

PLAIN TALK.

The Supreme Court Knocks Out a Fresno Judge.

He Pursued a Course That, While Novel, is Declared to Be Unlawful.

The case of Montgomery vs. Sayre, executor (appellant), was decided yesterday and filed in the office of the Deputy Clerk of the Supreme Court in this city.

The action was brought in Fresno County, on a promissory note executed by Sayre to the plaintiff. It was given to secure the payment of the note of the Pioneer Gold Mining Company to the plaintiff for \$10,000. This last note was indorsed by William S. Chapman and is secured also by a mortgage on the Pioneer mine.

It further appears that there was a prior mortgage executed by the company on the Pioneer mine, on which a suit of foreclosure was brought, and in this suit the plaintiff, who was one of the defendants therein, filed a cross-complaint, asking that his mortgage be foreclosed. This was done and an order of sale issued directing the proceeds of the sale of the mine under the decree to be applied, first to the payment of the prior mortgage, and the remainder upon the plaintiff's mortgage. The sheriff's return showed a deficiency on the second debt to plaintiff, amounting to \$61,534.13. Judgment for this deficiency was docketed against the mortgage company and W. S. Chapman.

This action was brought on the note to recover the amount claimed to be due thereon, to be paid by the defendant in due course of administration.

It is set up in answer that the \$10,000 note had been fully paid, and was denied that any sum remained due and unpaid thereon. Other allegations of the complaint were denied.

The case was tried by a jury and a verdict rendered in the form of questions, but appeared that the trial proceeded after the return of the verdict and the court subsequently rendered its decision finding on all the issues in the case, disagreeing with the jury, and rendering judgment for the plaintiff for a sum of money. He appeals from the judgment.

The Supreme Court says the findings of fact by the jury upon which the judgment is based are not supported by the special findings of the jury. The jury found Chapman's lands in Fresno County to be worth \$12,800. The court finds that \$65,000 was the reasonable value of the lands. The jury found that Montgomery, the plaintiff, did release Chapman from all claims against him, and that Montgomery did not agree to release Chapman.

"These are vital issues in the action," says the Supreme Court, "for Sayre was in law a surety and a guarantor, and, although, except so far as he may be indemnified by the principal, if by any act of the creditor or the guarantor, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal are impaired or suspended, it seems that all the issues involved were not submitted to the jury, and for that reason the verdict may be termed an incomplete and imperfect special verdict."

This court will indulge in all proper inferences necessary in order to support the verdict, and in a case where an appeal is presented to us solely upon the judgment roll, but we think upon the face of this record there is sufficient to indicate that this trial court lower court took not only a novel but inconsistent and unlawful course. In this case a jury was impaneled and a verdict rendered in its favor, and it is unnecessary to closely scrutinize that verdict to ascertain whether it is defective and informal or complete and perfect. It was the verdict of a jury placed in the box to try the cause, and it

cannot be disregarded. Until set aside and vacated by the court, as we have already seen, the court made findings directly contrary to this verdict, and this action of the court was in effect to vacate and set it aside. It is immaterial whether such action was had by reason of defects and informalities in the verdict, or whether the evidence was such as to indicate that it was rendered through passion or prejudice, or from any other cause, and that result would be that a new trial should have been ordered. Such is necessarily the law, for if it were otherwise, parties would be deprived of their right to a trial by jury.

When the trial court set aside and vacated the verdict it was its duty to order a new trial. It had no power to proceed to determine the cause, as the court cannot do so until a new trial is ordered, and it is immaterial whether such action was had by reason of defects and informalities in the verdict, or whether the evidence was such as to indicate that it was rendered through passion or prejudice, or from any other cause, and that result would be that a new trial should have been ordered. Such is necessarily the law, for if it were otherwise, parties would be deprived of their right to a trial by jury.

We therefore conclude that the verdict was set aside and vacated by the court and that the court had no power to proceed and determine the cause, but should have ordered a new trial. Let the judgment be reversed and the cause remanded.

The opinion is written by Justice Gantt, and concurred in by Chief Justice Beatty and Justices DeHaven, McFarland, Paterson and Harrison.

EVERYBODY'S COLUMN. Correspondence of Interest to the General Public. Under this heading the RECORD-UNION will publish short letters from correspondents on topics of interest to the general public. The matter in these communications will be deemed to represent only the views of the writers. All communications should be accompanied by the name of the writer, not for publication, unless so desired, but as a guarantee of good faith.

Sarcasm "Judge." Eds. RECORD-UNION: The wonderful sympathy of the Saturday Evening Bee for Dr. Heider, a Christian minister, is very touching. The facts are that before the doctor had the temerity to talk to our honorable Board of Supervisors he had been in our midst, off and on, for four or five months, carefully studying our social and convivial habits, with the deliberate intention of coming here and making war on the business and influences of our four hundred liquor establishments, so that he was by no means an entire stranger to the subject he is about to touch about. He is now entrenched in the Calvary Baptist Church, and organizing a desperate attack on our established institution. He is actually enticing our young men away from the very doors of our saloons and persuading them to join a great Sunday Bible class for young men, which is now being organized in this church.

Now, we old citizens must stop this kind of his in some way. These young men are the main support of our saloons, and if they should become Christianized they might wake up the old church members, whose friendly neutrality has hitherto been of such good service to us. I tremble when I think what the effect would be on this city, its saloons and gambling houses, if all the Christians should unite and earnestly work together for what they profess to believe. I do not think, however, there is any immediate danger of such a calamity, we have known them so long and so intimately.

The fight, however, is getting desperate and the outlook very discouraging. The license tax law recently passed has compelled a score of our saloons to stop their business, and the very ones which were the main support of our saloons, and where the children are sent to buy bread and groceries and whence they first learn to drink and afterwards become our best customers. We must stop this crushing high-

ly business in some way, for it hits us the hardest in our pockets, where it hurts the most. Our only hope now seems to be to induce the prohibitionists to join us in fighting it, because this will divide the temperance forces, discourage the high license party and enable us to get the obnoxious tax repealed. And now if the good temperance ladies will only help us out in this way, in this time of our extremity, we'll never forget them—no, never.

EXPLAINED IN COURT.

Why Three Chinamen Were Charged With Robbing a Woman.

When the cases of Fong Ah Him, Fong Ah Leung and Fong Ah Moy, charged with robbing a Chinese woman, were called in the Police Court yesterday City Attorney Hart arose and stated that the matter had either been settled between the Chinese companies or else no robbery was ever committed and the charge was simply one that had been "trumped up." He stated that about a week ago, when the court was called to consider that any robbery was committed in administering sentence, as he could prove by the testimony of the woman, herself, that nothing was taken from her. The woman was allowed to testify, and also two Chinamen who are respected more than any other merchants in Chinatown. They stated that about a week ago, when Goo Wah, the Chinese girl who took poison, died, a Chinese girl came to the house with some sacred paper which she had burned on such occasions. The head woman in the house (the prosecuting witness in the case) refused to allow the paper to be burned, and the girl was allowed to testify, and the paper did not burn when lighted the house was "tabooed" forever. She accordingly sent the girl back with the offering.

Shortly afterward the three defendants came over to the house and wanted to know why the occupants would not burn the paper. A few angry words were said and the three men engaged in a fight with another Chinaman. The woman was struck in the face during the scuffle. She cried that the man who had taken her in the fight, was found next day on the floor.

Judge Cravens fined Fong Ah Leung \$15.

THE SHOWER.

There Was Enough of It Yesterday to Be Measured. The Government weather reports show that during the shower of yesterday there was .02 of an inch of rain, making a total for this season .05 of an inch against a trace to an equal date last year. The highest and lowest temperature yesterday were but 70° and 56° as against 80° and 54° on the same date last year. The highest and lowest one year ago to-day were 76° and 52°.

The first appreciable precipitation last year occurred on the 28th and 29th of September, when there was .30 of an inch measured.

POLICE TRIBUNAL.

Several Cases Disposed of Yesterday by Judge Cravens. In Judge Cravens court yesterday William Dunston pleaded guilty to a charge of disturbing the peace, and was ordered to appear to-day for sentence.

W. J. Crosby pleaded guilty to a charge of vagrancy, but the testimony did not prove that he was really a vagrant. Judge Cravens ordered him to appear to-day for sentence.

Thomas Murray was sent to the County Jail for six months for petty larceny. The case of Frank Silva, charged with battery, was continued until to-day.

At the railroad office in this city yesterday rain was reported to have fallen at many stations along the Oregon road, in the Sacramento Valley and above. A pile of railroad ties were discovered on the near Webster Station last evening, and the water-train was sent out from this city to extinguish the blaze.

Newly Incorporated. The following articles of incorporation were filed in the Secretary of State's office yesterday: Union Club of Santa Clara, organized to improve the moral, mental and physical condition of its members. Directors: L. H. Herrington, L. M. Fajó, L. F. Duncan, J. B. O'Brien and George Bray.

Seventy-five Days for Cole. Frank Cole, the young man who attempted to commit a criminal assault upon May Arnold, but who was allowed to plead guilty to a charge of battery, was sentenced to seventy-five days' imprisonment yesterday by Judge Cravens.

O'Brien from Chico. A man named O'Brien called at the Police Station yesterday morning, with his pants in a sadly dilapidated condition. His pockets had been cut out, and he claimed to have been robbed of \$50. He hailed from Chico.

Berlin Cough Cure. For coughs and colds and all lung and throat affections this article has superior merit. It is perfectly safe, gives immediate relief and cures the worst cases in from two to three days. Indorsed by our best physicians. Try a bottle and you will always keep it. Price, fifty cents a bottle. The W. H. Home Company, San Francisco, sole proprietors. Getty & Co., sole agents. Try C. C. Liniment for aches and pains.

Sacramento, March 27, 1890. JOHN F. COOPER—Dear Sir: I had occasion to remark, Jules Levy, in the Metropolitan Theater, to try and to carefully test your "Machines" and I am now able to congratulate you upon the highest state of perfection these splendid machines have reached. EDWIN M. SHONBERG.

What three away your money on worthless Sewing Machines when you can get one to buy a "Domestic" Office car. Ninth and J. HAMMER'S RUBBER STAMP, No. 320 J street. Sole agency for Chetkoff & Sons' pianos, Clough & Warren organs; also cheaper makes.

REDDING'S Burns and Scalds are quickly relieved by applying Russia Salve. Its cooling nature allays the pain, and gives a soothing effect to the parts affected. As a Dressing for all wounds and sores, it is superior to every other preparation. Ask your Druggist for it. Price 25c, 50c, and \$1.00 a box.

THEY ARE INDUSTRIOUS.

Robbers and Garroters Making Hay While the Sun Shines.

The Police Are Having a Hard Time with Them—Another Garroting Case Last Night.

Notwithstanding the fact that the police have been keeping a close watch on the alley between Third and Fourth, J and K streets, where considerable garroting has been going on, another pedestrian "was stood up" there last night, and after being brutally beaten, was relieved of what few things of value he possessed. The victim's name was Ezra B. Batters, and he only arrived here from Oakland yesterday. He was making a "short cut" through the alley to the postoffice, shortly after midnight, when he was suddenly pounced upon by three men who had been

HIDING IN A DOORWAY leading into one of the K-street dives. One of the footpads struck him down, before he could call for assistance another of the men knelt upon him and held both hands over his mouth, while the other two robbers went through his pockets.

Batters was relieved of \$9 50 and a nickel watch. But the thieves were not satisfied with robbing their victim, and before leaving him kicked him cruelly about the head. Batters was taken to his lodgings, on Fifth street, by a citizen. He says he could not possibly identify the men, as the place was dark and they sprang upon him before he could realize what was taking place.

After robbing and beating Batters the footpads ran back into the saloon, whence they had come. There are several of these saloons which have rear entrances from the alley, and they afford splendid opportunities for the robbers to do their work and escape.

Shortly after 4 o'clock yesterday morning Special Officer Brady was informed that burglars had broken into Haumer's music store on J street, above Eighth.

The officer says he went to the place immediately and found a number of musical instruments lying in the doorway of the store. He says that the thief would return for the articles, Brady says he secreted himself near by and in a short time his patience was rewarded by the appearance of the burglar. He immediately and found a number of musical instruments lying in the doorway of the store.

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ago, and experts pronounced it one of the cleverest set-tos they ever saw.

CAUGHT A TARTAR.

An Athletic Attorney Gets Into Trouble at the Park.

There was quite a commotion yesterday afternoon at the racetrack. Assistant Marshal Spurgeon ordered Plaintiff, who is a young attorney, who recently located in this city and went into partnership with ex-Judge Armstrong, went out to the track to see Superintendent Hancock on some business. The latter went over to the judges' stand and left the attorney standing on the racetrack, telling him to wait there for

While the Superintendent was absent the judges gave the signal for the gates to be closed and the track cleared. Assistant Marshal Spurgeon ordered Plaintiff out of the track, but the latter declined to leave, saying that the Superintendent had told him to remain there.

Some words were exchanged and then Spurgeon got off his horse and started to forcibly put the lawyer out of the track. Plaintiff, who is a young attorney, who recently located in this city and went into partnership with ex-Judge Armstrong, went out to the track to see Superintendent Hancock on some business.

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Men's Sanitary Undershirts, medium weight, with double front, buttoning on shoulder. Prices, \$3 90 to \$4 75 according to sizes. Men's Heavy-weight Sanitary Undershirts or Drawers, natural gray color, \$4 20 to \$4 90, according to sizes. Men's Sanitary Wool Nightshirts, \$5 to \$5 50, according to sizes.

Dr. Jaeger's Combination Suits of Underwear for ladies' wear, natural gray, very soft and fine, \$4 50 to \$5 90 per suit, according to sizes. Ladies' Sanitary Wool Undershirts or Pants, \$2 55 to \$3 75, according to sizes. Dr. Jaeger's Sanitary Wool Hosiery for ladies' wear, in natural gray or fast black, \$1 to a pair.

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FIRST—Because we have a large out-of-town as well as city trade, giving us by far the largest outlet for goods enjoyed by any firm in this vicinity. We can therefore buy and sell at low or lower than others. SECOND—A large portion of our stock having just been purchased in the East and made specially to our order must necessarily present the latest styles and freshest goods.

THIRD—We deal only in Clothing of the most reliable manufacture and cannot afford to sell what will not give satisfaction. Many is the man or parent in Sacramento who to-day, if they knew about it, would be glad to avail themselves of the advantages presented by this collection of Clothing. Is it not possible this may concern you?

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FINEST LINE OF FRENCH BONNETS AND TOQUES

In the city to select from at



MRS. M. A. PEALER'S, 619, 621 and 623 J Street.

BIG VALUES IN CARPETS AND FURNITURE

CHAS. M. CAMPBELL'S, 400 K St.

See our PINE BEDROOM SET (8 pieces), \$17. WIRE SPRINGS, \$2 50. PATENT KITCHEN TABLES, \$4.

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FALL DRESS GOODS.

Same must move at once. Price, 15c a yard. Will you see the assortment?

WHY

We say little in reference to our Shoes? It is because the popularity of the lines we carry advertise themselves so thoroughly that it is unnecessary. People appreciate good value, and are prone to talk of it to their neighbors.

HERMSDORF DYE FAST BLACK SOCKS

Full regular made, 3 Pair for 50 Cents.

H. MARKS,

Proprietor Mechanical Clothing Store, 414 K Street.

When Baby was Sick, we gave her Castoria.

When she became a Child, we gave her Castoria.

When she became a Man, she clung to Castoria.

When she had Children, she gave them Castoria.

Miscellaneous.

Woven Wire Mattresses, - - \$2 75 Bed Lounges, - - - - 12 00 Solid Walnut Wardrobe, - - 22 00 Antique Bedroom Set, 7 pieces, 24 00

These are only a few of the many bargains to be found at

L. A. JACOX & CO'S.

Call and see our fine stock of Furniture * and * Carpets.

Store Open Every Evening till 8 o'clock. 920 AND 922 K STREET.

A LIFE SAVED!

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WILLIAM BENJAMIN TRIGGS, 616 K Street, realized that he was a sick man. He would arise in the morning feeling tired; his nerves were weak; he had a general, irritable, and a perfectly cured man. He could not eat or sleep well and he began to go into a decline. He preferred good food to sympathy and instead of waiting until he was past his prime he sought relief in the best of medical science. His case was one of general debility. He took four weeks' treatment and was discharged a perfectly cured man. Mr. Triggs will gladly corroborate this statement.

Sufferers from CATARRH, Bronchitis and all other Lung troubles, are permanently cured. NEURVOS DEBILITY, resulting from excess of sexual excitement, loss of memory, ambition and manly power, impotency to marriage, and wrecking the victim mentally and physically.

BLOOD AND SKIN diseases, such as Scrofula, Syphilis, Eczema, itching body, throat and bowels, are speedily and thoroughly eradicated from the system. URINARY AND KIDNEY troubles, painful, too frequent, difficult or badly-colored urine, pain in the back, Stenury, Gonorrhoea, and all private diseases CURLED FOR LIFE and all private diseases CURLED FOR LIFE.

Young, middle-aged or old men suffering from a general debility, and those restored to perfect health, manhood and vigor. DR. W. and S. WILLIAMS, Physicians, Surgeons and General Practitioners, of the best American and English Colleges in all branches of medicine and surgery, are identified with the California State Board of Medical Examiners, and are legitimately enrolled in the State of California. If they cannot cure you of a chronic ailment, you will waste your time and money in trying others.

CONSULTATION FREE.

DOCTOR WILLIAMS DISPENSARY.

613 K Street, Sacramento, Cal., and at 28 Geary Street, San Francisco. OFFICE HOURS—9 A. M. to 4 P. M., and 6 to 8 P. M.; Sundays, 10 A. M. to 12 M.

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WAGONS, CARRIAGES, BUGGIES and CARTS.

The latest styles and the best made vehicles in the world.

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Our Sarsaparilla, Iron and Vichy Water and other medicinal preparations, are of the highest quality and cost on account of their healthfulness, purity, delicate flavor and refreshing qualities.

Beware of irresponsible parties, who, under all sorts of misrepresentation, offer cheap sale stunts, but whose inferior goods made in outside towns.

CAPITAL PHARMACY,

S. W. Corner Seventh and K Sts., J. S. O'CALLAGHAN, Proprietor, Druggist and Apothecary.

PREPARED BY THE CHIEF OF POLICE AND PROCURE YOUR NUMBER FROM THE CHIEF OF POLICE.

FOR SALE. 250 HEAD CHOICE Spanish Merino Sheep, 1000 Head Choice Spanish Merino Sheep, 1000 Head Choice Spanish Merino Sheep, 1000 Head Choice Spanish Merino Sheep.

JOHN T. WHITNEY, Stocklin, Cal. 252-11v

NOTICE TO HACKMEN AND EXPRESSMEN. YOUR ATTENTION IS CALLED TO SECTION 10 of the City Ordinance relative to registering hacks and other vehicles. You are directed to call immediately on the Chief of Police and procure your number from the Chief of Police.

TRADE MARK. CURE YOURSELF! It is a well known fact that this Gleet, Whites, Spermatorrhoea or any unnatural discharge can be cured by using this Gleet Cure. It cures in a few days without the aid or publicity of a doctor. Non-refundable and guaranteed not to re-occur. The Danvers Chemical Co. CINCINNATI, O. U.