

CONFLICTING TESTIMONY.

John Touhey and Eli Mayo On Trial for Battery.

Testimony Causes Much Hilarity in the Police Court—Both Defendants Discharged.

The charge of battery against John Touhey and Eli Mayo was heard in the Police Court yesterday.

John Meyers, the complaining witness, swore that young Touhey hooked a cane around his (Meyers) neck. He took it away from Touhey and threw it in the water. Touhey then struck him on the head with a brick, cutting him badly. Mayo told the boy to hit the Dutch—

with a brick. Some other man came up and also struck witness on the shoulder with a brick. Witness talks very broken English—in fact, he breaks it all to pieces—and his cross-examination by Mayo aroused much laughter from the spectators, both parties becoming much excited.

Mrs. Meyers testified that her husband went after beer, and when he came back she heard a disturbance at the door. Touhey put the cane around Meyers' neck, and after Meyers threw it away she called to her husband to come in, and he did so. She corroborated her husband's testimony—Mayo makes all this trouble.

Witness and Mayo had a tilt while she was on the stand, she accusing him of sneering and laughing at her while asking for ten cents or two bits at a time. It was so lively that the spectators became uproarious, and it was difficult to preserve order.

Mrs. O'Neill corroborated the testimony of Meyers fully. She saw Mayo hand the cane to the boy, and tell him to hit the Dutch—

Mrs. Chadwick testified for the defense that Meyers acted like a wild man when Mayo asked him for the rent, and knocked Touhey down and beat him badly. A man came up and knocked Meyers down. Witness showed that she had no love for Meyers, saying that he had made the neighborhood a hell since he came there.

George Dunning said that he was a short distance off, and saw young Touhey getting up out of the water, and Meyers came out of the house and struck the boy over the head with a baby wagon and knocked him down. He abused the boy shamefully while he was down, and he did so until he had done so he believed Meyers would have killed the boy.

Mrs. Brown heard Mayo call Touhey to listen and bear witness to what Meyers said, and when Meyers made a motion to attack Mayo, the latter asked Touhey to take his cane and protect him. She knew Touhey was not responsible for what he did, and went to get some one to take him away. He is subject to fits.

Mayo testified that he never used any bad language in his life, was perfectly lamb-like during the whole proceeding.

"Mrs. McMahon," said Clerk Desmond, "you are to tell the truth and nothing else." "O'm to tell the truth an' nothin' else," interrupted the next witness, Mrs. McMahon. "That's twat O' kem for, an' nobody felted me, nayther? O'm tell the truth an' nothin' else. O' knows this much about it—"

"Wait a minute, Mrs. McMahon," said the court. "Just answer what questions are put to you, and nothing else." "That's just what O'm after doin', year anner! O' proposes to tell the truth an' nothin' else. O' knows this much about it—"

"Wait till I ask her some questions, your honor," said Mayo. "She'll be all right."

"For the Lord's sake, don't you say a word to her, Mayo," said the court. "Let Mr. Bruner talk."

Mrs. McMahon knew very little about the affair.

The court said it was clear that the boy was not to blame in the matter and was more sinned against than sinning, and he should dismiss the charge against him. It was evident that as the cause of the whole disturbance, but unfortunately the wrong charge had been preferred against him. As he had not struck Meyers he could not be held for battery. He was discharged.

SUPREME COURT DECISIONS. Litigants Have a Right to Amend Once Without Permission.

The Supreme Court has rendered a decision in the case of Clara Spooner, respondent, vs. Frank P. Cady, appellant, a Lassen County case.

The action was one of claim and delivery, Cady being Sheriff and having taken personal property under two writs of attachment. Plaintiff had judgment, from which and from an order of court made after final judgment refusing a motion to set aside the default of defendant and judgment thereon, defendant appealed.

The action was commenced on October 3, 1892. On the 13th defendant's default was overruled, and on December 16th he served and filed an amended answer without leave of court first obtained. Plaintiff moved to strike out the amended answer, because it was without permission and also without notice to plaintiff's attorneys, and was not verified and did not state sufficient grounds to constitute a cause of action.

The motion was heard on December 23d, and plaintiff asked leave to verify the amended answer on the ground that he was absent from the county on official business. The application was denied and the court gave judgment to the plaintiff. It went further and declared that the amended answer struck out the original, and when it was struck out there was no pleading on file on behalf of defendant.

The Supreme Court holds that the lower court was in error and states that any pleading may be amended once by the party, of course, without costs, and therefore no permission was necessary, it being a right. The amended pleading was void, it could not supersede the original.

The judgment and order are reversed, with leave to the defendant and respondent to amend his answer if he shall be so advised.

(It would seem from the context of the decision that it was intended that the defendant should be given to defendant and appellant, who are one and the same person, the respondent being a woman.)

ENJOYABLE CONCERT.

Calvary Baptist Young People Give an Entertainment.

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Mrs. W. F. Barrett proved herself a most competent accompanist. After the entertainment was concluded refreshments were served and a season of sociability ensued.

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The funeral will be held on Sunday, at 10 o'clock, at the residence of the deceased, 1007 Fourteenth street. The interment will be in the cemetery at 11 o'clock.

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