract. *Held*, that as to any unpaid balance due on said contract, plaintiff's claim of lien is subordinate, as he had notice of the fact that this defendant might have a vendor lien sufficient to have put him upon inquiry.

Shedler v. *Jeismer, et al.*, *Buckham, J.*, District Court, Waseca County.

NEW TRIAL; MUST BE ON ALL ISSUES.—The cause had been decided in the Supreme Court, a new trial being ordered; but on some questions of fact respondent prevailed there. On *remittiter* being filed respondent above moved to try only those issues upon which court above sent back the case, and to exclude from the hearing those issues upon which the court above had found in respondent's favor. Motion denied; all issues must be tried.

Minneapolis Mill Co. v. *Minneapolis & St. Louis Ry. Co.*, *Hicks, J.*, District Court, Hennepin County.

PRACTICE; WHAT PROPER WHEN BILL OF PARTICULARS IS NOT FURNISHED.—Defendant demanded bill of particulars; ten days elapsed and none was served; defendant moves in advance of trial that plaintiff be precluded from offering any evidence and that he cannot order judgment for defendant. Motion *denied*, as only proper way to take advantage of such neglect is by objecting to evidence at trial.

Erickson v. *Johnson*, *Twohy, J.*, Municipal Court, St. Paul.

PRACTICE IN CASES WHERE JUSTICE ENTERS JUDGMENT WITHOUT JURISDICTION.—Where a Justice of the Peace wrongfully enters judgment, in a case where he has no jurisdiction by the person, or otherwise, the question should be raised on appeal, and cannot be raised on application to Justice to set aside judgment; that he has no power to do.

Pioneer Fuel Co. v. *Smith*, *Twohy, J.*, Municipal Court, St. Paul.

PRACTICE; CLAIM OF EXEMPTION HELD NOT SUFFICIENT.—Defendant filed a claim of exemption wherein he stated that the money, proceeds of a draft, in hands of garnishee, "is exempt, and that he claims it as such;" *Held*, insufficient to disclose ground of claim to exemption.

Lytzer et al. v. *Forber & Garnishee*, *Twohy J.*, Municipal Court, St. Paul.

PRACTICE; OBJECTIONS TO TAXATION OF COSTS MUST BE FILED WHEN COSTS ARE BEING TAXED BY CLERK.—Objections to proposed taxation of cost and disbursements were filed some hours after clerk had, without objection, taxed costs. Appeal was taken upon the objections so filed and the appeal dismissed; such objections must be filed at time of considering taxation by clerk.

Garrow v. *Osborne*, *Twohy, J.*, Municipal Court, St. Paul.

PUBLIC OFFICERS; POLICEMEN ARE PUBLIC OFFICERS; THEIR SALARY EXEMPT FROM PROCESS.—A policeman is such a public officer that his salary cannot be reached by proceedings supplementary to their execution, or other process.

Nash v. *Pohl*, *Smith, J.*, District Court, Hennepin County.

SUPPLEMENTARY PROCEEDINGS; EXEMPTION OF POLICE OFFICER FROM.—See *Public officers*.

PRACTICE; ORDERS TO SHOW CAUSE AND NOTICES OF MOTION; WHAT TO CONTAIN.—Rules VIII and XI, Code of Rules, District Court, construed to require that notice of motion must be served with an order to show cause, as formerly, and that such notice must contain at least a general statement of the grounds thereof.

Guar. Loan & Debenture Co. v. *Blaisdell, et al., Canty, J.*, District Court, Hennepin County.

PRACTICE; ORDER STAYING PROCEEDINGS UNTIL COSTS OF FORMER SUIT PAID.—Upon its appearing that plaintiff had failed to pay a judgment for costs against her on former case, which was dismissed, order was made that all proceedings would be stayed until such costs were paid.

Frojd v. *Toll*, *Hicks*, *J.*, District Court, Hennepin Co.

RESOLUTION OF CITY COUNCIL; WHEN NOT LEGAL FOR INDEFINITENESS.—City Council of Waseca passed a resolution "that the tiling be bought and same laid in sewer running as follows", describing location. *Held* to mean nothing, and City Council and officers enjoined from proceeding under it.

Reed v. *City Council of Waseca*, *Buckham*, *J.*, District Court, Waseca County.

RECEIVER; DISTRICT COURT HAS POWER TO APPOINT ONE FOR PROPERTY OF NON-RESIDENT DEBTOR.—Attachment was made of real property of debtor, who was a resident of Wisconsin, and was insolvent. Application was therefore made for a receiver, on proper grounds, by a citizen of Minnesota on a contract made in Wisconsin, whereby insolvent became applicant's debtor. *Held*, that this court has power to appoint a receiver for such property, at least, in favor of a citizen of this state; that the citizen is not bound to go into the Wisconsin courts, although the contract of indebtedness was made in that state.

In re App. for receiver for A. J. Goss, *Kelly*, *J.*, District Court, Ramsey County.

RECEIVER; INTEREST DUE ON BONDS MADE BY INSOLVENT SUBJECT TO GARNISHMENT IN HANDS OF:—Receiver made garnishee, disclosed that there was a large sum as interest on bonds issued by insolvent, due to defendants; defendants moved for discharge of garnishee and motion was denied; holding that such interest was subject to garnishment.

Truesdale v. *Phila. Trust, etc. Co. & Truesdale, receiver, etc., garnishee*, *Hicks*, *J.*, District Court, Hennepin County.

SUMMONS; SERVICE OF, BY PUBLICATION SET ASIDE.—Summons was published on Dec. 19th, 26th and Jan. 2nd, and the return day, set therein for Jan. 9th, at 9 a. m. On objection to jurisdiction, on ground that such publication was not for three weeks, *held*, that service was void, the end of the three weeks being less than six days from return day.

Grimschied v. *Pieper*, *Twohy*, *J.*, Municipal Court, St. Paul.

WAREHOUSE RECEIPTS; LIABILITY OF ASSIGNEE TO PAY CHARGES ON ADVANCEMENTS; NOTICE.—Plaintiff held warehouse receipts of defendant, issued to Stevens & Co. and assigned to it. Receipt read "deliverable to Stevens & Co. or order upon payment of charges." Defendants moved for judgment for charges for storage on goods and also for freight advanced. Motion was granted, the court holding that the above quoted clause in receipt was sufficient to put plaintiff upon inquiry as to what the charges were and that the assignment of the receipt was made subject to such charges, not only for storage but for advances for freight.

Security Bank v. *Minneapolis Cold Storage Co.*, *Russell*, *J.*, District Court, Hennepin County.

CORPORATIONS; NOT DISSOLVED, IN CERTAIN CASES.—A petition by a stockholder, showing that all the other stockholders are insolvent and were so when corporation was organized, does not show a state of facts upon which a temporary injunction will be issued or a decree of dissolution entered.

Danforth et al. v. *Titus, et al.*, *Kelly*, *J.*, District court, Ramsey County.

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AMERICAN JURISPRUDENCE; ITS REFORMATION, PAST AND FUTURE.

EXTRACTS FROM ADDRESSES DELIVERED BEFORE THE AMERICAN BAR ASSOCIATION.

The last meeting of the American Bar Association was fruitful in the way of calling up the history of past achievements and of proposing reforms for the future, along many lines of work. The words of John Randolph Tucker, President of the Association, in his annual address, are especially fitting as showing what has been accomplished. He said in part:

"The efforts made by this association in the promotion of laws throughout the Union have been seconded in the last year by the states of Massachusetts, New Hampshire, Connecticutt, Pennsylvania and Wisconsin, which have appointed commissions to co-operate in bringing about uniformity in the laws as to marriage and divorce, conveyancing, etc."

"Truancy laws or laws for compulsory attendance of children at school have been passed, making it penal for the father not to send and

HON. THOMAS CANTY,
JUDGE OF SUPREME COURT OF MINNESOTA.

THE

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AMERICAN PROGRESS IN JURISPRUDENCE.

FROM A PAPER READ AT THE COLUMBIAN EXPOSITION.

BY DAVID DUDLEY FIELD.

Approaching now the great department of procedure, the key of jurisprudence, or I should rather say the key of its temple, we find the United States first of all English-speaking nations rejecting the cumbersome and contradictory methods of the common law of England, which that country had been gathering together through immemorial ages. Time-worn and worm-eaten were those cracked, dusty parchments, on which was written the worst contrived plan of entering the courts and getting out of them that the wit of man could devise. In place of the old labyrinthine ways we have laid out a plain and easy road for all litigants with their burdens, and their witnesses. No suitor is turned away for defect of form, and no witness is rejected who has sense enough to think and voice enough to speak.

We all know, or rather, I should say, all lawyers know, that by the English common law, made by the judges, a suitor was obliged to choose between two great divisions of the courts, one called legal and the other equitable. If he entered one when he should have entered

the other, he lost his suit. This was not all; the legal division was subdivided according to what were called forms of action, and he was required at his peril to choose one of these as his particular form for the occasion. A royal commission in England had reported that there was no authentic enumeration of these forms. This grotesque machinery has been swept away, wholly or in part, in twenty-eight American States and Territories: New York, Missouri, Wisconsin, California, Kentucky, Ohio, Iowa, Kansas, Nevada, North Dakota, South Dakota, Oregon, Idaho, Montana, Minnesota, Nebraska, Arizona, Arkansas, North Carolina, South Carolina, Wyoming, Washington, Connecticut, Indiana, Colorado, Georgia, Utah and Maine.

The example was contagious, even so far as across the sea, and in 1873 the parliament of England took up the subject, and following American example adopted the judicature act, by which the forms of action were abolished and law and equity fused together. This act extended to Ireland, and has been followed in the English colonies of Victoria, Queensland, South Australia, Western Australia, Tasmania, New Zealand, Jamaica, St. Vincent, the Leeward Islands, British Honduras, Cambia, Grenada, Nova Scotia, Newfoundland, Ontario and British Columbia.

It was not civil procedure alone that was taken up in America; criminal procedure, that is, procedure in the criminal courts, was meliorated and codified. Long before this, however, and from the very beginning of American courts, the denial of counsel to persons accused of crime had been repudiated as a gross inhumanity.

I must not pass from this subject of advancing jurisprudence without a few words upon the form of expression which it seems tending to assume, and that is codification. This tendency is remarkable, and in that respect we have also outstripped all other English-speaking communities.

Besides the acts of civil procedure that I have mentioned, and which I count as codes—though a few of them, like the Practice Act of Maine, are couched in not more than a dozen comprehensive and fundamental sections, to be engrafted upon the general practice of the state—besides these acts, I repeat, there are already to be found in American jurisprudence eighteen codes of criminal procedure, five penal codes, and five general civil codes. Taken altogether, here is an array

of fifty-six codes which the United States are able to present to the world as the fruit of the first century of independence, or rather of the present half of it.

The foregoing is a sketch, and but a sketch, of what I call our advancement in jurisprudence. I have avoided questions of morals, or tastes or manners, and have refrained from inquiring how far, if at all, our acts have strayed from our professions. I am discussing only the laws of the land as they appear in our books. I have shown the bright figures of the shield. We are all proud of them, and as I think, justly proud. I wish there were no shadows there. But shadows there are nevertheless, from which we ought not to turn our eyes aside, since they may prove to be the cloudy precursors of storms. I refer to the popular election of judges; allowing them short terms of office, and the increasing habit of spasmodic and excessive legislation.

The Federal judges are all appointed by the president, with the consent of the senate, and hold their offices during good behavior. The judges of the several states are appointed or elected, and hold office as the constitutions of the states severally provide. These constitutions have been so often changed, that I am not sure that I can write them all down correctly; but so far as I have the means at present of knowing, their arrangements are as follows: In 8 of the 42 states the judges of the highest courts are appointed by the governors, with the consent of the senate, or a legislature or a council; in 7 they are elected by the legislature; in 27 they are elected by the people. In 8 of the states, New Hampshire, Massachusetts, Connecticut, Delaware, North Carolina, South Carolina, Florida and Alabama, the judges of the highest courts hold their offices during good behavior; in 6. New York, Pennsylvania, Maryland, Louisiana, Tennessee and West Virginia, they hold for terms between 10 and 15 years; in 2, Illinois and Colorado, for 9 years; in 5, Virginia, Kentucky, Michigan, Arkansas and Wyoming, for 8 years; in Minnesota for 7 years; in Ohio for 5 years; in Georgia for 3 years; in all the rest for 6 years, except that Vermont elects her judges annually by the legislature, and Rhode Island elects hers by the legislature to hold during its pleasure. Now, after reading this catalogue, let us call to mind, that according to the dogma of the common law, and the rule of *stare decisis*, every one of these judges, so appointed or so elected, for terms long or short, makes law in some

degree, great or small, for the whole English race, which lives upon reports, near or afar, excepting those autonomous states which have had the courage and the wisdom to condense their laws into codes.

In framing the judicial department of some of our states, and particularly the new ones, we have forgotten the lessons and departed from the practice of the statesmen who contrived our system of Federal government. This system was but the evolution of movements that had been struggling and swelling for ages in the mother country between the sovereign and the people. Our fathers of the revolutionary period considered profoundly the formation of a judiciary and the best means of securing fit occupants, and of placing them above the reach of temptation. They understood well that the functions of the judicial department were different from those of the legislative or the executive. These two represent the people and are chosen to execute their will; the judges are but interpreters of the law. They have nothing to do with the will of the people, except as that will is expressed in the laws of the land.

The problem is simply this, how to get the best judges, and make them safe against temptation. We have but three means of selection —a convention of the people, the legislature, or the chief executive. A popular convention has rarely the knowledge and frequently not the disposition to choose the fittest lawyer for their judge. Generally the members of these conventions do not know and cannot know whom that fittest person is, or if they know they are apt to be swayed by personal or party motives. If an architect or an astronomer were to be made a public officer, who but a lunatic would think of making him elective by popular vote?

A choice by the legislature is subject to many of the objections which can be offered to a selection by popular convention, and it is subject to the further objection that it devolves upon the legislature functions which do not properly belong to it. The closer a legislative body is confined to the making of laws, and the less scope is allowed to other measures, the better for the laws themselves.

On the other hand, a president or a governor is usually a person of some distinction who has already shown ability and discernment. He may indeed abuse his trust, and choose the unworthy or unqualified to office, but the chances are greater that he will make a wise choice than

that such a choice will be made by a casual assembly of the wise and unwise, brought together for a day, and animated more by considerations of party than of country. We have seen in our late president the choice of the highest judges made with wise discernment.

This ultimate sovereign power in this republic rests, we know, in the body of the people. That does not signify that individuality should be crushed out, or that all offices, or even the most of them, should be filled by popular election. And so the only true question in respect of filling the judicial department, is whether a popular assembly is the best device to insure the choice of the best judges; and I insist that it is not. They who have read aright the history of subservient English judges before they were made independent—they who remember the chancellor of Mississippi, who lost his office because he decided against repudiation, and the supreme court judge of Michigan, who was voted down because he did his duty—they who thus read and remember can best appreciate the value of a judiciary which has nothing to hope or fear but from the conscience of its own members.

Whilst I was writing these last words of my paper, the chief justice of the United States, with two other judges, was delivering a masterly judgment in a case involving the question of opening the Exposition at Chicago on Sunday. This judgment is certain to wound the susceptibilities of a large number of religious teachers and their disciples. If the chief justice were to be a candidate for renomination by a popular convention, is it likely that he would receive it? And yet his judgment rests upon the foundation stones of this nation.

NOTE AND COMMENT.

ANNOUNCEMENT FOR 1894.—With this issue of the JOURNAL the present ownership and management ceases. Other and abler hands take up that portion of the work, and much more time and effort will be spent the coming than in the past year, in making this Journal what it should be.

For the support we have had in the past, we heartily thank our friends; and we trust that in the future the same interest will be manifested. The first few months of the life of any such venture means many disappointments, delays and much more hard work than remuneration. Such has been the case in this. But the new publishers will start upon the foundation we have laid, and we hope with still greater success.

The editorial management remains the same; and for the coming year we can announce that a large number of prominent lawyers and law writers have promised articles of merit, and no issue but will contain two or more such articles. Especial attention will be paid to the department of the Inferior Courts, and a lawyer of ability has been engaged to attend to reporting such cases in the courts of Ramsey and Hennepin counties, and will give to it much of his time. Our exchanges will be quoted from liberally, and the size of the magazine increased to from 32 to 40 pages, besides cover, per issue. New features will be introduced from time to time, and it is intended to make the JOURNAL a necessity to every lawyer in the State. If attorneys will send in notes on any questions arising in their practice, they will be gladly received.

THE DECLINE OF LITIGATION.—The practice of law has undergone a radical change within recent years. A generation ago, and less, a lawyer's standing at the bar and his ability as a practitioner, were guaged

by the number of litigated cases in which he was retained as attorney of record. The respect in which he was held professionally, both by his fellow members of the bar and the general public, rested almost wholly upon his achievements in safely conducting his clients through the courts. Successful litigation was the only sure road to professional distinction. Indeed, in those days, litigation formed the principal occupation of the lawyer. It was also the most lucrative. To-day, however, the reverse of all this is true. Litigation has declined, and counsel work has become the leading feature of practice. The chief forum of the lawyer has been transferred from the court house to the office.

Litigation is a means, not an end. More than this it is an agency which, like the knife of the surgeon, should be the practitioner's last resort. The spirit of the age which requires statesmen to avoid war and secure peace with honor, physicians to foresee the approach of disease and to ward off its attacks, requires that our profession shall devote its wisdom to the prevention, rather than to the carrying on of litigation. In this respect the leaders and perhaps the great body of the profession are meeting a requirement of the times. They will satisfy remaining requirements when they so simplify and so readjust legal procedure, that litigation, when resorted to, shall not mean tedious delay, ruinous expense and uncertain results. The one reform is already well advanced. The other cannot long be delayed.—*American Lawyer.*

THE SOUTHERN WAY OF TYING THE MATRIMONIAL KNOT.—A new form of marriage ceremony is practiced by a Georgia justice of the peace. He concludes as follows: "By the authority vested in me as an officer of the State of Georgia, which is sometimes called the Empire State of the South; by the fields of cotton that lie spread out in snowy whiteness around us; by the howl of the coon dog, and the gourd vine, whose clinging tendrils will shade the entrance to your humble dwelling place; by the red and lucious heart of the watermelon, whose sweetness fills the heart with joy; by the heavens and earth, in the presence of these witnesses, I pronounce you man and wife."—*Ex.*

SITTING IN DHARNA:—Probably the best account of sitting in *Dharna* is to be found in Mr. Nelson's work on "Hindu Law." The following description is there given:

"The recognized mode of compelling a debtor to pay up appears to have been by sending a Brahman to do *Dharna* [is this our "dun"?] before his house, with a dagger or bowl of poison to be used by the Brahman on his own body if the debtor proved obstinate. When the tax-collector gave too much trouble, a ryot would sometimes erect a *Koor*, or a pile of wood, and burn an old woman on it by way of bringing sin on the head of the tormentor.

"The *lex talionis* obtained in the following shape: Persons who consider themselves aggrieved by acts of their enemies would kill their own wives and children, in order, as we may suppose, to compel their enemies to do a similar act to their own hurt. Thus two Brahmans cut off their mother's head to spite a foe. And it seems that upon being punished by loss of caste, out of deference to the feelings of the British Government, these simple-minded men expressed the greatest surprise, since they had acted, so they said, through ignorance. On one occasion five women were put to death together for witchcraft, after being regularly tried for the offence, according to custom, by the heads of their caste.

"With regard to the *lex talionis*, a letter is preserved in Recueil X. of the *Lettres cur. et ed.*, written by Father Martin in 1709, in which he describes the horrible practice in vogue amongst the inhabitants of the Marava country, of killing or wounding oneself, or one's wife or child, in order to compel one's enemy to go and do likewise. Such a practice can obtain only where no legal means exist of obtaining reparation for wrongs suffered. It would be very interesting to know to what extent this natural law has prevailed in various forms in South India, and whether its influence has yet altogether died out.

"The practice of *Dharna* would seem to be nothing more than a threat of instantly resorting to the *lex talionis*. And I take it that Marco Polo was mistaken in his view of the meaning of a creditor drawing a circle around his debtor, by way of arresting him, when he said that a debtor who breaks such arrest 'is punished with death as a transgressor against right and justice,' and that he (Marco Polo) had seen the king himself so arrested and compelled to pay a debt. Doubtless the king was coerced by the threat, express or implied, that the creditor would kill or wound himself if not satisfied, in which case the king would have been bound to kill or wound himself in return.

"What coerced the debtor probably was the fear of his creditor injuring himself. And possibly it is this fear that often operates on the minds of native servants of the present day, when they decline to go on a long journey with their masters without first partially satisfying their creditors, and where, as so often happens, an old man or woman is killed by his or her own party in a boundary riot. Probably in most instances the object of the slayers is to bring sin on their opponents."—*Green Bag.*

LEGAL VULGAR ERRORS:—The idea that an Englishman has a common-law right to take his wife to market for sale with a halter round her neck now only lingers in the mind of the intelligent foreigner and some North-country miners, but the related superstition that a husband may beat or imprison his wife died hard only quite recently in the Jackson case. These, and a good many other vulgar legal errors, seem to be the shadows cast by traditional usage or obsolete statutes, such, for instance, as that bull-beef may not be sold unless the bull has first been baited; that no one may shoot a crow within five miles of London, or carry a dark lantern; or, more singular still, that the owner of an ass must crop its ears to prevent it frightening horses on the road. The idea that an heir could not be disinherited unless he was given a shilling still survives in the phrase being "cut off with a shilling." When Sheridan was threatened with this last extremity by an indignant parent, he replied with characteristic coolness, "You don't happen to have the shilling about you, sir, do you?" This demand was premature; the said shilling need only (according to the vulgar view) be given by will. —*London Law Journal.*

COURTING VISITS.—There is a very impolitic and immoral decision in Clark *vs.* Hodges, Vermont Supreme Court, May, 1893, which should be studied by every young man disposed to go a-courting, at least in Vermont:

"The plaintiff was permitted to show by a neighbor that during the period of defendant's visits he frequently saw a light in the parlor on Saturday evenings and Sunday evenings. The defendant insists that this was error, on the ground that it does not appear that the defend-

ant was in any way connected with these lights by the testimony of other witnesses. It appears that there was evidence tending to show that the family was not in the habit of passing the evening in the parlor, and that it was the room made use of by the plaintiff when receiving the defendant's visits. If it had further appeared that there was evidence tending to show that the defendant's visits were ordinarily made on the evenings named, it would not have been questioned, but that the testimony regarding the lights was admissible to establish a corroborating circumstance. Assuming that this further showing was required to properly connect the defendant with the lights, it will not be presumed that the evidence which was undoubtedly in the case, as to the time of the defendant's visits, placed them on evenings other than those named."

This is impolitic because it will have a tendency to diminish the courting industry. It is immoral because it will inspire young men to turn the lights down or out. It reminds one of a recent excellent jest in "Life." A young man applied to a stern father for permission to call on his daughter, which was accorded, but the warning, "Remember, young man, I always turn out the gas at ten o'clock." "All right, sir, replied the young man, "I will be careful not to call before that hour." —*Green Bag.*

COURTS OF CONCILIATION.—Public interest has been directed to Courts of Conciliation by the Conciliation act of North Dakota, which passed the Legislature of North Dakota last winter. The idea of Courts of Conciliation is supposed to have arisen out of the French Revolution. Such tribunals were established in Denmark in 1795, and in Norway in 1797, but these were only a slight change from the system of civil justice, created in 1790 by the National Assembly of France In these countries, viz: Denmark, Norway and France, the object of the tribunals was to rid the country districts of the scourge of petty litigation. In France the system went down. In the Scandinavian north it arose to vigor and strength. It has now crossed the sea, and has planted itself in the legislation of the most Norwegian State of the Union, namely, North Dakota. The attempt to introduce such courts into other States has not been successful. An effort was made some

years ago in Iowa, followed by an effort in Minnesota in 1891, and last winter the identical bills were introduced in the Legislatures of Minnesota, Wisconsin and North Dakota. North Dakota alone has shown a readiness to try the experiment. The bill was signed March 10, 1893, and will take effect next spring. This Court of Conciliation act is short, and very general in its provisions, and no doubt much practical difficulty will arise in the enforcement of it. The laws of Norway on the same subject contain 87 sections, and the original laws have been amended and improved from time to time for over half a century.—*The Collector*.

LIABILITY OF SURETIES ON APPEAL BONDS; EFFECT OF AFFIRMANCES.

In the case of *Davis et al. vs. Patrick*, 57 Fed. Rep., 909, the Circuit Court of Appeals for the Eight Circuit consider the above question, and came to this conclusion that, "A judgment of affirmance by the Supreme Court fixes the liability of the principal and sureties on a *supersedeas* bond, as it shows conclusively that the principal did not prosecute his appeal to effect; and where the mandate has been filed in the lower court it is not necessary for that court to make an order that the judgment be executed, before suit can be maintained on the bond."

This question has been considered in very few of the State Courts, and has not been directly decided in this or neighboring states. The decision certainly follows the sensible side of the question, and prevents useless litigation which would be rendered necessary had the opposite view been taken.

See Publisher's Announcement on page 169.

NOTES ON RECENT DECISIONS.

THE SO-CALLED BOND INVESTMENT COMPANIES DECLARED ILLEGAL. Judge Grosscup, of the United States Circuit Court for Illinois, in charging a jury in the case of the State vs. McDonald, *et al.*, officers of the Guaranty Investment Company, of Chicago, charged with operating a lottery, said:

"How does this constitute a lottery? There is no doubt, gentlemen, upon the face of it that it constitutes a cheat. The testimony shows that this company has been in existence now for two years and has had 52,023 applications. According to the constitution of its organization it has therefore received more than half a million dollars from the ten dollar preliminary fee. The testimony shows that they have paid out $206,000 from the so-called trust fund, if they had paid out all they received, as the constitution of the company required them to do, and they have received as maintenance from the dues more than $40,000.

Therefore, after an experience of two years, the officers and the stockholders have received more than $500,000, and its so-called beneficiaries have received but $206,000. That is public plunder. It is said that this has been done fairly. The court, of course, is not sitting here to pass upon the fairness of any such transaction. Two hundred years ago, when coaches were robbed by highwaymen on the heaths of London, it was always said that the highwaymen acted with courtesy, but nobody but an ignorant fool returned to London without knowing he had been plundered, but that does not prove that it is a lottery. It may be a cheat, but we must ascertain by the legal canons and definitions whether it is a lottery. What is a lottery? The best definition I can find for it is this: 'Where a pecuniary consideration is paid and it is to be determined by chance or lot, according to a scheme held out to the public, whether he who pays the money is to have anything for it, and if so, how much, that is a lottery.'"

For the report of the case we are indebted to the *Chicago Legal News*.

ADVERSE POSSESSION; TIME MAY INTERVENE BETWEEN ACTS OF OCCUPANCY. In the case of Dean vs. Goddard, 56 N. W. Rep., 1060, the Supreme Court settles the question of the validity of the title to some lots near the Chamber of Commerce in Minneapolis, and, incidentally, of the lots upon which that building stands.

The court, among other points, holds that "the mere fact that time may intervene between successive acts of occupancy, while the party is necessarily absent, engaged in business, will not destroy his continuity of possession." This holding is so near the border line of breach of continuous possession that the reasoning of the court, through Judge Buck, is interesting.

He says: "If, as was said by the court in Stephen vs. Leach, 19 Pa. St. 263, the adverse possessor 'must keep his flag flying,' yet it is no less essential that the actual owner should reasonably keep his own banner unfurled. The law, which he is presumed to know, is a continual warning to him that if he shall allow his lands to remain unoccupied, unused, unimproved and uncultivated, by adverse possession for a long period of time, fixed by law, he may be disseised thereof, and deemed to have acquiesced in the possession of his adversary. In this case, the actual owners by paper title have never occupied the premises since the first owner obtained his title from the government, in 1855 or 1856. Considerations of public policy demand that our lands should not remain for long periods of time unused, unimproved and unproductive. Taxes should be promptly paid."

And further: "The mere fact that time may intervene between successive acts of occupancy, while a party is engaged in such lumber business, as by taking his teams from such stable and shed, and using them in procuring logs to be sawed into lumber to be by him piled and stored upon such premises, does not necessarily destroy the continuity of possession. During such time, the lumber left upon the lot, the barn and shed there remaining, and various implements connected with such lumber business used upon the premises, would indicate that some one was exercising acts of domain over the lot, even though the party was occasionally and temporarily absent upon the business for which he was using such lot.

NO TRADE MARK IN THE WORD "COLUMBIA." On December 4th the Supreme Court of the United States handed down a decision in the case of the Columbia Mill Co. vs. Alcorn, *et al.*, in an action to restrain the use of the word "Columbia" as applied to flour. The plaintiff is a Minneapolis corporation and the defendants Philadelphia flour merchants. The action was brought some three or four years ago in the U. S. Circuit Court for the Eastern district of Pennsylvania, and there resulted in a decree dismissing the bill.

This action of the court below is affirmed, and the court lays down the rule that "there can be no valid trade mark in a word which is placed upon an article, not for the purpose of indicating origin, manufacture or ownership, but merely as designating quality, class, grade or style." 14 Sup. Ct. Rep., 151.

NATIONAL BANKS– APPOINTMENT OF RECEIVER BY COMPTROLLER OF THE CURRENCY. The power vested in the comptroller of the currency by act June 30, 1876, (19 Stat. 63) authorizing him, whenever he becomes satisfied of the insolvency of a national bank, to appoint a receiver, is discretionary; and his decision as to such insolvency, for the purpose of such an appointment, is final, and not reviewable by the court." And, further, "The right to put a national bank in voluntary liquidation, given to stockholders by Rev. St. § 5220, does not affect the right of the comptroller to appoint a receiver under the act of June 30, 1876."

Thus runs the decision of the Circuit Court of the United States in the case of Washington National Bank vs. Eckels, 57 Fed. Rep., 870; and it would seem to indicate that the national banks are under a much more accurate and severe system of government control than other corporations.

BOOKS AND REVIEWS.

STEVENSON'S INDEX-SUPPLEMENT TO STATUTES OF '78.—Compiled by William J. Stevenson, of the Duluth bar. St. Paul, Minn.: F. P. Dufresne. Price $1.00.

This is a full and comprehensive work supplementing the Minnesota General Statutes of 1878, by taking up each chapter thereof and showing in what particular each section has been amended, modified, superceded or repealed, by the general laws of 1889, 1891 and 1893. All the new laws are placed in their proper position with reference to the sections of the statutes. A person may thus see at a glance whether or not any particular section has been changed, how changed, and by what changed. The work covers some twenty pages the size of the statutes, and serves the purpose of bringing the Statutes of '78 up to date. By using this inexpensive work an attorney is enabled to retain his familiar statutes, which usually contain more or less written marginal annotations, and at the same time have a full and reliable reference to all the changes and additions made since the Supplement of '88.

THE INFERIOR COURTS.

ASSIGNEE; JURISDICTION OF MUNICIPAL COURT IN ACTION BY:—Assignee in insolvency brings action in municipal court to recover notes, etc., claimed to have been given defendants in preferance of other creditors. Demurrer on ground that court has no jurisdiction of subject of the action. *Overruled.*

Thoralson, Assignee, etc. vs. Wyman, Partridge & Co., Elliott, J., Municipal Court, Minneapolis.

ACTION AGAINST CORPORATION BY CREDITOR, FOR RECEIVER AND DISTRIBUTION OF ASSETS; INTERVENTION:—An action was brought by a judgment creditor against defendant corporation under Ch. 76, Gen. St., on behalf of themselves and all other creditors; but petitioner's judgment was satisfied and another creditor subsequently sought to intervene and prosecute such action. *Held*, that the action was still pending; *Held*, further, that the petitioner under said chapter need not be a judgment creditor to bring such action or intervene.

Southwell et al. vs. Hekla Fire Ins. Co. et al., Ettenson, Intervenor; Otis, J., District Court, Ramsey County.

ANSWER; IRRELEVANCY AND REDUNDANCY:—In answer to a complaint for services it was stated "that plaintiff claimed to have performed services for defendant worth 50 dollars," stricken out on motion as irrelevant and redundant.

Snyder vs. Carson, Egan, J., District Court, Ramsey County.

ATTACHMENT; DISSOLVED IN CERTAIN CASES:—Where there does not appear to be any other creditors and the facts upon which the affidavit rested are disputed, an attachment will be dissolved.

McGroth vs. Quinlan, Brill, J. Dist. Court, Ramsey County.

ARBITRATION:—Where by the articles of an agreement to an arbitration, the award was to be delivered to the parties only, the result is a common law arbitration.

Doty vs. Laftem, et al., Start, J. District Court, Wabasha Co.

ASSIGNEES AND RECEIVERS—ACTIONS AGAINST; JURISDICTION OF MUNICIPAL COURT:—E. made an assignment of all his property in the usual form; the

creditors then had the assignee removed and a receiver appointed. Assignor then brought an action of replevin in the municipal court to recover his exemption of one year's provisions. This action was commmenced without leave of the district court. *Held*, that, notwithstanding Chapter 54 of the Laws of '93, such action could not be maintained in the municipal court, as the entire property was in the custody of the district court.

In re-assignment of Eppling, *Lewis*, *J.*, District Court, St. Louis County.

ANSWER, NOT FRIVOLOUS:—In an action on a promissory note against the makers, defendants answered admitting the making of the note as alleged, but stated that at the time of making the note an agreement was made whereby plaintiffs were to extend the time of payment if defendants were unable to meet the note when due. On motion to strike out answer as frivolous, *held*, that the answer was sufficient as it would be presumed that the agreement was in writing and hence valid.

Wolf et al. vs. McKinley et al., *Ensign*, *J.*, District Court, St. Louis Co.

BURDEN OF PROOF; NEGATIVE ALLEGATION:—In an action under Sec. 24, Ch. 81, G. S. '78, to recover, from the owner of a mortgage which has been foreclosed, three times the amount of all costs and disbursements not absolutely paid or incurred in said foreclosure, *held*, that the negative allegation in the complaint, that such costs were not incurred nor paid, placed the burden upon plaintiff to prove the negative and show that such overcharge was fraudulent.

Hobe vs. Swift, *Lewis*, *J.*, District Court, Saint Louis County.

BOOKS OF CORPORATION; STOCKHOLDER'S RIGHTS TO EXAMINE SAME:—Plaintiff, stockholder in defendant corporation, had brought action against it, and in that action applied for an order compelling defendant to permit him to inspect all the books of defendant; inspection having been refused by officers of the defendant. *Application granted.*

McMillan vs. Dickson Co., *Smith*, *J.*, District Court, Hennepin Co.

COMPLAINT; MUST SHOW CAPACITY IN WHICH PLAINTIFFS ACT:—Complaint on promissory notes given to plaintiffs as trustees of a land company. Demurrer on ground that complaint failed to show that they were such trustees; and therein failed to show a cause of action. *Sustained.*

Lyman, et al. vs. Bracket, et al., *Jamison*, *J.*, District Court, Hennepin County.

CONTEMPT; PROPER PROCEEDURE ON SERVICE OF TEMPORARY INJUNCTION:—Temporary injunction was issued and served; defendant disobeyed same, and an order to show cause why he should not be committed for contempt, attempted to justify on ground that the complaint upon which the injunction issued did not show a cause of action. Objection *held*, not well taken; that were such the case, it was duty of defendant to obey the injunction and then come in and move to set it aside.

Rogers vs. Lunke, et al., *Russell*, *J.*, District Court, Hennepin County.

COMPLAINT; MUST SHOW POWER OF CORPORATION, DEFENDANT, TO ENDORSE ACCOMMODATION PAPER:—Action against corporation on accommodation indorsement of commercial paper. Demurrer on ground that complaint failed to show that the defendant was empowered to sign such paper. *Sustained.*

Cole vs. Jellison Towrig Co., *Start*, *J.*, District Court, Wabasha Co.

CONVEYANCES VOID AS TO CREDITORS; NOTICE:—A chattel mortgage was given over a year before receiver was appointed for mortgagor, but was not filed until about 30 days prior to such appointment; there having been no change of possession. *Held*, void, at action by receiver to set it aside.

Pierce, receiver, etc. vs. Link, Start, J., District Court, Wabasha County.

GARNISHMENT; WHEN MONEY DUE:—The disclosure shows that the company held $51.50 of defendant's money; exemption was allowed, and judgment was demanded for balance; but it appeared that of the balance $25.00 was deposited with company, as security for honesty of defendant, and was not payable until discharged, and then order for judgment was *refused*.

Bartlett vs. Beidleman and Twin City Rapid T. Co., Gar., Elliott, J., Municipal Court, Minneapolis.

GARNISHMENT; APPLICATION FOR PERMISSION TO DISCLOSE SECOND TIME:—Garnishee asked permission to again disclose the facts as to money in his hands, claiming that full disclosure had not been made at first hearing. *Denied*.

Brown vs. Shogg & Gar., Hicks, J., District Court, Hennepin Co.

INSOLVENCY. SUFFICIENCY OF ALLEGATION OF SOLVENCY:—In insolvency proceedings the affidavit of the insolvent debtor stated that he had "property exceeding, by ten thousand dollars, the amount of his debts." *Held*, insufficient, *per se*, to prove solvency.

In re-application for appointment of receiver, for Bissell, Lewis, J., District Court, St. Louis County.

INSOLVENCY; PROOF OF:—On an application for a receiver for a farmer who had issued a large amount of commercial paper it was *held*, that the insolvency law of this state applies to all insolvents whether traders or non-traders and the only difference is in the amount of proof required to show such insolvency.

In re-application for appointment of receiver for Bissell, Lewis., J., District Court, St. Louis County.

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In re-app. for receiver for A. J. Goss, Kelly, J., District Court, Ramsey County.

JUSTICE COURTS; ENTRY OF JUDGMENT: Case was taken under advisement on 10th and 13th was Sunday; entered judgment on Monday, 14th. *Held*, that judgment was properly entered and Sunday should not be counted in such a case.

Stephens vs. Heinse, Start, J., District Court, Wabasha County.

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Stephens vs. Heinze, Start, J., District Court, Wabasha Co.

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Schulenberg vs. White et al., Lewis, J., District Court, St. Louis Co.

RECEIVER IN SUPPLEMENTAL PROCEEDINGS; NOTICES TO DEFENDANT REQUIRED:—The amendment of the statute relating to such receivers, Ch. 106, Laws of 1889, by inserting "in accordance with and

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Pioneer Fuel Co. vs. St. Paul Elec. Mfg. and Const. Co., Kerr, J., District Court, Ramsey County.

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Pioneer Fuel Co. vs. St. Paul Elec. and Mfg. and Const. Co., Kerr, J., District Court, Ramsey County.

SUPPLEMENTAL PROCEEDINGS; RECEIVER; SUBSEQUENT LEVY:—An order supplemental to the execution was issued and a receiver appointed *ex parte*; subsequently an *alias* execution was issued and levied on personal property. *Held*, that the order and appointment of receiver would be vacated, as such levy is inconsistent with existence and necessity of a receivership.

Pioneer Fuel Co. vs. St. Paul Elec., Mfg. and Const. Co., Kerr, J., District Court, Ramsey County.

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