

AGAINST THE RAILWAY

Southern Pacific Defeated in the Supreme Court. SNOWSHEDS TOO LOW TRAINS WERE NOT PROPERLY MADE UP.

Rock Case Surprises the County Attorney, Who Will Appeal From a Court's Ruling on Demurrer—Shadrach Green Pleads Guilty—City Wins in the Haynes Case.

Two opinions were handed down by the supreme court yesterday, both being similar in all essentials. The first was in the case of H. Nelson, administrator of the estate of Charles A. Nelson, respondent vs. the Southern Pacific Railway company, appellant.

The opinion was by the chief justice, who says, in part: This was an action to recover damages in consequence of the death of Charles A. Nelson, caused, as alleged, by the negligence of the defendant company in placing three refrigerator cars between the caboose and seven cars loaded with sheep, in charge of deceased and two other men, and in crossing and maintaining a switch shed so low that the sheep were killed by it while passing over a refrigerator car from the sheep cars to the caboose.

On this point the court holds, as in the case of Kennedy vs. the Oregon Short Line, that the time for appointing commissioners is directory, as well as the time for selecting jurors. The language being directory, and not mandatory, no error in denying defendants the court's time to select jurors. The court holds that the commission review findings of fact further than is necessary to determine questions of law. This settled, it proceeded to say: One Philander V. Saunders was wrongfully killed, and was injured, although not fatally. His case has been before the court once before.

After quoting its own opinion in this former case, the court says the evidence as to the right of the deceased to be upon the train are, in effect, the same as in the other case, while the testimony for putting the refrigerator cars between the sheep cars and the caboose seem to be frivolous, and the evidence fails to show any justification for main taining the switch shed so low as to endanger the lives of people rightfully on top of the cars. It appears that she had recently built a high enough to allow cars with persons standing upon them to pass safely through them. It is not sufficient excuse to say the raising of the sheds would involve additional expenditure of money. The company should take all reasonable precautions to prevent injury by giving timely warning of danger. The soundness of a whistle might be sufficient to a person understanding it to mean overhead danger, but to another not informed of the meaning, it would not be sufficient.

The judgment is affirmed, with costs. Barch, J., dissents, in the following language: I am of the opinion that under the facts and circumstances as they appear, the question of custom ought to have been withdrawn from the jury, on the ground that the evidence respecting the custom, it be held to have existed, it was unreasonable.

Cherry, district judge, who sat in the case, concurs. The case of Saunders being identical, is also affirmed, the former case controlling. Cherry concurs and Barch dissents. SUSTAINED THE DEMURRER. County Will Appeal in the Rock Case.

It was the intention of the county attorney to spend yesterday and today in the trial of Charles H. Rock, charged with fornication with Florence Holingsworth, but counsel for the defendant interposed a demurrer to the proceedings, on the ground that the defendant was not indicted by a jury of fifteen men, and, further, that the termination of the trial was not an indictment under the laws in existence at the time of making the complaint.

The matter was argued and the demurrer sustained. The county attorney declares he will appeal the case to the supreme court at once, as the condition is such that the trial of criminal would be greatly hampered, if the decision is permitted to stand.

Shadrach Green, the young man who on Nov. 21, broke into the house of James E. Jennings and took a lot of silverware, gold cane, etc., saved the state some expense yesterday by arising in his plea of insanity. The jury found him guilty, and he was sentenced to pay a fine of \$10, or serve a term of ten days in the county jail.

WANTS A DIVORCE. Sarah Holton Alleges Failure to Provide. Sarah J. Holton yesterday filed a petition for a divorce from her husband, Isiah Holton. The quiddity of the complaint upon which she requests a separation is that he has a nollion, amounting to several hundred dollars, comes to providing her with a living, having done nothing in the way of providing her with sustenance for five years. She alleges that she has been caused extreme prostration in her efforts to support her minor children and now seeks reconciliation in these proceedings.

The couple were married in Northampton, England, in 1873, and have six children, the petition asking she be appointed custodian of the youngest, aged 7 years.

CITY WINS. Haynes Jury Returns a Verdict For Defendant. City Attorney Hall has added another victory to the many already won since he has taken charge of the legal business of the corporation, the jury in the case of Hyrum Haynes vs. Salt Lake City returning a verdict for the defendant in Judge Cherry's court yesterday afternoon.

Haynes claimed the construction of the gravity sewer dried up a spring under his house, causing the quicksand to run out and lower the foundation, as the house settled, and asked damages for this condition.

The city claimed the construction of the sewer had nothing to do with it, and that the spring was a natural one.

Jack T. Peyer vs. the Salt Lake Amusement association was on trial during the afternoon. This is an action for \$1,000 due for services of Brigham Peyer, who worked at the Grand Theatre at the time the late J. C. McNally was the president, general manager and master of the place. The case

is being warmly contested and will continue today. Other orders were made as follows: Mrs. E. N. Davis vs. Patrick Phelan; continued until Dec. 12. Berdona Gray vs. William McQueen; continued by consent.

Gertrude Castagne vs. Nat. M. Brigham; motion for continuance overruled and case stricken from the calendar with leave to restate. Jurors John C. Cutler, Jr., and Hamilton G. Park were excused for the term.

Probate Orders. Before Judge Blair yesterday the estate of Elias Smith was closed, an order being made for allowance of final account and distribution of the estate. John Milner was appointed administrator of the estate of the late Charles W. Milner, with bonds in the sum of \$30,000.

Estate of Robert Beveridge; Robert Beveridge was appointed administrator with bonds in the sum of \$7,000. An order was made allowing final account and providing for distribution of the estate of Sarah Lane Hyde.

Before Judge Rolapp. Judge Rolapp heard the arguments in the case of the Western Hotel company vs. Francis C. Glids and took the same under advisement.

THE REGULAR NOMINEES WIN

(Continued from Page 1.) over the protest of Mr. Jones, one of the judges. At the Fifth ward school house, districts 12 and 14, also a part of the Second, the regular nominees, with their Cutler in the lead, there was but one challenge, that of Mrs. Bergholtz, whose name had to be challenged on the roll from Bergen, and all was satisfactory.

NEWMAN IN THE THIRD. Received 238 Votes Without a Struggle. Nothing exciting transpired in the Third. Mr. Newman, the only candidate, received 238 votes. The few voters who came cast their ballots and went away, so that there were no crowds about the polls, and no incidents worthy of note occurred.

EXCITEMENT IN THE FOURTH. Smooth Work For the Eleventh Hour Candidate. The fight in the Fourth was both surprising and exciting. The surprise consisted in H. G. McMillen becoming a candidate at the last moment, in emulation of the methods of Mr. Symons and his friends in the First. Joe Lippman was McMillen's manager, and the consequence was that the campaign was run with a good deal more ability and adroitness than was shown by the Symons people in the First. In fact, had it not been for a little item that appeared in The Herald of yesterday, stating that a secret meeting of malcontents had been held, and that Mr. McMillen had been selected as the regular nominee, the friends of the regular nominee would have been taken entirely by surprise, and Mr. McMillen, if supported, say, would have been elected.

It was nearly 2 o'clock in the afternoon before the candidacy of McMillen came into evidence. The plan was to let Young believe there was no fight against him, and very few voters came out. Then, at 3 or 4 o'clock Lippman started out in carriages, and hustled in a vote of small bits of leaflets and bone, which is now nearly completed and will be, when finished, one of the most wonderful bits of handwork ever turned out. It was intended that Gavin should be surprised by the gift, but one trusty, deeming it would not be right to spring the present on him and denounce the giving his time to prepare, and being especially desirous of seeing what he would do when he had ample time to get ready, leaked on the story, so that Gavin knows all about it and has been burning midnight oil as a result for some days, or rather nights. He does not know exactly how to commence. To say "fellow citizens" would be wrong, as it is not a party name. To address them as "fellow convicts" would imply that he was one of them. "My friends" might bring him into disrepute. "Citizens" would be a misnomer. That is the only thing which is turning Gavin's hair white, and is the cause of a great deal of quiet joshing among his associates, who allege they will attend the session in a body and hear the response, if they miss their dinner.

SCHEDULE TO BE CHANGED. Short Line Planning Important Changes. (Special to The Herald.) Pocatello, Ida., Dec. 7.—It is announced here today that within a few days there will be a change in railroad time tables which will bring the train from Salt Lake City, and also the train from the east via Granger into Pocatello at about 4 p. m. Both these trains arrive at 3 p. m. now, and Pocatello has no dining car. This is great news for Pocatello.

Truesdale Succeeds Fordyce. St. Louis, Dec. 7.—The executive board of the Southwestern Traffic bureau has accepted the resignation of Chairman S. W. Fordyce, and W. H. Truesdale, vice chairman, has been elected his successor. It has been decided by the board, after a lengthy discussion as to its future operations, to continue the American anti-maloon league. Rev. Howard H. Russell, the superintendent, read his annual report. It gave in detail the work for the past year and showed gratifying progress. The annual address of the president, Hon. Hiram Price, was heard with a great deal of interest. The president touched upon the various phases of the work of the league and said the members had excellent reasons for feeling encouraged in view of the work which had been accomplished.

At the conclusion of the president's address the reports of committees were read. The members of the various committees for the ensuing year were appointed.

The Buckner Trial. The case against George F. Buckner was called at 3 o'clock. The defendant was charged with having sent an obscene letter through the United States mail. The letter was mailed at Provo and directed to Virgie Benson, who received it at Silver City on May 17, 1897. The following jury was sworn in the case: P. G. Hoffman, J. W. Mueser, Hans Carlsson, W. S. Bing, H. W. Lawrence, A. R. Anderson, Hyrum Stewart, R. P. Irving, Elijah Ellison, A. E. Brady, W. A. Needham, J. H. Florence. District Attorney Whittemore appeared for the government, and M. M. Warner of Provo conducted the defense.

Postmaster W. D. Roberts, Clarence Bray, Cora Bray, Ailie Bray and Virgie Benson were witnesses for the prosecution and identified the letter afterwards introduced in evidence as the one sent by the defendant to Miss Benson.

On direct examination, Miss Cora Bray said that the defendant came to her home and asked Clarence Bray for a stamp. She heard Buckner read the letter and saw the pictures it contained. On cross-examination she testified that at a party held at their home on the day previous Miss Benson said George Buckner was a dirty dog, in the presence of his sister, Miss Rhoda Buckner, who, she supposed, upon going home told the defendant what Miss Benson had said.

The other witnesses, including Miss Benson, testified substantially the same as Miss Bray. Miss Benson testified to calling Buckner a dog, and said further that she went to Silver City on May 16 and received the letter on the following

day. She said she and Buckner were not on speaking terms. The prosecution announced the conclusion of its evidence and rested, whereupon Mr. Warner made a motion to dismiss on the ground that there was nothing in the letter to warrant the charge of obscenity. In passing on the motion, Judge Marshall cited a decision of the supreme court on an alleged case of obscenity, wherein it was held that the statute under which it was brought was intended to prevent corruption of the morals of the people. The present case was not so obscene as the one referred to and it would be a strange construction if the letter could be said to create any impure desires. The court declared that the letter was very coarse and should not have been sent, and further that he regretted there was not a statute to convict. The jury was, therefore, instructed to find a verdict of not guilty, which was accordingly handed in by Henry W. Lawrence, foreman.

West Pleads Guilty. Lee West pleaded guilty to the charge of robbing the United States mail at Millford on Oct. 14, 1898. Previous to passing sentence, the court was addressed by J. M. Hamilton, attorney for the prisoner, who stated that he had advised West to plead guilty, although considering him only an accessory after the fact. District Attorney Whittemore made a statement of West's confession of the robbery, after which Judge Marshall passed a sentence of three years upon the prisoner, in a statement to the court previous to being sentenced. West said he had been in Utah six weeks previous to the mail robbery, having come here from Florence, Ida., where he mined for two years. He was born in Texas and most of his life has been passed as a cowboy.

Sentenced to Four Years. The plea of guilty was entered by Maurice Prevost, who was indicted for breaking into the postoffice at Eureka and robbing the mails on Sept. 15, 1898. Prevost stated that he had been divorced from his wife, who had the custody of their 14-year-old daughter, but would never allow him to see the child.

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RAILWAY CIRCLES

Gathering of Union Pacific General Agents at Omaha.

OBJECT OF THE MEETING REPORT THAT IT RELATES TO TRAFFIC MATTERS.

Intimation of Contemplated Changes to Take Place About the First of the Year—Gavin's Christmas Present—Truesdale Succeeds Fordyce—Stickney As a Humorist—Notes.

Reports from Omaha are to the effect that the present gathering of the Union Pacific general agents there is for the purpose of patching up traffic matters, and not because of any contemplated changes among them in the near future. At least, such is the information given out at the Omaha headquarters.

The gathering is composed of all the freight and passenger agents at terminal points, among them being General Agents Choate of Salt Lake, Johnson of Denver, Caley of Kansas City, Clifford of Butte, and Knight of Chicago, all of the freight department, and General Agents Gay of Salt Lake, Holly of Chicago, A. J. Denney, and Fravelly of Kansas City, all of the passenger department.

While the traffic situation is perhaps the chief cause for the calling of these agents to headquarters, there are rumors that some changes are scheduled to take place about the first of the year. The force at the office of the Union Pacific here, and the knowledge of any contemplated change in any way, and do not look for it. At other quarters beliefs are strong that something is going to happen in the near future. It is pointed out that prominent Union Pacific officials have just been in conference at Omaha and that President Cornish, who was recently looking over the situation here, was present.

General Agents Choate and Clay will not be home until the latter end of the week.

SALE OF HEREFORDS.

Spirited Bidding For the Cross Herd of Thoroughbreds. Kansas City, Mo., Dec. 7.—The sale of the sunny slope herd of Hereford cattle, which belongs to the estate of the late C. S. Cross of Emporia, Kan., began at the stock yards here today. Cross committed suicide when the First National

bank of Emporia, of which he was president, was closed last month by the comptroller of the treasury. The proceeds of the present sale will, it is said, be divided between his personal creditors and those of the bank. About 500 cattle fanciers from various parts of the United States are attending the sale, which will be held in the afternoon of today. The bidding was spirited at times and the prices on fancy animals ran rapidly into the hundreds of dollars. Some of the cattle, however, did not bring what they were really worth. Mr. Cross, widow of the banker, and owner of the famous herd, is herself ill, and the sale is being assisted by G. W. Wilder, her brother, and the clerks and employees of Bunny Slope farm. One hundred and four animals were sold for \$24,610, an average of \$233.

ANTI-SALOON LEAGUE. President Price Feels Encouraged Over the Work Accomplished. Cleveland, O., Dec. 7.—At today's session of the American anti-maloon league Rev. Howard H. Russell, the superintendent, read his annual report. It gave in detail the work for the past year and showed gratifying progress. The annual address of the president, Hon. Hiram Price, was heard with a great deal of interest. The president touched upon the various phases of the work of the league and said the members had excellent reasons for feeling encouraged in view of the work which had been accomplished.

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ROYAL Baking Powder. Made from pure cream of tartar. Safeguards the food against alum. Alum baking powders are the greatest makers to health of the present day.

of the neatest publications of its kind in the west, and reflects credit on the passenger department, which comprises all the matter, and the Rounds Printing company, which does the mechanical work. E. E. McLeod, assistant general passenger agent of the Rock Island, and who has been elected president of the American Association of Traveling Passenger Agents, is well known in Salt Lake. He was frequently through here last summer with coast excursions and made himself very popular with local railway men.

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MAURICE PREVOST.

He committed the crime in order to obtain money to carry off the child. He admitted having served a term in the penitentiary for burglary at Provo in 1894, being released July 5, 1897. Judge Marshall sentenced him to four years of hard labor in the state prison.

L. L. Pratt Fined. L. L. Pratt, who was indicted on the charge of sending unmailable drugs through the United States mail, entered a plea of not guilty and made an honest statement to the court, saying that at the time he mailed the drugs he was ignorant of its being a violation of the laws of the United States. The drugs were designed to prevent conception. In behalf of the defendant, District Attorney Whittemore testified to the character and integrity of the defendant.

Judge Marshall stated that while the law provided an extreme sentence of a fine of \$3,000 or imprisonment, or both, in view of the unmailable drugs, stances he would impose a nominal fine of \$300, the defendant to be imprisoned in the county jail until paid. A short time afterwards, Pratt deposited the amount of his fine with the clerk.

Notes. H. M. Abbott, who is also held on a charge of sending unmailable drugs through the mail, will appear Dec. 15 to enter a plea. The case of John E. Billings vs. Elias H. Parsons has been reassigned for trial Dec. 15.

New York Reaches Havanna. Havanna, Dec. 7.—The cruiser New York, which left Newport News on Dec. 2, arrived at the harbor at 3:55 p. m. immediately after her arrival, the New York saluted and Captain Chadwick paid a visit to Admiral Montenegro and General Castellanos. A naval lieutenant promptly returned the visit on board the New York.

Ayer's Hair Vigor. What does it do? It makes the hair soft and glossy, precisely as nature intended. It cleanses the scalp from dandruff and thus removes one of the great causes of baldness. It makes a better circulation in the scalp and stops the hair from coming out. And it restores color to gray or white hair. \$1.00 a bottle. Sold by all druggists. It Prevents and It Cures Baldness. If you do not obtain all the benefits you desire from the use of the Vigor, write the Doctor about it. Address, Dr. J. C. AYER, Lowell, Mass.

G. F. CLOWARD IS GUILTY

West and Prevost Sentenced For Mail Robberies.

G. F. BUCKNER ACQUITTED WAS CHARGED WITH SENDING AN OBSCENE LETTER.

Judge Marshall Instructs the Jury to Return a Verdict of Not Guilty—L. L. Pratt Fined Three Hundred Dollars For Sending Prohibited Drugs Through the Mails.

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WYSPEPSA. For six years I was a victim of dyspepsia, but milk toast, and at times my stomach would not retain and digest even that. Last March I began taking CASCAID, and after several weeks I have steadily improved, until I am as well as I ever was in my life. DAVID H. MURPHY, Newark, O. CANDY CATHARTIC. REGULATE THE LIVER. Pleasant, Palatable, Potent, Taste Good, Do Good, Never Sicken, Weaken, or Gripes. 25c. Solely PURE CHLOROPHYLL. Mottling Remedy Company, Chicago, Standard, New York. NO-TO-BAG Sold and guaranteed by all druggists and purveyors of CIGARETTES and TOBACCO.

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New York Reaches Havanna. Havanna, Dec. 7.—The cruiser New York, which left Newport News on Dec. 2, arrived at the harbor at 3:55 p. m. immediately after her arrival, the New York saluted and Captain Chadwick paid a visit to Admiral Montenegro and General Castellanos. A naval lieutenant promptly returned the visit on board the New York.

WYSPEPSA. For six years I was a victim of dyspepsia, but milk toast, and at times my stomach would not retain and digest even that. Last March I began taking CASCAID, and after several weeks I have steadily improved, until I am as well as I ever was in my life. DAVID H. MURPHY, Newark, O. CANDY CATHARTIC. REGULATE THE LIVER. Pleasant, Palatable, Potent, Taste Good, Do Good, Never Sicken, Weaken, or Gripes. 25c. Solely PURE CHLOROPHYLL. Mottling Remedy Company, Chicago, Standard, New York. NO-TO-BAG Sold and guaranteed by all druggists and purveyors of CIGARETTES and TOBACCO.

HOOD'S Coupon CALENDAR 1899. Is a perfect beauty, and is up to date. Subject: "An American Girl." One of the handsomest pieces of color work issued this year. Lithographed, with border of army and navy emblems embossed in gold. Leave your name with your druggist and ask him to save you a copy or send 6 cents in stamps for one to C. I. HOOD & CO., Lowell, Mass. (Mention this paper.)

Remember, Hood's Sarsaparilla is America's Greatest Medicine for the Blood and the Best that Money Can Buy. Hence take only Hood's.

Just Received GRAND STOCK of New and Nobby COLLARETTES AND DRESS SKIRTS. The Newest and Latest NOVELTIES. Inspection Invited.

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THE DESERET SAVINGS BANK. SALT LAKE CITY, UTAH. Capital, \$100,000. Surplus, \$10,000. DIRECTORS: W. W. Ritter, President. Moses Thatcher, Vice President. Elias A. Smith, Cashier.

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