

Postoffice Hours.

Week days—Office open from 7 A. M. to 7 1/2 P. M.  
Sundays—From 10 to 2 P. M.  
Money Orders issued from 9 A. M. to 4 P. M.  
No Money Order or Registry business transacted on Sunday.  
Blackfoot mail closes at 7 1/4 A. M.  
Edisto closes at 7 A. M.  
Lethbrum, Galena and Sawtooth closes at 12 1/2 P. M.  
Bullion closes at 1 P. M.  
Elate closes at 2 1/4 P. M.

JOTTINGS.

Several residents of Shoshone City are in Hailey to-day.

If you want really elegant printing, you must come to the TIMES office.

Stoves and tinware at cost at Siefaff's; also a double freight-wagon for sale.

The families of James Judge and John Pilmer, of Ketchum, arrived in town to-day.

All parties indebted to Ad. Siefaff are notified to settle by October 10th, without fail.

John Carrington foreman of the Eureka mine, left this morning for Salt Lake City, on a business visit.

Lee Griffith, of Salt Lake, who is interested in Wood River mines, arrived in town on the Blackfoot stage to-day.

Ask any newsdealer for a copy of the TIMES map of Wood River. It is the most accurate extant, and only costs 25 cents.

If you want to while away an hour comfortably while drinking a glass of good beer, go to George Kohlepp's Hailey Brewery.

Attorney Montandon paid the County Recorder's office a visit this morning, and had a very pleasant interview with Mr. Harrington.

General Cunningham arrived last evening from Shoshone, and will return to-morrow and establish his headquarters there for the winter.

The meeting at the theater, last evening for the purpose of organizing a choral association, was not well attended, owing to the storm—though those who attended had a very satisfactory practice.

A party tried to jump some locations on Deer Creek, last week, and were not willing to leave until two Winchester rifles were employed as interpreters, when the jumpers concluded to pull their staves and depart.

Colonel Sam Conner went to Ketchum Saturday, to look over the mines of that section, but as it snowed there all of Saturday, Sunday, and Monday, he had to defer his examinations and fears it is all up with prospecting now, until next July. Colonel Conner will leave for a trip to New York in a few days, and will not return until spring.

DANGER AHEAD.

Wood River Threatened With a Flood.

Not a pound of flour to be had in Hailey, and none can be procured from adjoining towns, as Jno. F. Boyle, the well-known mining man of Ketchum and several others have already visited the towns from Bellevue to Sawtooth to secure what could be got. Jno. M. Cannady, May Krieg & Co., and Willman & Walker of this city, have large lots on the roads from Corinne and Kelton, Utah, and from Boise, Idaho, but the present whereabouts of these lots are unknown. Mr. Cannady shipped 5,000 pounds from Boise 13 days ago, and it has not been heard from since. He also had a load of two shippers from Corinne via Kelton, but that is also at some unknown locality on the road. Messrs. May, Krieg & Co. and Willman & Walker are in the same undesirable condition. All are out of flour.

The supply on hand in private families, restaurants and hotels will not last over three days longer. Several families are out already, and borrowing what they require from their more fortunate neighbors.

The roads have been in a bad condition since the recent equinoctial storm, and the stormy weather of the past three or four days must have made them much worse and thus caused great delay in the arrivals of the teams.

If no flour arrives by to-morrow night it may be necessary, in order to avoid a famine, to start a light wagon out on each of the roads by which flour is expected, to bring in a few hundred pounds, so as to "lengthen" out the stock on hand until fresh supplies are received.

Mr. Gladstone wears ready-made clothing, and when crossing a street, always acts on the principle that the hypotenuse of a triangle is less than the two sides. In place of using the crosswalk, he cuts off the corners, or crosses diagonally on the cobble.

London has its anti-Chinese movement too. A company of Chinamen, doing business in that city, have gone into a scheme for importing their countrymen in large numbers for employment as servants, farm laborers, and in the trades. The project is being denounced in mass meetings.

The TIMES job office is prepared to print candidates' cards at 24 hours' notice. Send in your orders now.

Women who ride tricycles in England are beginning to wear trousers.

WINTERS VS. SWIFT & CO.

THIS IMPORTANT MINING SUIT DECIDED.

The Decision in Favor of J. O. Swift and T. E. Clobey, with Costs—Judge Prickett's Decision in Full.

This cause having been heard up on the pleadings, proofs and exhibits on the part of the respective parties and upon the arguments of their counsel, and the court having taken the same under advisement and having fully considered all and singular the premises, doth now at this day file its findings of fact and conclusions of law arising therefrom.

As facts resulting from the evidence on the trial the court doth find—

I. That the defendants are, and have been for two years last past, partners and traders doing business under the name of "J. O. Swift & Co.," at several stores at different places in Wood River in said county, one of which was at the town of Ketchum, and there was no other partner in their firm until after the transactions which are subject of this action.

II. That Wilhelm Jaikowski in the year 1880 discovered and located the North Star mine and afterwards conveyed one-third thereof to Owen Riley, and during the same year discovered the "American Eagle" mine, and located it first in his own name, but before recording it he at the request of said Riley posted on this claim and recorded a joint notice of location of himself and said Riley, whereby they became tenants in common of said mining claim, said Jaikowski being the owner of two-thirds of the North Star and one-half of the American Eagle, and said Riley owner of one-third of the former and one-half of the latter claim; and they thereafter, till the summer of 1881, worked said claims as mining partners and the title to said mines continued without change till the transaction of the 7th of Sept. 1881, stated in finding below.

III. That in the course of working said mines Jaikowski prior to Sept. 7, 1881, obtained large credits, amounting to between three and four thousand dollars, from the defendants at their store in Ketchum, the amount being debited to the North Star mine. Jaikowski had also become indebted to Pinkham & Leonard, merchants of the same place, in the sum of \$2082.98, evidenced by a promissory note dated January 7th, 1881, and executed to them as mortgage (exhibit D), on one third of the North Star mine to secure the same.

IV. That about the 1st of March, 1881, Jaikowski, being also indebted to other persons, and being pressed for money—all negotiations for the sale of said mines having failed—employed defendant Clobey as his agent to negotiate a loan of \$6,000 for him, at Salt Lake City, Utah, and for the purpose gave him a power of attorney (exhibit A) authorizing him to sell, mortgage or otherwise dispose of all his interest in the North Star mine, and at the same time represented that his entire debts amounted to only \$4,500, and that such loan would furnish him enough money to pay all his debts and \$1,500 to develop said mines. For the same purpose he signed a promissory note for \$6,000, dated March 1, 1881, payable to defendant Clobey five months after date, with two blanks, one as to the rate of interest, and the other as to the bank in house where payable, which on negotiations were filed by adding three per cent per month in the first blank, and McCormick & Co. in the second blank.

V. That Clobey, pursuant to this agency, went to Salt Lake City, Utah, and negotiated a loan of \$6,000 from said McCormick & Co., delivered to him said promissory note with the blanks so filled, and with his indorsement thereon, and in order to secure the same, executed a Trust deed (exhibit L) conveying Jaikowski's interest in the North Star mine to William H. Greenwood and George A. McCormick, trustees, with power to them or to the sheriff of said county, to sell the same on default of payment of the debt, at public sale at the place and on the notice therein specified, the money not being obtainable on said loan until the return of the trust deed and an abstract of title from the Recorder's office of said county. Clobey, on his personal guaranty, obtained \$2,700 thereof to apply to the pressing needs of Jaikowski, and paid off said mortgage to Pinkham & Leonard, and afterwards as the agent of Jaikowski received the balance of the loan and paid out the same on Jaikowski's debts to sundry persons.

VI. After this Jaikowski endeavored to sell his interest in said mines to several different persons, all of which negotiations failed, and he requested Clobey to aid him in effecting a sale, and for that purpose, on the 20th day of May, 1881, made and delivered a deed (exhibit B) to Clobey for his interest in the North Star mine, but no sale being effected by this means, this deed was cancelled by a reconveyance to Jaikowski, by deed (exhibit C) dated August 24, 1881.

VII. The note to McCormick & Co. being about to fall due, Jaikowski

started to Salt Lake City, but met the defendant, Swift, below Bellevue, going up to Ketchum, and turned back to that place and the two went over to the mines and Swift examined them at the instance of Jaikowski and declined to buy. Jaikowski then went to Salt Lake City, to obtain further time from McCormick or sell his interest in the mines. This was about the last of August, 1881. He applied to McCormick for an extension of time on this debt but McCormick refused the extension and said that he must have his money.

VIII. Early in September, 1881, defendant Swift went to Salt Lake City, and at the request of Jaikowski, went with him to R. C. Chambers, Groesbeck, Hanauer and McCormick to effect a sale, but all the negotiations failed. Jaikowski finally offered his interest in the properties to Groesbeck for \$12,000 and the offer was declined. Swift thereupon proposed to Groesbeck that if he would purchase half of Jaikowski's interest at that rate he (Swift) would purchase the other half at that price, but Groesbeck declined this offer also.

IX. After the failure of those negotiations and on the 6th day of September, 1881, Jaikowski proposed to Swift to sell to him two thirds of the two mines and all the ore on the dumps, with the cabin, tools and cooking utensils at the mine and his claim for contribution against Riley, his partner, if Swift would pay the debt to McCormick, his debt to J. O. Swift & Co., and furnish him money to return to Idaho, and Swift replied that he would see McCormick and see what time and terms he could get from McCormick on the note, and would give him an answer to the offer next day.

X. Having seen McCormick in the meantime, and obtained satisfactory terms as to time and interest, Swift, on the 7th day of September, 1881, met Jaikowski and told him he would accept his offer, and would agree to pay the debt to McCormick & Co., and the debt to J. O. Swift & Co., and would furnish him money to return to Idaho (the sum agreed upon and accepted by Jaikowski for that purpose being \$600) if Jaikowski would sell the property to him for that price, and they then went together to the office of an attorney (W. C. Hall, Esq.), over the bank of Wells, Fargo & Co., when the terms were stated to the attorney in the presence of both parties, and he was directed to draw up a deed for two-thirds of both mines, and a bill of sale of all the ore on the dump of said mines, all the tools, cabin, cooking utensils and an assignment of Jaikowski's claim for contribution against his mining partner Riley, for the consideration aforesaid, which was stated at \$11,058.49 and was ascertained by giving to the attorney the amount of the McCormick note and interest thereon, the amount due from Jaikowski to J. O. Swift & Co., which was not then known to Swift (except approximately, Clobey, who had charge of the business at Ketchum, having stated to Swift some time before that it was between \$3,000 and \$4,000) but was stated by Jaikowski in a memorandum he had, at a little over \$3,000, and the \$600 paid to Jaikowski and \$10 to the attorney for drawing the paper. The attorney drew the deed (exhibit D) and the bill of sale (exhibit E) according to the instructions as given in the presence of both parties, and the deed and bill of sale were thereupon signed by Jaikowski.

XI. Nothing had been said about the bond from Swift to Jaikowski during the negotiation nor during the time the attorney was drawing up the papers, nor until the deed and the bill of sale had been signed by Jaikowski. Either immediately after the deed and bill of sale had been signed, or after the parties had gone out to have the deed acknowledged and had returned, Swift directed the attorney to draw up the bond (exhibit E) which was accordingly done and it was executed.

XII. As soon as the papers were completed Swift went with Hall, the attorney, to McCormick & Co.'s bank, on the same day, and pursuant to their understanding, paid \$1,080, the interest on the \$6,000 note up to September 1, 1881, and by indorsement on the note by his firm J. O. Swift & Co., assumed the payment of said note, and McCormick in consideration thereof, by indorsement on the note reduced the rate of interest to one per cent, per month and extended the time of payment till September 1, 1882. These indorsements were dated the 1st day of September, 1881, at the instance of McCormick on interest account, though they were in fact made on the 7th of September, 1881.

XIII. On the same day, September 7, 1881, Swift wrote to his firm at Ketchum, stating that he had bought out Jaikowski and requested them to charge the account due to said firm from Jaikowski in his personal account, which was done accordingly by the firm by adding the name of J. O. Swift v a to the caption of the account, so that it thenceforth stood on their books thus, "North Star Mine, J. O. Swift v a." Swift was, at that time in advance \$20,000 or more on his personal account and credit with the firm. The firm assented to such transfer, and have not claimed any demand against Jaikowski since that time.

XIV. Swift paid to Jaikowski the

\$600 to enable him to return to Idaho, and also paid for Jaikowski, to the attorney for drawing the papers, \$10.

XV. During the preparation of the deed in the attorney's office on Sept. 7th, 1881, the state of Jaikowski's title, as affected by the deed from him to Clobey (exhibit B) was mentioned, and the deed from Clobey to Jaikowski (exhibit C) re-conveying the property, was produced by Clobey, and under the advice of the attorney had been delivered by Swift to Jaikowski, in order to clear his title, and it was then delivered by him to Swift to be recorded.

XVI. There was no debt due from Jaikowski to Swift: the debts mentioned were due to McCormick and to J. O. Swift & Co., and the contract provided for their payment. There was no evidence that Swift provided or undertook to lend money to Jaikowski to pay these debts, and Jaikowski made no note, promises or agreement to repay Swift. The undertaking on Swift's part was that he would pay these debts, but there is nothing in the evidence to show that the payment was to be immediate or within any limited time. He has since fully paid and extinguished both debts and on the 18th day of July, 1881, offered to deliver up to Jaikowski a written receipt or discharge from J. O. Swift & Co. and the McCormick note, having stamp of cancellation on April 15th, 1882, which Jaikowski declined to receive.

XVII. By his deed of Sept. 7, 1881, Jaikowski assumed to convey to Swift two-thirds, undivided, of both of the mines, but he owned only one half of the American Eagle mining claim, and two thirds of the North Star.

XVIII. The deed and bill of sale of Sept. 7, 1881, were executed and delivered at the same time, and for one and the same consideration.

XIX. The bond from Swift to Jaikowski, of Sept. 7th, 1881, did not embrace all the property mentioned in the deed and bill of sale from Jaikowski to him, but omits the ore on the dump, the tools and cooking utensils, and the cabin specified in the bill of sale, as well as the demand for contribution against Riley, which is included in the deed; again, the bond gave to Jaikowski the option to purchase, and obligated Swift to convey to him, if payment or tender were made in time, property which Jaikowski had never owned or conveyed by the deed to Swift, viz: two thirds, instead of one-half of the American Eagle mining claim.

XX. Shortly after Sept. 7th, 1881, Swift wrote to his partner, Clobey, at Ketchum, to send a man up to take possession of the property for him, which seems to have been done sometime in September or October, 1881. Swift began work on the mines in the latter part of October, 1881, and has continued ever since in the possession of, and working them; has expended about \$3000 in such work, and has extracted about six tons of ore from the "North Star" which remains on the dump.

XXI. On his return from Salt Lake City, and in the month of Sept. 1881, Jaikowski stated to several persons in different conversations, at Bellevue, Hailey, and at Ketchum, that he had sold the property to Swift, the declarations all being to that effect, though varied in form, or that he had sold out completely to Swift and then owned nothing in the properties; that he had sold the mines to Swift and had a bond on them from Swift for two or three months, etc., and Jaikowski testified that pending the bond he had asked Swift the privilege of working and opening the "American Eagle" mine in order to develop it so as to make it salable, and it does not appear in evidence that he, then or at any other time since Swift entered into possession and has been working the mines, controverted Swift's right to possess and work the claims, or asserted any right in himself to possess or work them, except what may be inferred from his formal sale to Shaeffer on Oct. 10th, 1881.

XXII. On Oct. 10th, 1881, Jaikowski executed a deed (exhibit G) to Shaeffer, the consideration being an open account for lager beer and wine amounting to \$432, or \$452, and some small sums of money (the amount of which the witnesses to the transaction, Jaikowski and plaintiff Winters, could not state, and which were not in the account which was then balanced on Shaeffer's book), due to Shaeffer, and assigned to him the bond. This sale and transfer was promoted and negotiated by P. F. Winters, who testified to that fact, and that he had his eye on this property as a valuable plant ever since he came on Wood River.

XXIII. On the 17th of November, 1882, Shaeffer executed to plaintiff Winters a deed (exhibit J) to the property and assigned to him the bond.

XXIV. Neither Jaikowski, Shaeffer nor P. F. Winters, pending said bond or at any time since, has ever tendered to Swift the price stipulated therein, or any sum of money pursuant to its provisions, and plaintiff's counsel, in the trial, stated that plaintiff did not claim any rights under the conditions of the bond.

XXV. It appears from the evidence that J. O. Swift & Co. were extending to Jaikowski, or to him and his partner, Riley, under the name of the

"North Star mine," large credit without security, while others were obtaining security incumbrances on his property and extending such credits while he was further incumbering his property, with their knowledge, but it is not shown that they, at any time, pressed him for the amount due them. During the spring and summer of 1881, and up to Sept. 7th 1881, they aided him in his numerous but abortive efforts to sell the property, as well as in borrowing the \$6,000 from McCormick, for which purpose defendant Clobey, for accommodation, made himself personally liable on the note, and furthermore made himself liable by guaranty for a portion of said loan in order to obtain the funds to enable Jaikowski to pay the lien of Pinkham & Leonard, pending the delay in securing the requisite title papers to McCormick.

XXVI. A large proportion of the testimony in the trial was directed to the value of the two mines, but this is really no issue in the pleadings as to their value at the date of the transfer to Swift, the time at which, if at all material, it was pertinent to inquire. The complaint alleges that said two mines were of the value of \$100,000 at the date of the commencement of this action, (Dec. 3d 1881) and that two-thirds of the ore on the dump was then of more than value enough to pay off all the indebtedness to McCormick and to J. O. Swift & Co. The owner deems that said mines were then of the value of \$100,000, and that they were not of sufficient value on or before Dec. 7th 1881 to enable Jaikowski to effect a repurchase of two-thirds thereof at the price stipulated in the bond.

There is no class of property in this country which is subject to such sudden and wide fluctuations of value as mining claims, and none on which the estimates of men differ so widely as undeveloped mines, and this fact has been illustrated by the evidence in this case. Estimated as high as \$100,000 in the early stage of development, by Jaikowski and the plaintiff, these mines were examined by several parties, and in their reports in 1881, prior to Sept., with a view of purchase, none of them estimated them as worth more than \$20,000, and a majority regarded them more unfavorably. All of Jaikowski's negotiations for a sale on Wood River had failed and he had also failed to effect a sale at Salt Lake City to any of several parties with whom he negotiated in Sept. 1881, one of them declining to purchase his interest at \$12,000.

The expert who examined these mines at a date nearest to September 7th, 1881, testified that he had advised defendant Swift that he could safely give \$12,000 for the property on a speculative purchase, and might go as high as \$16,000 for the whole property, though there was then not \$500 worth of ore in sight in the mine. The plaintiff testified that he negotiated the sale from Jaikowski to his grantor Shaeffer on the 10th of October, 1881, the consideration being a debt or account of \$432 or \$452 for beer and wine due Shaeffer, and some small sums of money (not included in the amount on the books and the amount not stated) before that time loaned by Shaeffer.

From all the evidence it is a reasonable conclusion that Jaikowski's interest in the property on the 7th of September, 1881, was not worth more than \$11,000 to \$12,000, and no presumption arises on this ground that the transaction was a mortgage and not a deed.

XXVII. Soon after the 7th of September, 1881, Swift wrote to his partner at Ketchum to send a man to the mines to take possession of the property, and he took possession, under the deed, in September or October, 1881, and has continued in possession ever since.

XXVIII. The promissory note of Jaikowski to McCormick (or rather payable to Clobey and by him indorsed to McCormick) was negotiated and delivered by him, through his agent who was authorized to negotiate the loan, at Salt Lake City, in the Territory of Utah, and was by its terms, payable there. The statutes of that Territory provide that interest may be collected at the rate of ten (10) per cent per annum when parties have not agreed upon a different rate, otherwise parties are allowed to stipulate any rate of interest without statutory restriction.

CONCLUSIONS OF LAW.

As conclusions of law arising upon the facts, the Court doth find:

I. That the transaction of the 7th of September, 1881, between Jaikowski and the defendant Swift was one of bargain and sale and not one of security for debt. There being no pre-existing debt, no loan at the time, and no continuing indebtedness, there could be no mortgage, and the deed operated as an absolute sale and conveyance of the property to Swift.

II. The bond from Swift to Jaikowski was not a defeasance of the deed, but, by its terms, gave to Jaikowski and his assigns the privilege or option to repurchase part of the property conveyed to Swift, together with an additional interest in one of the mines, for the sum stipulated as the price thereof, on condition that he or they should pay or tender such price within the time limited; otherwise to be void.

III. Neither Jaikowski nor either of

his assigns having tendered the stipulated price within the period limited, the plaintiff is not entitled to relief.

IV. The promissory note from Jaikowski to McCormick is not usurious or void; being valid according to the law of the place of its making and performance, it must be so held under the law of this forum.

V. Upon the whole case, the equities are with the defendants, and they are entitled to judgment for the dismissal of plaintiff's bill of complaint and for their costs in this action to be taxed. Let a decree be drawn accordingly.

H. E. PRICKETT,  
District Judge.

Roseborough & Merritt, James H. Beatty, W. F. Anderson and W. C. Hall, for J. O. Swift and Thomas E. Clobey; Ganahl & Vineyard and Daniel E. Waldron for John B. Winters.

THE DOLLAR COLUMN.

[Advertisements not exceeding an inch (or ten lines of small type) in length will be inserted in this column for one dollar per week, or fifty cents the first insertion and twenty-five cents each additional insertion—payable in advance.]

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I. O. F.

The Odd Fellows' Association of Hailey will meet at Ward & Quantrell's Hall every WEDNESDAY EVENING, at 8 o'clock, sharp. All Odd Fellows in good standing are invited to attend.  
LEON FULD, Sec'y.  
H. WARD, Pres.

Notice.

The Idaho & Oregon Land Improvement Company have for rent good farm land in lots of ten to sixty acres, with water for irrigation.  
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J02

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Sujuring brethren are respectfully invited to attend.  
By order,  
C. B. FOX, Sec. A. Monson, C. C.

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