SUPREME COURT DECISIONS.

[Filed March 6, 1891.]

Appeal from Superior Court of Butte County—P. O. Hundley, Judge.

For appellant, R. H. Lindsay, Gray & Sexton.

For respondents, John Gale.

IN BANK.

PREBLE ET AL., Respondents, vs. ABRAHAMS, Appellant. } No. 13,710.

The plaintiffs in their complaint allege that on the 13th day of January, 1888, they and the defendant entered into an agreement, of which the following is a copy:

"BIGGS, January 13, 1888.

"This agreement made and entered into by C. S. Preble and C. S. Young of Reno, Nevada, and A. Abrahams of the same place; said Preble & Young agree to sell to A. Abrahams of Reno, for $125 per acre, for forty acres of the eighty-acre tract at Biggs, and upon the payment of the said sum said parties of the first part shall make, execute and acknowledge and deliver unto the party of the second part a good and sufficient deed, vesting the title of said property in party of second part. PREBLE & YOUNG,

"A. ABRAHAMS.

"Witness, M. BIGGS, JR."

Plaintiffs further allege that when said agreement was written, it was understood between all the parties thereto that the same should contain a clause obliging said defendant to buy said land at said price of one hundred and twenty-five dollars per acre, and the omission of such a clause therefrom was wholly accidental and unintentional. That between the words "said Preble and Young agree to sell to Abrahams, of Reno," and the words "for one hundred and twenty-five dollars per acre for forty acres of the eighty-acre tract at Biggs" in said contract, there should have been inserted the words "and said Abrahams agrees to purchase." That the omission was the result of a mutual mistake, etc. Plaintiffs further allege that they have kept and performed all the terms, covenants and conditions on their part to be performed, and that defendant refuses to keep or perform any of the terms, covenants or conditions of said contract on his part, and refuses to purchase said land or pay plaintiffs therefor. Wherefore plaintiffs pray to have said contract reformed so as to make it obligatory upon defendant to purchase said land at the price agreed upon, and that as so reformed it be construed and enforced. In his answer the defendant denies all the material allegations of the complaint, except the making of the memorandum in writing, a copy of which is contained in the complaint. Evidence was introduced by the plaintiffs tending to prove the alleged mistake in the memorandum in writing of the agreement between the parties, and by the defendant tending to prove that there was no mistake. Upon all the material issues the court found in favor of the plaintiffs, and decreed the reformation of the contract and a specific performance of it, as prayed in the complaint. Defendant moved for a new trial upon a statement. The motion was denied, and from the judgment and from the order denying the motion for a new trial defendant appeals.

Everything relating to the reformation of the contract may be eliminated from the case, because the contract, as reformed, means just what it did before it was reformed. Without any reformation it obligated the defendant as strongly to buy and pay the price specified for the land as it did the plaintiffs to sell it for that price.

Appellant contends that the agreement which it is sought to have specifically performed is "an agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable," and, therefore, cannot be specifically performed. (C. C., Sec. 3390.)

The contention is that the agreement to sell "forty acres of the eighty-acre tract at Biggs" is not sufficiently certain to make the precise act which is to be done clearly ascertainable. This is the only agreement in writing, between the parties, for the sale or purchase of any real estate; and an agreement not in writing, for the sale and purchase of real estate, is void. And the description of the property in the written agreement is so entirely uncertain as to render the instrument inoperative and void, unless we can go beyond the face of it to ascertain its meaning. Parol evidence is always admissible to explain the surrounding circumstances, and situation and relations of the parties, at and immediately before the execution of the contract, in order to connect the description with the thing intended, and thereby to identify the subject-matter, and to explain all technical terms and phrases used in a local or special sense. (Pomeroy on Contracts, Sec. 152.) It appears by the written agreement that the parties intended a sale and purchase of land, and that it was "forty acres of the eighty-acre tract at Biggs." If the vendors owned an eighty-acre tract at Biggs, we would assume that they intended to sell forty acres of the eighty-acre tract owned by them at Biggs. Evidence was introduced which tended to prove the location and description of the eighty-acre tract at Biggs, and in what part of the tract the forty acres which plaintiffs agreed to sell to defendant was situated. The court, in effect, found that at the date of said agreement one Mrs. Biggs was desirous of purchasing one-half of said eighty-acre tract, *i. e.*: the western half, upon which there were valuable improvements. She offered to pay for that half $5,000. Plaintiffs would not accept her offer, but offered to sell the entire eighty-acre tract for $10,000. Thereupon defendant agreed with plaintiffs that if they would sell to Mrs. Biggs the western half of said eighty-acre tract for $125 per acre, he, defendant, would purchase the other half of said eighty-acre tract and pay $125 per acre therefor. The finding is justified by the evidence, and there is no specification of the particulars in which the evidence is insufficient to justify that finding. The contracts to sell to Mrs. Biggs one-half of said eighty-acre tract, and to the defendant the other half thereof, were made at the same time and place. We think the evidence makes the subject matter sufficiently certain, and that is all that is necessary. Professor Pomeroy says: "It is not strictly accurate to say that the subject-matter must be absolutely certain from the writing itself, or by reference to some other writing. The true rule is, that the situation of the parties and the surrounding circumstances, when the contract was made, can be shown by parol evidence, so that the court may be placed in the position of the parties themselves; and if *then* the subject-matter is identified, and the terms appear reasonably certain, it is enough." (Pomeroy on Contracts, Section 227, n.) This is in consonance with the maxim "*Certum est quod certum reddi potest.*" The evidence clearly shows that the parties perfectly understood that the sale and purchase was not of an undivided interest of forty acres in a tract of eighty acres but of forty acres in severalty. The defendant does not claim in his answer, nor in his evidence, that he intended to purchase an undivided interest in the eighty-acre tract. He denies that he intended or agreed to purchase any interest whatever. Nothing is made more clear by the evidence than that Mrs. Biggs, with the full knowledge of all the parties, purchased the forty acres of said eighty-acre tract upon which the improvements were located. This is clearly specified in the written agreement between her and the plaintiffs. They agreed to sell her forty acres, including the buildings and orchards on the forty acres, to be taken by her where the houses and barns and orchards were at that time, and the same place on which Mr. Biggs, Jr., and his family were residing. This and the agreement to sell to the defendant were contemporaneous. The defendant, if he agreed to purchase anything, agreed to purchase the forty acres remaining after the forty acres purchased by Mrs. Biggs had been segregated from said eighty-acre tract.

By the judgment of the court below the plaintiffs are required "to execute, duly acknowledge and deliver to said defendant a good and sufficient deed of conveyance in fee, and free and clear of all incumbrances, the form of the same to be settled and approved by the Judge of said Superior Court, if the parties differ respecting it, of the following described premises, to wit.: Forty acres of land, being the eastern half of said eighty-acre tract described in said complaint and the part thereof not heretofore conveyed to M. Biggs, Jr., said eighty-acre tract being one of the tracts into which the ranch known as Bigg's upper ranch is divided, and upon the western half of which the dwelling-house and buildings used in connection with said ranch are situated, all being situated near Biggs, in said Butte county." And it is further adjudged, that if said defendant refuse to receive said deed, the plaintiffs file the same with the Clerk of the court; and that upon such delivery or filing of said conveyance the defendant pay to the plaintiffs, or their attorney, the sum of five thousand dollars, the purchase price named in said agreement.

It is urged on behalf of the defendant that said premises are incumbered, and therefore he ought not to be compelled to accept a conveyance of them. He is not compelled to accept a conveyance which does not vest in him the fee free of all incumbrances. He was once tendered a conveyance which he did not refuse to accept on the ground that it did not convey the premises free of all incumbrances, but on the ground that he had never agreed to purchase the premises. He is amply protected by the judgment against any incumbrances, and until he is tendered a conveyance free of all incumbrances he is not compelled to accept it or to pay anything to the plaintiffs.

The errors of law, specified, are such as could not have affected the substantial rights of the parties, and, therefore, must be disregarded.

Judgment and order affirmed.

SHARPSTEIN, J.

We concur:
HARRISON, J.,
MCFARLAND, J.,
DEHAVEN, J.,
GAROUTTE, J.

[Filed March 7, 1891.]

IN BANK.

LOGAN ET AL., Appellants, vs. ROSE ET AL., Respondents. } No. 13,922.

This action was for damage against Rose, as roadmaster, and the other defendants as his employers, advisers, etc., for the removal of embankments or approaches to the plaintiffs' warehouses.

At the trial, on the conclusion of the the plaintiffs' case, it appeared that neither Gray, Streeter nor Smith, three of the defendants, had anything to do with the matter, so that a non-suit was granted as to them.

After the argument and submission of the case, the court, sitting without a jury, gave judgment in favor of the defendant Rose for costs, and dismissed the plaintiffs' complaint on its merits. From the judgment and an order denying a new trial the plaintiffs appeal.

They claimed the right to use and possess the land in controversy under a lease from the Central Pacific Railroad Company, who had derived its title by deed from Charles Crocker, and he by deed from the "Contract and Finance Company." The defendants claimed that the land was dedicated to the use of the public as a street in the town of Biggs, in Butte County, before the plaintiffs obtained their lease.

The main question at issue here is whether the tenth finding of fact in reference to that dedication is sustained by the evidence. The plaintiffs claim that the street was dedicated only to the extent of sixty feet in width, but admit that if the dedicated width was of as much as eighty feet then the judgment and order should be affirmed.

The theory of the case as presented by the appellants seems to be that Charles Crocker (in whom the legal title was vested by the Contract and Finance Company on October 26, 1875), by his deed of April 28, 1886, conveying to the Central Pacific Railroad Campany a strip of land ninety feet wide, which was a part of the land he acquired by his deed from the Contract and Finance Company, revoked any offer of dedication of the land in controversy as a street which had been before made, and that this revocation took place prior to any acceptance by the public of the street.

There was evidence which tended to show that as early as 1870-1871 there was a map made of the town of West Biggs by the then owner of the land, upon which there was laid out blocks and streets, which last were all indicated to be eighty feet wide, except the one in controversy here, called "California street." Between the east line of the blocks of land, as laid out, and the track of the Central Pacific Railroad, that map shows a space of 150 feet wide, in which is written the words "California street." While the Contract and Finance Company owned land in Biggs, they made deeds to V. Bunnell, J. R. Buffington, M. Rosenberg and T. R. Fleming of certain portions of it described as being in certain "blocks" as laid down on that map. When Crocker became the owner he made deeds of other lands so described, with reference to that map, to T. R. Fleming, Benjamin McVay, Sylvanus Shurtleff, S. Stockwell, William Bolt and Barney Mushholt.

The map as originally made contained the words, between the front of blocks on the west side of the railroad track, "California street." A line in pencil running along the space between the front row of blocks on the west side, and the railroad track, and running through the written words, "California street," indicated the street as sixty feet wide. This line was run in pencil just before the deed of Charles Crocker to the Central Pacific Railroad Company, which deed was not made until April 28, 1886, many years after the map was made, and the deeds to the various parties to whom Mr. Crocker and the Contract and Finance Company had sold blocks or parts of blocks of land with reference to the map, the first deed of the latter having been made as early as August 18, 1873, and the earliest of the former having been May 15, 1878, the last of these deeds to individuals having been made by Mr. Crocker on October 11, 1884.

The evidence introduced by the defendant tended to show that the public had used this strip marked "California street" as a highway or street for about fifteen years before the commencement of this action, to the extent of eighty feet wide, and that the encroachments removed by the defendant were upon the line of the street, taking it at eighty feet.

It is apparently claimed by the plaintiffs that even if a dedication of the street at eighty feet wide had been offered by the making of the map and the sale of land with reference thereto, that when Charles Crocker, in 1886, deeded the ninety feet wide strip to the Central Pacific Railroad Company, that this was a revocation of the offer, and that up to that time the public had never accepted the dedication by user.

It was said in People vs. Reed, (81 Cal. 79): "Conceding that a platting of property and sale of lots constitutes a dedication, as between the owner and purchasers under him, of the streets delineated on the map, in order to constitute a dedication which can be taken advantage of by the public authorities of a city, the offer of dedication must have been accepted by such authorities, either by user or some formal act of acceptance." And at page 80 it said: "Such acceptance must be within a reasonable time after such offer of dedication, and if not accepted, the owner may resume the possession of the property and thereby revoke his offer."

Tested by these rules, which seem to have been approved in City of Eureka vs. Croghan (81 Cal. 527), and City of Eureka vs. Armstrong (83 Cal. 623), it appears to us that in this case there existed a sufficient offer of dedication, by the making of the map, and the sale of lands with reference thereto. The user by the public for a long time prior to what is claimed to have been a revocation by the deed of Charles Crocker to the Central Pacific Railroad Company, under whom the plaintiffs claim by lease of the premises, is a sufficient acceptance of such offered dedication to make it complete before the attempted revocation, at least to the extent of a street eighty feet in width, which is enough for the purposes of this matter.

The further point is made that Charles Crocker, as trustee of the Central Pacific Railroad Company, had no authority to dedicate the land for a street. It does not appear distinctly from the record, whether the Contract and Finance Company or Mr. Crocker first made the map, but they both sold land with reference to it, and the land was accepted by the public in using it as a street and highway, as against both of them. But in addition to this, there is nothing in the record to show any trust expressed in the deed from the Contract and Finance Company to Crocker. On the face of the deed it must be presumed that he took the fee simple title to the land. (C. C. P. Sec. 1105; Mabury vs. Ruiz, 58 Cal. 11-15.)

There is nothing in the evidence sufficient to rebut this presumption, or to show any kind of a trust capacity which Crocker bore inconsistent with the right to dedicate the land. At the most the *parol* evidence was a declaration or opinion of the witness that Crocker held the land in a trust capacity, but as to the character of that trust no evidence whatever is given. We think the evidence sufficient to sustain the finding, and advise that the judgment and order be affirmed.

FOOTE, C.

I concur:
VAN CLIEF, C.
I concur in the conclusion.
HAYNE, C.

THE COURT.

For the reasons given in the foregoing opinion the judgment and order are affirmed.

[Filed March 7, 1891.]

IN BANK.

WILLIAM W. WREN, Respondent, vs. JOHN M. MANGAN AND R. E. HYDE, Appellant. } No. 13,424.

THE COURT.

When this cause was pending in department an opinion was prepared by Commissioner Belcher. After hearing in bank, and due consideration of the case, we are satisfied with that opinion, and with the conclusion therein reached. The opinion is as follows:

"This action was brought to determine a contest as to the right to purchase from the State a certain half section of swamp and overflowed land, situate in Tulare County. The trial court gave judgment for the plaintiff, from which and from an order denying him a new trial, the defendant, Hyde, appeals.

"The material facts of the case are as follows: On the 2d day of July, 1879, the defendant, Mangan, filed in the State Surveyor-General's office his application to purchase a section of land under the law providing for the sale of swamp and overflowed lands. At that time the township in which the section applied for was situated, had not been surveyed, and the section had not been segregated as swamp and overflowed land by authority of the United States. In 1880 the township was surveyed in the field, and on the 9th day of February, 1881, the township plat was approved by the United States Surveyor-General and filed in his office.

"On this plat the section was marked and designated as swamp and overflowed. At the time of filing his application Mangan was qualified to purchase swamp land from the State, and the application was verified and stated all the facts required by law for that purpose. It also had attached to it a certificate of the County Surveyor that he had surveyed the section, and a certificate of the Register of the United States Land Office of the district, in which the land was situated, that there was no pre-emption, homestead, or other filing of record in his office on the said section. The application remained unacted upon until the 22d day of September, 1883, when it was approved by the Surveyor-General, and thereafter, on the 24th of November following, a certificate of purchase for the land was issued to Mangan. Afterwards, by mesne conveyances and assignments, defendant Hyde became the successor in interest of Mangan in the land and certificate.

"In February, 1888, the plaintiff settled on the north half of the section, applied for by Mangan, and on the 17th day of March following he filed in the State Surveyor General's office his application to purchase the half section so settled upon. The application was properly verified, and stated, among other things, that the land applied for was suitable for cultivation, and that there were no settlers thereon other than the applicant, and that he was an actual settler thereon. Plaintiff also filed at the same time his verified protest against the issuance of any further evidence of title to the said half section to Mangan or his successor in interest, on the ground that the said land was not segregated by authority of the United States until the year 1881, and that the same was suitable for cultivation, and neither Mangan nor his successor in interest had ever been a settler thereon.

"The contest thus raised was referred for determination to the Superior Court of Tulare County, and this action was thereafter commenced in proper time.

"As conclusions of law from the facts, the court below found as to the plaintiff, that he was entitled to purchase the land applied for by him and to have his application approved by the Surveyor-General; and as to the defendants, that the application of Mangan and the certificate of purchase issued thereon, in so far as they relate to the lands in controversy, were illegal, null and void, and that neither of the defendants had any right to purchase the said land, or any right, title, interest or estate therein.

"1. The first point, made for a reversal of the judgment, is that the evidence was insufficient to justify the findings, that the land in controversy, and each legal subdivision thereof, was suitable for cultivation, and that the plaintiff was an actual settler thereon when he filed his application. This point cannot be sustained. It is unnecessary to recite the testimony, but, in our opinion, it was amply sufficient to establish both propositions.

"2. The only other point presented is that one seeking to purchase swamp land may make his application to purchase the same before the land is segregated to the State as swamp and overflowed by authority of the United States, and that Mangan's application was, therefore, not prematurely filed. But in Garfield vs. Wilson (74 Cal. 178) this court held otherwise. In that case it was said that 'since 1874 no application to purchase swamp land has been authorized until after the land has been segregated as such by authority of the United States,' citing Sections 3441, 3443 and 3445 of the Political Code. That decision, if correct, and we think it is, is decisive of the question. (See also Tubbs vs. Wilhoit, 73 Cal. 61.)"

For the reasons given in the foregoing opinion the judgment and order appealed from are affirmed.

[Filed March 7, 1891.]

IN BANK.

IN RE, VANCE. } No. 13,594.

This appeal is from a judgment in a case of contempt, and the respondent moves to dismiss the appeal on the ground that an appeal does not lie in such a case because it is provided by the Code of Civil Procedure that "the judgment and orders of the court or Judge, made in cases of contempt, are final and conclusive." In Tyler vs. Connolly, 65 Cal. 30, the question is carefully considered, and the conclusion reached that no appeal lies from a judgment imposing a fine of more than $300 for a contempt of court, expressly overruling People vs. O'Neil, 47 Cal. 109. Tyler vs. Connolly was followed in Sanchez vs. Newman, 70 *Id.* 210.

We see no ground for disturbing the rule laid down in Tyler vs. Connolly, *supra*.

Appeal dismissed. SHARPSTEIN, J.

We concur:
MCFARLAND, J.,
DEHAVEN, J.,
GAROUTTE, J.,
HARRISON, J.,
PATERSON, J.,
BEATTY, C. J.

[Filed March 7, 1891.]

IN BANK.

THE PEOPLE, Respondent, vs. CHEW SING WING, Appellant. } No. 20,661.

The defendant was by information charged with the murder of one Leuy Jing. He was tried and convicted of murder in the first degree, and sentenced to be imprisoned for life. He appeals from the judgment and order refusing him a new trial.

Upon the trial one Chang Fook, a witness for the people, testified: "I was going up Baker's alley on the night of the 13th of July, 1889, in San Francisco. * * * I saw Leuy Jing coming down the alley and the defendant coming seven or eight steps behind him. I saw the defendant fire a pistol at Leuy Jing. After the defendant fired the shot he ran back up the alley, while Leuy Jing kind of hurried off down towards Dupont street. * * * When I saw Leuy Jing shot he ran down the alley. * * * He said, 'save life,' and he said 'Sun Wing has shot me.'"

There was also introduced the dying declarations of the deceased, which were in substance that the defendant shot him; that he turned and saw him; that defendant followed him out of his room. He further said: "He accused me of asking Cum Moon for money. I did not attempt to hurt him or any one."

This was all of the evidence in the case tending to show the circumstances of the shooting, and the court gave the following instruction to the jury:

"If the testimony bearing upon the question of the killing, so far simply as the deceased is concerned, and the means by which he came to his end, are believed by you, it would undoubtedly make out a case by the prosecution of murder in the first degree, under the statutes. The testimony tends to show under the circumstances that the killing—whoever committed it—must have been deliberate, must have been premeditated, must have been unlawful, and must have been malicious. All the elements of murder in the first degree occur upon the testimony, if believed, as given in the case, and by the conversation of certain persons. The only question would be as to who committed the murder. The testimony is, I believe, uncontradicted, that this man, the deceased, was shot in that alley, in what is called Chinatown in this city, in the night, in the back, that he ran a short distance, fell and was picked up, and died of that wound, and that the murderer—so far as the immediate evidence is concerned, as to the act of killing—escaped from the spot without any further detection than this given by the testimony of one witness who professes to have seen the transaction."

This instruction contravenes Section 19 of Article VI. of the Constitution of this State, which declares: "Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law." (People vs. Ybarra, 17 Cal. 171; People vs. Ah Lee, 60 Cal. 85.)

In People vs. Ybarra, *supra*, the court, speaking through Cope, J., say: "This provision is violated whenever a Judge so instructs as to force the jury to a particular conclusion *upon the whole or any part of the case*, or to take away their exclusive right to weigh the evidence and determine the facts. The meaning of the provision is that the Judge shall decide upon the law, and the jury upon the facts, and that the former shall not invade the province nor usurp the powers of the latter. The Judge has no more right to control the opinion of the jury upon a matter of fact, than the jury have to disregard the directions of the Judge upon a matter of law."

There is no question arising in a trial for murder, more peculiarly or purely one of fact, than the one whether the killing was done with deliberation and premeditation, or in the decision of which so much is necessarily left to the sound sense, discretion and experience of the jury who, under the Constitution, are made the exclusive triers of that issue. In People vs. Ah Lee (60 Cal. 86), this court said: "And we think it to be well settled in this State, that it was error to instruct the jury that there were no circumstances in the case to reduce the offense below that of murder in the first degree. The question whether the killing was perpetrated with the deliberation and premeditation necessary to constitute it murder in the first degree, was one which it was 'peculiarly the province of the jury to determine.'"

If the witnesses in this case had testified to a taking of the life of deceased, under any of the circumstances enumerated by Section 189 of the Penal Code as conclusive evidence of murder in the first degree, such as by means of poison, lying in wait or torture, it may be that an instruction in the form given by the court below could be upheld, as in that case, if the evidence were true, it could be said as a matter of law, that the crime committed was murder in the first degree because the act itself is made conclusive evidence of the fact that it was willful, deliberate and premeditated. But the question arising upon the evidence here is far different, and whether the shooting of Leuy Jing was willful, deliberate and premeditated was purely a question of fact to be determined as an inference from all the circumstances surrounding the act, and was solely a matter for the jury to find and declare for themselves. No matter how clearly it may have appeared to the court that the circumstances or manner of the killing, as given by the witness, would, if truly given, furnish sufficient evidence of everything essential to make the killing murder in the first degree, still the Constitution forbade the Judge to announce his conclusion to the jury, and the defendant was entitled to have that question submitted for decision to the jury alone, as being the only persons authorized to pass upon it, and was entitled to a verdict, based upon their own judgment, entirely uninfluenced by the opinion of the court as to what inferences of fact should be drawn from the evidence relating to this particular fact.

2. Nor are we permitted here to weigh the testimony for the purpose of determining whether the verdict of the jury is not right upon the evidence. What was said by the court in People vs. Valencia (43 Cal. 556) is in point here: "We are not justified in saying that the error was productive of no injury to the defendants, because we may be satisfied that the jury ought to have found from the evidence, as they did, that the defendants are guilty of murder in the first degree. The question as to the deliberation and premeditation of the defendants is one which is peculiarly the province of the jury to determine; and should we sustain the charge of the court, because of the apparently satisfactory character of the evidence, that question would virtually be withdrawn from the jury."

3. The error in this charge was not cured by this subsequent statement of the court: "I am not allowed to assist you in any way by suggestions on the testimony. And if you should think that there is any intimation of my opinion, or anything else, you should utterly disregard it. It is only your business to decide these questions of fact."

This was not a withdrawal or a qualification of the former statement of the court, that the killing of Leuy Jing was murder in the first degree, if the witnesses for the prosecution were believed.

Other parts of the charge are excepted to, but it is not necessary to pass upon any other assignment of error in the case.

Judgment and order reversed.

DEHAVEN, J.

We concur:
MCFARLAND, J.,
GAROUTTE, J.,
HARRISON, J.,
PATERSON, J.,
SHARPSTEIN, J.,
BEATTY, C J.

THE COURT.

For the reason given in the foregoing opinion the judgment and order appealed from are affirmed.

[Filed March 7, 1891.]

IN BANK.

EDWARD MOORE, Appellant, vs. J. F. MOODY, Respondent. } No. 13,618.

This is an action to recover the sum of $450 80, balance of account, for goods alleged to have been sold and delivered by C. E. Williams & Co., plaintiff's assignors, to defendant. The answer denied all the material averments of the complaint. The court below found upon all the issues against the plaintiff, and gave judgment for the defendant, from which and from an order denying a new trial plaintiff appeals.

It is claimed for appellant that the findings of fact were not justified by the evidence, and that the judgment should therefore be reversed. No brief has been filed on behalf of respondent.

The seventh finding reads as follows:

"The said C. E. Williams & Co. did not sell to the defendant any of said merchandise, and defendant did not purchase the same, and the defendant was not at the time of the commencement of this action and is not indebted to the plaintiff in any sum."

This finding, if justified, is conclusive of the case. And, after carefully reviewing the testimony brought up in the record, we think it is justified and must be sustained.

No useful purpose would be accomplished by stating the probative facts at length, and we therefore omit to do so.

We advise that the judgment and order appealed from be affirmed.

BELCHER, C.

We concur:
VAN CLIEF, C.,
FOOTE, C.

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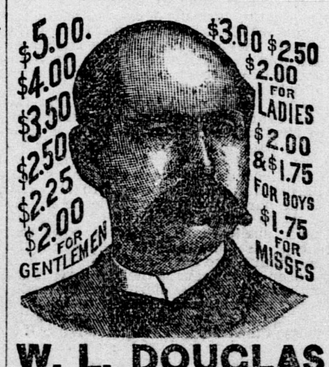

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WEAK MEN MADE STRONG FREE TO ALL MEN! Sealed Treatise, explaining absolute and perfect CURE without stomach drugging, for Lost Manhood, Nervous Debility, Lack of Vigor and Development, Premature Decline, Functional Disorders, Kidney and Bladder Diseases, etc. Address THE MARSTON CO., 19 Park Place, New York, N. Y.

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 Beauty Of It

"Is that Hood's Sarsaparilla gives such perfect satisfaction," writes a prominent druggist recently, after speaking of the large sales of this excellent medicine. We firmly believe there is nothing equal to Hood's Sarsaparilla to purify the blood and make the weak strong. If you have That Tired Feeling, or if your blood is impure take

Hood's Sarsaparilla

Changed Daily for the Red House.

In our new spring stock of Hats and Bonnets find every synonym for caprice, and all the fantastic vocabulary will but mark the strange vagaries of present fashion. New goods daily. Eastern prices.

MILLINERY PARLORS.

BLACK HOSIERY!

Everybody wants black. That's correct. It's the style. Everybody's crow is the blackest. We give our brands and prices. We are satisfied ours are as good as the market holds. Never mind if our prices are a little below others. We warrant the goods:

Infants' Hermsdorf Imported Black Cotton Hose, positively fast, 4 to 5½, 25c per pair.

Infants' Black Imperial Lisle Thread Hose, with silk heels and toes (the Daisy dye), 50c per pair.

Misses' Fast Black (Hermsdorf dye) Ribbed Hose, double knees, heels and toes, extra length, 25c per pair.

Ladies' Hermsdorf Dye Black Cotton Hose, guaranteed not to crock or stain, 25c per pair.

Ladies' Hermsdorf Black Lisle Hose (the Sewgal brand), absolutely fast and stainless, spliced heels and toes; extra fine quality, 45c per pair.

Ladies' Black Cashmere Hose, all wool, fast dye, silk heels and toes, 75c.

Ladies' Black Italian All-silk Plaited Hose, 75c.

Ladies' Black, all pure silk, double heels and toes; warranted stainless; London length, $1 per pair.

Men's Lisle Fast Black Half Hose, 25c per pair.

C. H. GILMAN, RED HOUSE, Sacramento, Cal.

OPENING, ON OR ABOUT MARCH 18th.

THE FINEST AND MOST COMPLETE STOCK OF

Imported Millinery

EVER PRESENTED.

625 J STREET. 625 J STREET.

Miss S. T. Mi Hoover,

(LATE OF NEW YORK), PROPRIETRESS.

THIS WEEK —WE WILL SELL— CALIFORNIA GLAZE FRUIT —AT— FIFTY CENTS PER POUND.

Send a Box to Your Eastern Friends.

H. FISHER & CO., 510 J STREET. mr1-tf

J. O. WACHTER. B. C. BECK.

WACHTER & BECK, (Successors to Oscar S. Flint)

Ice Cream and Candy Parlors

WHOLESALE ICE CREAM ORDERS A SPECIALTY.

NO. 824 J STREET. mr12-tf

GUTHRIE BROS., PRACTICAL PLUMBERS, STEAM AND Gas Fitters. Roofing and Jobbing. Terms reasonable. 127 J street.

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
12:50 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
	Central Atlantic Express	
11:00 P	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 P
*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.

A RARE OPPORTUNITY

Good Agricultural Land for $10 to $20 per Acre.

The Pacific Improvement Company has recently purchased twelve thousand acres of land in the heart of Tehama County, for the purpose of promoting subdivision and settlement. This land embraces lands from first-class Sacramento Valley agricultural land, to land of fair average quality, and is offered at from $10 to $20 per acre, in subdivisions of 40, 80, 120, 160 and 320 acres.

The terms upon which these lands are offered are especially attractive. They will be sold in subdivisions, as above indicated, by the payment of interest only for three years, at which time the purchaser can begin the payment of principal by paying the first of five equal annual installments. Thus no part of the principal is to be paid for three years, and then the purchaser is to have five years in which to pay five equal annual installments, with interest at the rate of 7 per cent. per annum, making payments extending over a period of eight years. Intending purchasers are assured that this is an opportunity to purchase land of fair average quality at $10 per acre, and good agricultural land at $20 an acre, with other grades of land at prices to correspond between these figures.

The assertion is frequently made that good lands, suitable for general farming, and especially adapted for fruit-growing, cannot be had in California for less than from $60 to $100 an acre. An examination of the land subject of this advertisement will prove to home-seekers that this is an opportunity for the purchase of good agricultural land at $20 an acre, and for qualities grading down to fair agricultural land at $10 an acre, on terms of payment which should make the disposition of these lands to actual settlers a result easy of accomplishment.

The primary object of the purchase of this body of land was the breaking up of a large holding for the purpose of promoting its settlement in smaller quantities and its devotion to diligent husbandry.

For further particulars call upon, or address, WM. H. MILLS, Land Agent of the C. P. R. R., Fourth and Townsend sts., San Francisco, Cal. fe14-2m

NOTICE TO THE PUBLIC.

HAVING PURCHASED THE YOLO Market of Dobner & Co., we will not be responsible for any debts contracted by Dobner & Co. before our purchase. mr12-3t A. J. STIER & J. DANQUART.

PHELAN BUILDING, SAN FRANCISCO, Cal., March 14, 1891.—Sealed proposals, in triplicate, will be received here, and at the offices of the Acting Commissaries of Subsistence at the following posts, viz.: Alcatraz Island, Angel Island, Benicia Barracks, Presidio of San Francisco, Forts Bidwell, Gaston and Mason, until 12 M. MONDAY, April 27, 1891, and then opened, for furnishing the Fresh Beef and Fresh Mutton, from the block, that may be required at those posts by the Subsistence Department, during the fiscal year commencing July 1, 1891. Preference given to articles of domestic production, conditions of quality and price (including in the price of foreign production or manufactures the duty thereon) being equal. The Government reserves the right to reject any or all bids. "Circular of Instructions to Bidders" will be furnished on application to the Post Commissaries, or to JOHN P. HAWHINS, Lieut. Col., A. C. G. S., U. S. A. mar15-16-17-18-m&p25-26