SUPREME COURT DECISIONS.

[Filed March 5, 1891.]

IN BANK.

THE PEOPLE, Respondent, vs. WM. TRAVERS, Appellant. } No. 20,750.

The appellant was convicted of murder and appeals from the judgment, on the judgment-roll and a short bill of exceptions which shows certain proceedings had on a motion to set aside the indictment.

1. Appellant, upon his arraignment, moved to set aside the indictment upon the ground that he had not been held to answer when the Grand Jury which indicted him was in session, and that the Grand Jurors were prejudiced against him, and had unqualified opinions that he was guilty. He introduced on the motion an affidavit made by the County Clerk and one made by himself, which showed that he had not been held to answer when he was indicted, and had no opportunity to challenge the Grand Jury. No other evidence was introduced. The bill of exceptions states that "defendant then offered to leave the challenge to the said Grand Jurors who indicted him to prove *the challenge* good, and moved the court for reasonable time and opportunity to examine each juror on his *voir dire* in support of said *challenge*. The court overruled said motion *and challenge*, and defendant excepted." The first part of the language above quoted is obscure. It probably was intended to state that defendant moved for leave to challenge the Grand Jurors, and thus "prove the challenge good." At all events, the idea of appellant seems to have been that he had the right to have the discharged Grand Jurors reassembled in court, and to proceed to challenge them formally, and to examine them on their *voir dire*, just as he might have done before the indictment was found. But this is evidently a mistaken notion of the law. A challenge to a Grand Juror is a preliminary objection to the qualification of the juror, and its purpose is to prohibit the juror from sitting and inquiring into the charge against the party interposing the challenge; and if the challenge be allowed the juror "cannot be present or take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberation of the Grand Jury thereon." (Penal Code, Section 900.) It is clear that after a Grand Jury has completed its work and been discharged the conditions which make a challenge possible no longer exist. But a defendant who has been indicted without an opportunity to challenge the Grand Jury is not without remedy. Section 995 of the Penal Code provides that an indictment may be set aside "when the defendant has not been held to answer before the finding of the indictment, on any ground which *would have been* good ground for challenge, either to the panel or to any individual Grand Juror." This language clearly contemplates that the time for challenges has passed, and provides that a defendant may still prove any fact which "would have been good ground for challenge" if he had had an opportunity to interpose it at a time when a challenge was possible. But the fact which would have been good ground for challenge must be proven in the ordinary way in which other facts are proven, by the introduction of evidence—either by the examination of the jurors, or by *other* competent evidence. For this purpose, of course, defendant is entitled to the process of subpoena to compel the attendance of his witnesses; but there is no process by which discharged Grand Jurors can be re-assembled in their official character, and subjected to the original process of challenging. For the purpose of producing this evidence a defendant would, no doubt, upon a proper showing, be entitled to a continuance; but in the case at bar there was no such showing. The appellant did not make any affidavit of merits, or diligence; nor did he, by affidavit or otherwise, show that he could produce a single item of evidence tending to show the disqualification of any Grand Juror. Indeed, he did not make a regular motion for continuance, but seemed to rely upon the supposed right to have the court re-asssemble the jury.

In People vs. Beatty (14 Cal. 567), relied on by appellant on this point, the only question was whether a Grand Jury could indict at all for a crime committed during their session, and after they had been impaneled; and the remark of the Justice who delivered the opinion about the right of challenge upon arraignment was evidently mere *dictum*, used in the progress of his reasoning, and was not intended as the grave determination of a question not before him. There is nothing in the other two cases cited (People vs. Turner, 39 Cal. 376, and People vs. Gerger, 49 Cal. 650) which determines anything adversely to the views above stated. We therefore think that the court below did not committ any error in the matter of the motion to set aside the indictment.

2. The other points made by appellant relate to instructions given to the jury, and the first one objected to is as follows:

"Fourth—During the argument of this case, your attention has been called to a number of cases in which it was claimed that juries had improperly convicted the defendants. While it is true that innocent persons have been convicted in the past, there is no proof in this case of any such fact, *and you are not justified in considering* such matters in determining the guilt or innocence of this defendant—the guilt or innocence of this defendant must be determined from the evidence admitted in the case, and not from sympathy or prejudice. If all criminals must go free because there is a possibility of jurors making mistakes, society might as well disband." This instruction was clearly erroneous. In the first place, it is objectionable—although perhaps not fatally so—on account of its apparent hostility to the defendant. The jury would be very apt to get the impression from it that the court considered the defendant as one of the "criminals" alluded to, and feared that the jury would fail to convict him on account of "sympathy" or prejudice." In the second place it is objectionable as an argument in favor of the prosecution on the weight of evidence, and thus was an invasion of the province of the jury; for "to weigh the evidence and find the facts, is in this State the exclusive province of the jury; and with the performance of that duty the Judge cannot interfere without a palpable violation of the organic law." (People vs. Dick, 34 Cal. 666; People vs. Fong Ching, 78 Cal. 173.) In the third place, if it can be considered as a direction about law, and not an argument about facts, it is still clearly erroneous. It was probably founded on The People vs. Cronin, (34 Ca., 191); but the instruction which was approved in that case, although itself somewhat extreme, was far different from the one given in the case at bar. In the Cronin case the court, in its instruction on this point, after stating the fact that counsel for defendant had—as in the case at bar—alluded to cases where upon circumstantial evidence innocent men had been convicted, told the jury, among other things, that "the quotation of such cases *is proper in order to make the jury careful* in arriving at a proper conclusion from such (circumstantial) evidence." But in the case at bar the court told the jury "you are not justified *in considering* such matters." But the jury had *the right to consider* that innocent men had been convicted; for the difference in the weight of evidence required in civil and criminal cases, and the doctrine of reasonable doubt itself, are founded upon the danger of destroying life or liberty upon evidence that does not produce thorough conviction, and that danger is based, in great part, upon human experience. The court seemed to think that the fact of former unjust convictions could not be considered because "there is no proof in this case of any such fact;" but that such cases have occurred is a matter of common knowledge; which the court, itself, admitted when it said, "It is true that innocent persons have been convicted in the past." If the court had simply told the jury that if they were satisfied beyond a reasonable doubt, by the evidence before them, that the defendant was guilty, they should not be deterred from so finding merely because there had been some innocent men convicted, the instruction might not have been objectionable; but to tell them that in coming to their conclusion they should not consider the danger of convicting an innocent man was clearly erroneous. And it certainly does not appear that the whole instruction was not prejudicial to appellant. We think, therefore, that for the giving of this instruction the judgment should be reversed. (It may be remarked that the propriety of counsel reading to a jury from law books is not here involved. It does not appear whether that was done, or whether counsel merely alluded to the subject orally; but if there was such reading it occurred without objection.)

As the case must be re-tried it is necessary to notice one or two other matters.

3. In the instructions given upon the subject of insanity there was no error prejudicial to appellant. They are somewhat voluminous; but the main proposition contained in them was that a person is presumed to be sane until the contrary is shown, and that the burden is on a defendant of showing insanity by a preponderance of evidence. This rule has been established in this State by a long line of authorities. (People vs. Myers, 20 Cal. 518; People vs. Coffman, 24 *Id.* 237; People vs. McDonald, 47 *Id.* 134; People vs. Wilson, *Id.* 13; People vs. Messersmith, 61 *Id.* 264; People vs. Hamilton, 62 *Id.* 377; People vs. Kernaghan, 72 Cal. 609; People vs. Eubanks, 24 Pac. R. 1014.) And this long line of decisions cannot be held to have been overruled by People vs. Bushton (80 Cal. 160), where the defense was accident, and People vs. Elliott (*Id.* 296), where the defense was self-defense. In those cases the court was dealing entirely with those "circumstances" referred to in Section 1105 of the Penal Code, which mitigate or justify or excuse an act done by a sane man who might commit a crime; and its attention was not called in any way to that unusual and peculiar mental condition called "insanity," which renders a man utterly incapable of committing crime at all. In the opinion of the court in People vs. Bushton reference is made to People vs. Smith (59 Cal. 607), and People vs. Flanagan (60 Cal. 3), in which the very doctrine of the Bushton case was stated; but in those cases—where the defenses were self-defense and defense of property—the court certainly did not intend to overthrow the settled rule of the court on the subject of insanity. We are clear, therefore, that the undisturbed law of this State still is that the burden of showing insanity is upon a defendant who seeks shelter under it as a defense.

In an instruction asked by defendant, and given, there occurs these words: "Or if you have a reasonable doubt as to his sanity you cannot convict him of any degree of crime, but should acquit him." This, of course, is conflicting with the other instructions on the subject of insanity; but as it was favorable to defendant, the conflict would not, of itself, be good for reversal. At another trial this conflict can be avoided.

4. We see no error in the instructions given on the subject of intoxication. As to the instructions asked by appellant on the subject of delirium tremens, etc., it is sufficient to say that settled insanity produced by a long continued intoxication affects responsibility in the same way as insanity produced by any other cause. But it must be "settled insanity," and not merely a temporary mental condition produced by recent use of intoxicating liquor. And an instruction to that effect should be given on another trial if asked, provided there be evidence to which such an instruction would apply. There are no other points necessary to be noticed.

It may be remarked, in conclusion, that in nearly every instance where this court has solved a doubtful proposition in favor of the affirmance of the judgment, the decision has been made the basis and pretext for further excursions in the same direction into the realm of unquestionable error.

The judgment is reversed and the cause remanded for a new trial.

McFARLAND, J.

We concur:
DEHAVEN, J.,
SHARPSTEIN, J.,
BEATTY, C. J.,
HARRISON, J.

DISSENTING OPINION.

The practical administration of justice should not be defeated by a too rigid adhesion to a close and technical analysis of the instructions of the lower court. And conceding this instruction to be obnoxious to criticism, of which fact I have some doubt, yet its weaknesses form too slight a basis for a reversal of the judgment in this case.

I do not believe that the fact of innocent men having been convicted in the past was a matter to be considered by the jury in making up their minds as to the guilt or innocence of this defendant. Such fact could not add to or take away one jot from the weight to be given every piece of evidence in the case. It was the duty of the jury to be convinced beyond a reasonable doubt from all the *evidence* in the case of the guilt of the defendant before they could convict, and the fact of innocent men having been convicted in the past should not and could not have impregnated itself into the question of reasonable doubt in any way.

The jurors in this case, under their oaths, were bound to try this defendant, in the same manner, under the same rules of law, and give him the full benefit of all the shields, with which the law surrounds every defendant, whether as a matter of fact no innocent men ever had been convicted in the past or whether such convictions by our courts of justice were an ordinary occurrence.

I see nothing in the instruction to indicate hostility toward the defendant. The words "sympathy" and "prejudice" as used applied equally as strong in his favor as against him. If all "defendants" must go free * * * I consider would have been a more appropriate expression, than if all "criminals" must go free. * * * Yet I do not think a jury would get the impression, and am sure that it ought not to get the impression, that by the use of the word "criminals" as used in the instruction, the court intended to refer to the defendant as one of that class.

I think the judgment should be affirmed.

GAROUTTE, J.

[Filed March 5, 1891.]

DEPARTMENT ONE.

ORTEGA, Appellant, vs. CORDERO, Respondent. } No. 13,889.

Action to recover balance of unpaid purchase money for land sold and conveyed by plaintiff to defendant. Judgment for defendant, from which plaintiff appeals on the judgment-roll.

It is alleged in the complaint that on or about November 22, 1888, the plaintiff agreed to sell to the defendant, and the defendant agreed to purchase from the plaintiff, one undivided third part of a tract of land, described in the complaint, containing about one thousand acres, of the value of not less than $3,300, for the consideration, and upon the terms hereinafter stated. That at the date of the said agreement the plaintiff was indebted to various persons in various sums, amounting to about $1,400. "That as part of the consideration for said purchase defendant agreed to pay off and discharge all of plaintiff's aforesaid indebtedness, amounting to about said sum of $1,400, and for the remainder of said consideration to pay to plaintiff, over and above said indebtedness, the sum of $1,500, and, in earnest of said agreement, said defendant then and there paid plaintiff the sum of $25, part of said $1,500, payable to plaintiff under said agreement.

"Plaintiff avers that he has in all respects fully performed on his part all the obligations of the agreement of purchase and sale above stated. That on or about the 25th day of January, 1889, he executed, acknowledged and delivered to said defendant his (plaintiff's) deed conveying the land above mentioned in accordance with, and pursuant to, said agreement of sale." That said deed was a deed of grant, bargain and sale, and was prepared, as he is informed and believes, under the direction of the defendant, and was recorded by request of the defendant on the day of its date.

"Plaintiff avers that notwithstanding the recital of full payment on said deed, that no part of the said $1,500 due and payable by defendant to plaintiff under the aforesaid agreement of sale and purchase has ever been paid plaintiff, excepting the sum of $25 hereinbefore mentioned, and that the balance of said consideration, to wit: The sum of $1,475 is still due and unpaid to plaintiff from said defendant, who has neglected and refused, and still neglects and refuses to pay the same, or any portion thereof, although requested to pay said sum."

For want of information or belief, the defendant, in his answer, denied that the value of the land was not less than $3,300. The answer then proceeds as follows:

"Denies that the deed mentioned in the amended complaint herein was prepared under direction of defendant.

"Denies that no part of the $1,500 due and payable by defendant has ever been paid plaintiff, except the sum of twenty-five dollars, and avers that he has paid to plaintiff the full amount of the purchase price of said land.

"Denies that the sum of $1,475, or any sum, is due or unpaid to plaintiff from defendant.

"Wherefore defendant demands judgment that plaintiff take nothing by this action and for his costs."

After finding the value of the property to have been $3,300 at the time of the purchase, and at the time of the trial, as alleged in the complaint, the court made the following findings:

2. "That on or about the 25th day of January, 1889, the plaintiff agreed to sell to the defendant, and the defendant agreed to buy of the plaintiff the plaintiff's one-third interest in said land for the sum of $1,500, and the plaintiff thereupon executed, acknowledged and delivered to defendant a deed of grant, bargain and sale, conveying to the defendant his said one-third interest in said land, and the consideration stated in said deed was $1,500.

3. "That the defendant has fully paid to plaintiff said sum of $1,500, and there is no part thereof now due or unpaid; that said sum of $1,500 was paid in the following manner; the defendant liquidated and discharged debts due by plaintiff to various persons amounting to $1,625, said debts being paid by consent of plaintiff.

4. "That the defendant did not at any time agree to pay or give to plaintiff any consideration other than said sum of $1,500 for his said one-third interest in said land.

"As a conclusion of law from the foregoing facts, the court finds that the defendant is entitled to judgment against the plaintiff, that he take nothing by this action, and for his costs of suit, and it is ordered that judgment be entered accordingly."

The appellant makes the point that the findings of fact are inconsistent with, and contradictory of, the facts admitted and established by the pleadings; and this point seems to be well taken.

The agreement as stated in the complaint is not denied or in any way qualified by the answer; nor is any other agreement set up in the answer; yet, the fourth finding of fact flatly contradicts a material part of the agreement as alleged in the complaint.

By the agreement established by the pleadings, the defendant was to pay debts of plaintiff amounting to $1,400, and in addition thereto, was to pay directly to plaintiff $1,500; but the fourth finding, read in connection with the third, is, that defendant never agreed to pay any other consideration for the conveyance than to pay debts of plaintiff amounting to $1,500. This contradicts the admitted allegation of the complaint that the defendant agreed to pay directly to plaintiff $1,500 in addition to the payment of $1,400 to plaintiff's creditors.

So far as the second finding sets forth an agreement of a different date and consideration from that alleged in the complaint, it is entirely outside of the issues made by the pleadings. The agreement to convey for a consideration of $1,500, referred to in the second finding, seems to have been inferred from the recital of that consideration in the deed of January 25th, executed in pursuance of the agreement alleged in the complaint. But no such inference was justifiable, since it was averred in the complaint, and not denied in the answer, that the deed did not recite the full consideration.

In Burnett vs. Stearns (33 Cal. 469), it is said: "The findings should be confined to the facts in issue. The province of the court in respect to facts, is to determine, but not raise issues. It is insisted on the other side, that it will be presumed the court found the fact in question from competent evidence. The answer is, it would not be presumed that evidence was introduced to contradict the admission of record." This case is emphatically affirmed in Gregory vs. Nelson (41 Cal. 279) where, among other things, it is said: "This court cannot presume that the trial court required or permitted evidence to be introduced on the trial for the purpose of establishing or rebutting allegations of the complaint not denied by the answer; nor can it be presumed that any evidence was received by the trial court, except such as was pertinent to the issues made or tendered by the pleadings, and evidence tending to rebut such legitimate evidence." To the same effect are the following cases: Hicks vs. Murray (43 Cal. 515), Bradley vs. Cronise (46 Cal. 287), Estate of McKinley (49 Cal. 152), McDonald vs. Homestead Ass'n (51 Cal. 210), Hill vs. Den (54 Cal. 20), Tracy vs. Craig (55 Cal. 91), Silvey vs. Neary (59 Cal. 97), Campe vs. Lassen (67 Cal. 570).

In the matter of the estate of Doyle (73 Cal. 570) the court, by Mr. Justice McKinstry, said: "When a trial is had by the court without a jury, a fact admitted by the pleadings should be treated as 'found.' * * * If the court does find adversely to the admission, such finding should be disregarded in determining the question whether the proper conclusion of law was drawn from the facts found and admitted by the pleadings. * * * In such case the facts alleged must be assumed to exist. Any finding adverse to the admitted facts drops from the record, and any legal conclusion which is not upheld by the admitted facts is erroneous." See also Reinhart vs. Lugo, (75 Cal. 639) and Gould vs. Stafford (77 Cal. 66).

The class of cases cited by counsel for respondent, such as White vs. S. R. & S. Q. R. R. Co. (50 Cal. 417), Tevis vs. Hicks (41 Cal. 123), Smith vs. Penny (44 Cal. 161) and Horton vs. Domingues (68 Cal. 642) has no proper application to the facts of this case. In that class of cases it appears of record, that the parties have actually tried issues outside of the pleadings without objection, and by tacit consent, as if the issues had been made by the pleadings, and under such circumstances that if one party had objected, the other might have supplied or cured the defect by amendment of his pleading, or otherwise mitigated the effect of the objection. The principle upon which these decisions rest, is that of equitable estoppel—it being held that a party who acquiesces and participates in the trial of an issue without objection, as if it arose from the pleadings, when he might have objected on the ground that the issue was not made by the pleadings, in the trial court, where the objection might have been met by amendment of the pleadings or otherwise, so that it would have operated less injuriously on the other party than if first made on appeal, has thereby waived the objection and mislead the other party to understand that the issue was properly made; and, therefore, should not be heard to make it on appeal. To justify this application of the principal of estoppel it should appear from the record on appeal, among the other elements of an estoppel, that the issue was actually and intentionally tried by the introduction of pertinent evidence, and that the party against whom the estoppel is invoked consciously participated or acquiesced in such trial, as if the issue had been made by the pleadings, and in such manner as may have induced the other party to believe that the issue had been properly made, or diverted his attention from the fact that it was not made by the pleadings.

It would seem that some of the decisions in the class of cases under consideration have gone to the verge of the province of waivers and equitable estoppels, and press to encroach upon the domain of the law of pleading and evidence, particularly Sections 462, 588, 589 and 590 of the Code of Civil Procedure. Section 590 provides: "An issue of fact arises. 1. Upon a material allegation in the complaint controverted by the answer;" * * * and Section 462 provides: "Every material allegation of the complaint not controverted by the answer must, for the purposes of the action, be taken to be true."

It is not within the discretionary power of any court to dispense with these provisions, yet they are not violated by a decision of the appellate court, that a party, by his conduct at the trial, is estopped from asserting, on appeal, for the first time, that a fact found by the trial court was not within the issues made by the pleading, since such a decision assumes that the fact found was within the issues, and its propriety can be questioned only upon the ground that the facts of record are insufficient to create the alleged estoppel. Doubtless the facts should be of a nature and effect similar to those required to effect an estoppel *in pais* in other cases; but, upon a superficial view, there is a seeming conflict in the cases as to how the facts shall be made to appear. Must the conduct of the party, which estops him, positively appear upon the record? or, may it be presumed for the mere purpose of upholding the decision of the trial court? We have seen that the cases of Burnett vs. Stearns, Gregory vs. Nelson, and In re Doyle are expressly opposed to any such presumption; but in the case of Horton vs. Domingues (68 Cal. 642), cited by respondent, there is a dictum, at least, in favor of such a presumption. In this last case it was conceded that the agreement pleaded and relied upon by the defendant in his cross-complaint was void, but the court found a subsequent agreement, which was not pleaded, which is fully set out in the finding, and in accordance with which judgment was rendered. This court, by Mr. Justice Thornton, said:

"It is objected that the finding is not within the issues. As the record shows nothing to the contrary, we must presume that testimony was introduced to establish the facts found by this finding. It does not appear that any objection was made by the plaintiff to the evidence that it was inadmissible under the pleadings as not being within the issues joined. As the record stands, it appears that the cause was tried as if the agreement found was put in issue. Under such circumstances, we cannot permit the objection to be now made that this finding is of matters outside of the issues joined in the cause. It should not be permitted that the plaintiff should allow the cause to be tried as if issues are regularly joined, and when the result is a judgment adverse to his claims, urge in this court that no such issue was made in the court below."

This case is not fully reported. By referring to the original record it will be seen that the subsequent agreement was (imperfectly) pleaded, and that the judgment-roll contains a bill of exceptions showing that testimony sufficient to justify the finding of the subsequent agreement was introduced by the defendant without objection, on the ground that the subsequent agreement was not pleaded. Therefore, there was no occasion or room for a presumption that "testimony was introduced to establish the facts found" by the finding set out in the opinion, as to the subsequent agreement. Farther on the learned Justice says: "As the record stands *it appears* that the cause was tried as if the agreement found was put in issue." This must be understood as referring to the evidence contained in the bill of exceptions. So understood, it shows that the learned Justice did not rely upon any presumption to establish the fact that testimony was introduced, without objection, to prove the subsequent agreement on which the judgment rested.

In the judgment-roll of the case at bar there is no bill of exceptions, nor anything to show that any evidence was introduced tending to prove a subsequent or other contract than that alleged in the complaint and not denied in the answer, or tending to show, contrary to the admission of the pleadings, that the deed of January 25, 1889, from plaintiff to defendant, correctly recited the full consideration for the conveyance.

Perhaps the plea of payment, in the absence of a special demurrer, sufficiently tendered an issue as to payment; but the findings show that the only payment by defendant was $1,500, made by liquidating and discharging debts due by plaintiff to various persons, amounting to $1,625, by consent of plaintiff. Thus leaving a balance of the contract price due the plaintiff of at least $1,375.

I think the judgment should be reversed and the cause remanded for a new trial, with leave to the parties to amend their pleadings if they so desire.

VAN CLIEF, C.

We concur:
BELCHER, C.,
FOOTE, C.

THE COURT.

For the reasons given in the foregoing opinion the judgment is reversed and the cause remanded for a new trial, with leave to the parties to amend their pleadings if they so desire.

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IN THE SPRING OF LAST YEAR Robert A. and Neal D. Barker associated themselves with William McKay, all of Oakland, with a view of searching out a suitable location in which to engage in the profitable occupation of fruit-growing. After visiting many localities, they decided on the Capay Valley, Yolo County, and the Rhodes tract at Tancred.

Negotiations were opened with the Capay Valley Land Company, owning the tract in question. With W. H. Mills, the General Agent of that company, they arranged for the purchase of about 220 acres of foothill land. This being more than they had thought of taking for their own use, they spoke to a number of friends about it, with the result that the tract was divided among the following people: B. L. Hickok, 40 acres; W. T. Barnett, 20 acres; N. T. Greathead, 20 acres; Mrs. L. Greathead, 20 acres; W. McKay, 20 acres; N. D. Barker, 20 acres; R. A. Barker, 20 acres; J. P. Brownlee, 20 acres; E. H. Haslett, 10 acres; Joseph Barker, 10 acres; A. W. Kelly, 10 acres, and Frederick Kelly, 10 acres.

So far this had been merely a private venture of the gentlemen above named, but in talking up the question of dividing the land already purchased, it was found that so many more would like to join it than the area of the purchase would admit of, that it was suggested on all hands, "Why not get some more land and divide it up in the same way?" Then followed the idea of a stock company to take hold of a larger tract and arrange for the cultivation of the whole of it, after subdividing it according to the requirements of the subscribers. A provisional board was formed, a prospectus issued, and finally, on the 5th of June, 1890, the Western Co-operative Colonization and Improvement Company was duly registered and proceeded to business, with the following officers: President, William McKay; Vice-President, M. P. Brown; Directors—H. C. Ellis, Charles Brooke and R. A. Barker; Secretary and General Manager, Neal D. Barker; Solicitor, C. E. Snook; Treasurer, First National Bank of Oakland.

The balance of the tract, 373 acres, was purchased. A contract was entered into for the purchase of a large number of fruit trees, vines, etc. This early purchase of trees was the means of saving between $3,000 and $4,000 to the company, the prices in some cases having more than doubled since then.

The ideas which the prospectus set forth have been but slightly modified and the progress of the company has been uninterrupted. Those who went into it doubtingly have become enthusiastic, and almost all the members arranged to set out all their lands in fruit trees, etc., the first year. Consequently in this, the first season, some 40,000 trees and between 20,000 and 30,000 vines will be planted.

The satisfactory working of this scheme has had the effect of attracting considerable attention to the work of the Colony Company, and a number of people are now desirous of joining in with them. An additional 200 acres have been added to the sixty acres originally purchased.

For the company is predicted a very bright future, as well as for the beautiful valley in which their operations are conducted. How this marvelous little garden has come to be so long neglected is a puzzle to every one who has visited it, but one thing is very sure, and that is that this neglect will never again be felt in the valley.

The fruits set out are mostly of the standard varieties—peaches, apricots, Bartlett pears, prunes, figs, raisin grapes, etc., while along both sides of the avenues, throughout the tract, walnuts will throw their graceful shade. A considerable number of citrus trees are also being set out; quite a sufficient number to demonstrate that these fruits can be successfully grown in the valley, about which the colonists appear to have no doubt, provided proper care is given to the young trees. Neal D. Barker, General Manager of the company, resides on the tract, and to his care is to be ascribed much of the success of the venture.

Mention should be made of the town-site, about which there is a pleasant innovation which might with profit be followed by more ambitious places. A small park of some three acres has been laid out right in the center of the town. This park it is proposed to beautify by planting in it from time to time as many of the beauties and curiosities of tree and shrub life as may be obtained by diligent search and a wise expenditure of money. It is not expected that Tancred will ever be a large and busy city, but it is thought that it can be made a very pleasant little place to dwell in.

A petition has been circulated recently and very largely signed, asking the county to accept Island avenue, on the colony tract, as a county road, and to build a bridge across Cache Creek at this point, in order to give the settlers on the east side of the creek access to Tancred Station. The Tancred colonists are quite willing to give the necessary right of way, and are very desirous of having a bridge there, as the colony lands extend along both sides of the stream. It is thought that it would be a very wise expenditure of public money to grant them this very necessary improvement, as the operations of such companies are of widespread benefit to the whole county and State. The attractions and comforts of the cities are well known, but to those who are willing to settle on the land and show that the country also affords attractions and comforts and ways of making money pleasantly, every inducement should be held forth.

The following is a list of the principal members of the Tancred Colony, with the number of acres owned by each, and a fact worthy of mention is that in each contract or deed issued by the Colony Company there is a provision that no intoxicating liquor shall ever be manufactured or sold on the land. The apparent success of the enterprise shows that the ideas and plans of the colony, as set forth in the prospectus some time ago, are not impracticable: C. T. Hull, Berkeley, 5 acres; W. P. Hammon, Oakland, 14 acres; C. S. Kasson, San Francisco, 11 acres; Jos. Barker, 10 acres; A. W. Kelly, Kincardine, Ont., 5 acres; N. T. Greathead, 5 acres; R. G. Greathead, Oakland, 10 acres; R. A. Barker, San Francisco, 10 acres; N. D. Barker, Tancred, 10 acres; Dr. K. Favor, San Francisco, 27 acres; J. P. Brownlee, Kincardine, Ont., 9 acres; W. T. Barnett, Berkeley, 5 acres; M. P. Brown, 10 acres; Chas. Brook, Sr., Oakland, 10 acres; W. C. Boutelle, Berkeley, 20 acres; Mrs. T. A. Crelin, Oakland, 5 acres; C. H. Peach, Tancred, 5 acres; H. C. Ellis, Oakland, 10 acres; J. Vanstone, Winnipeg, 10 acres; E. A. Vanstone, Tancred, 5 acres; E. Wadsworth, Sacramento, 5 acres; M. A. Thomas, Oakland, 6 acres; James Graham, San Francisco, 11 acres; A. Stark, 12 acres; J. Stark, 10 acres; Mrs. M. Vrooman, 5 acres; C. E. Snook, 10 acres; C. T. Greathead, 12 acres; Wm. McKay, 5 acres; Mrs. Wm. McKay, Oakland, 5 acres; Mrs. E. C. Wooley, Brooklyn, N. Y., 10 acres; Mrs. H. Beckley, Oakland, 5 acres; T. A. Marriett, 5 acres; J. C. Harrison, Tancred, 5 acres. The land reserved by the Colony Company, including townsite, consists of 61 acres.

fe15-tfd&w

Edwin K. Alsip & Co., Real Estate Agents.

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All Lots Withdrawn From Sale Until After

The Next Auction,

Which will be held as soon as the weather will permit. Y street to be graded and a couple of the blocks to be leveled and graded. We have only a few left.

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Half Acres for Sale.

THE TERMS are one-fourth cash, deferred payments in monthly installments of $10, purchaser paying taxes on lots. Remember these prices stand for 15 days only HALF ACRES from $250 to $425 each on same terms.

We will build a dwelling on any lot paid for, and take the cost of dwelling in these payments: One-fifth down, balance in monthly installments of $15, with interest at 7 per cent. per annum.

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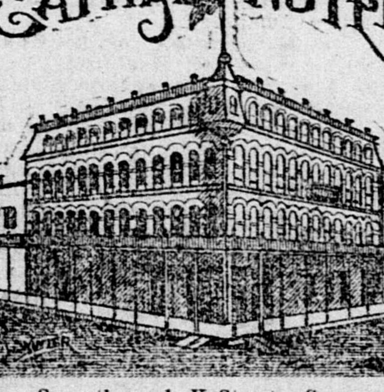

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CHEAP FURNISHED ROOMS BY THE day, week or month.

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BUSH STREET, BETWEEN MONTGOMERY and Sansome, San Francisco; conducted on both the European and American plan. This Hotel is under the management of Charles Montgomery, and is the best Family and Business Men's Hotel in San Francisco. Home comforts, cuisine unexcelled, first-class service, highest standard of respectability guaranteed. Board and room per day, $1 25 to $2; single room, 50 cents to $1 per night. Free coach to and from the Hotel. [mr1-1yTTSu

ST. DAVID'S,

715 Howard Street, near Third, San Francisco.

A FIRST-CLASS LODGING HOTEL, CONTAINING 200 rooms; water and gas in each room; no better beds in the world; no guest allowed to use the linen once used by another; a large reading room; hot and cold water baths free. Price of Rooms—Per night, 50 and 75 cents; per week, from $2 upwards. Open all night. R. HUGHES, Proprietor.

At Market-street Ferry take Omnibus Line of street cars for Third and Howard. TTS

DISSOLUTION OF COPARTNERSHIP.

NOTICE IS HEREBY GIVEN THAT THE copartnership heretofore existing between the undersigned, under the firm name of POSTEL & SCHNERR, has this day been dissolved by mutual consent. CONSTANT SCHNERR, having purchased all the interest of HENRY J. POSTEL, will continue the business under the name of C. SCHNERR & CO. All accounts of the old firm are payable to Mr. SCHNERR, and he has assumed all of the firm's liabilities.

Sacramento, March 7, 1891.

HENRY J. POSTEL.
mr10-2w CONSTANT SCHNERR.

TO WEAK MEN Suffering from the effects of youthful errors early decay, wasting weakness, lost manhood, etc., I will send a valuable treatise (sealed) containing full particulars for home cure, FREE of charge. A splendid medical work; should be read by every man who is nervous and debilitated. Address, Prof. F. C. FOWLER, Moodus, Conn.

THE NEWS OF THE WORLD IS CONTAINED in the WEEKLY UNION.

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JAMES WOODBURN,

No. 417 K Street, Sacramento, Cal.

IMPORTER AND WHOLESALE DEALER in Fine Whiskies, Brandies, Wines and Liquors. Thanking my old friends and patrons for their former patronage, I solicit a continuance of the same. All orders will be promptly and cheerfully filled.

Railroad Time Table.

SOUTHERN PACIFIC COMPANY

[PACIFIC SYSTEM.]

JANUARY 19, 1891.

Trains Leave and are Due to Arrive at Sacramento:

LEAVE	TRAINS RUN DAILY.	ARRIVE
6:15 A	....Calistoga and Napa....	11:40 A
3:05 P	....Calistoga and Napa....	8:40 P
12:30 A	....Ashland and Portland....	5:55 A
4:30 P	Deming, El Paso and East	7:00 P
7:30 P	........Knights Landing........	7:10 A
10:50 A	...........Los Angeles...........	9:35 A
12:05 P	Ogden and East—Second Class	2:25 A
11:00 P	Central Atlantic Express for Ogden and East	8:15 A
3:00 P	.............Oroville.............	10:30 A
3:00 P	Red Bluff via Marysville	10:30 A
10:40 A	....Redding via Willows....	4:00 P
2:25 A	San Francisco via Benicia	11:40 A
6:15 A	San Francisco via Benicia	12:35 A
8:40 A	San Francisco via Benicia	10:40 P
3:05 P	San Francisco via Benicia	8:40 A
*10:00 A	San Francisco via steamer	§6:00 A
10:50 A	San Fran. via Livermore	2:50 P
10.50 A	............San Jose............	2:50 P
4:30 P	.........Santa Barbara.........	9:35 A
6:15 A	...........Santa Rosa...........	11:40 A
3:05 P	...........Santa Rosa...........	8:40 P
8:50 A	......Stockton and Galt......	7:00 P
4:30 P	......Stockton and Galt......	9:35 A
12:05 P	.......Truckee and Reno.......	2:25 A
11:00 P	.......Truckee and Reno.......	8:15 A
12:05 P	.............Colfax.............	8:15 A
6:15 A	.............Vallejo.............	11:40 A
3:05 P	.............Vallejo.............	†8:40 P
*6:35 A	..Folsom and Placerville..	*2:40 P
*3:10 P	..Folsom and Placerville..	*11:35 A

*Sunday excepted. †Sunday only. §Monday excepted. A.—For morning. P.—For afternoon.

RICHARD GRAY, Gen. Traffic Manager.
T. H. GOODMAN, General Passenger Agent.

SEND THE WEEKLY UNION TO YOUR friends in the East.