# ews of North Dakota

## NMAL SCHOOL PROGRAM IS OUT

**mmencement Week at Mayville to be big Event—Celebrate Anniversary.**

Mayville, May 5.—During the coming commencement week, from June 20 to 24, the Mayville normal school will celebrate the completion of its twenty-fifth year. Besides the regular events of commencement week, which will this year be made to contribute to the celebration, there will be special commemoration exercises on Thursday morning, June 24. The other events of the week will be baccalaureate service, Sunday evening, June 20; senior class chapel, Monday morning, June 21; commencement party, Monday evening, June 21; senior class exercises, Tuesday evening, June 22; scenior class picnic, Wednesday, June 23; reception to the senior class, Wednesday evening, June 23; alumni association meeting, Thursday morning, June 24; outdoor sports and alumni banquet, Thursday afternoon, June 24, and graduation exercises, Thursday evening, June 24. There will be good music throughout the week and special speakers for the baccalaureate service, the commemoration exercises, and the graduation exercises.

In the first twenty-five years of its extence the normal school has sent out almost 900 graduates and during this time it has had in attendance thousands of other students who for many reasons have not been able to graduate. An earnest effort will be made to make this year's commencement week an appropriate rounding-out of the normal school's first quarter-century's useful service to the state and nation.

## CNTRAL SCHOOL IN MORTON COUNTY

Mandan, N. D., May 5.—One of the first of the so-called centralized schools will be erected soon in Thain school district at a cost of $7,000. The plan is to locate the school in the exact center of a congressional township and provide transportation for the pupils. Such is the information given out today by County Superintendent W. F. Lorin.

## GLEN ULLEN FARMERS LAUNCH WIRE CO.

Glen Ullen, N. D., May 5.—The farmer's Fertile Valley Telephone company was organized at a meeting in Glen Ullin, with fourteen stockholders. Material has been ordered sufficient to build 18 miles of line, and lines will be connected with the North Dakota Independent Telephone company circuit. Officers named were Simon J. Nagel, president; Albert Seitag, vice president; Jos. Kellar, secretary; Fred Green, treasurer, and the officers with Peter Kastner will form the board of directors.

## CELEBRATE THEIR GOLDEN WEDDING

Taylor, N. D., May 5.—W. A. Page and wife for over ten years residents of the Golden Valley country, have just celebrated their golden wedding anniversary. They came here from Villard, Minn. Four sons conduct big farms in this vicinity.

## POSTOFFICE TO BE OPENED AGAIN

Sentinel Butte, N. D., May 5.—When B. G. Odiorne decided to quit work for Uncle Sam, the postoffice at Alpha was ordered discontinued. Not that he was so indispensable, but no one could be found to take the office. Now he has changed his mind and the department order has been reversed.

**SHE SHOULD WORRY.**

Mr. Pester—This dinner isn't fit for a dog to eat.
Mrs. Pester—Dear little Trixie has Mandy had her dinner.

## LAKE RESIDENT TO RAISE POTATOES

Devils Lake, N. D., May 5.—Convinced by past success that there is exceptional money in potato raising, J. A. Strong of Devils Lake is preparing a sixty acre field whic hhe will devote entirely to potatoes. To indicate that he means business he is this week advertising for 500 bushels of seed potatoes. Mr. Strong does not attempt to compete on the early market. He holds the opinion that it pays just as well in this section to depend on the fall harvest of spuds and for that reason has not rushed his seeding this spring.

Two years ago, in partnership with C. E. West, Mr. Strong harvested 6,200 bushels of potatoes from 34 acres, receiving a top notch price. That was the largest field of potatoes ever seen in the lake region. This year he will put in sixty acres, while Mr. West will plant nearly as much on adjoining land. Located on the outskirts of the city of Devils Lake the immense field of potatoes will furnish an excellent picture of what can be done along this line of farming where a few years ago nothing but wheat was seen.

## CHAMPION SWIMMING MATCHES PLANNED

Devile Lake, N. D., May 5.—The champion swimmers of North Dakota are going to be determined during the summer. In the center of the lake region of the state, Chautauqua announces a plan for establishing the state champions. An effort will be made to every organization, such as Y. M. C. A., especially those having indoor swimming facilities, to send representatives to an acquatic event during the assembly, July 3-18. No one will be barred. The urchins who are just graduating from the old swimming hole will be welcomed along with all the rest. Various classifications will be established to make the competition equal. Secretary Gilbertson of Chautauqua is working out the idea which will refute the argument that although North Dakota is dry that there are not many excellent swimmers within her borders.

## SLOPE COUNTY TO BUILD BIG BRIDGE

Amidon, N. D., May 5.—Action will probably be taken here in the near future by Slope county commissioners, towards the erection of a bridge over the Little Missouri river at Marmarth. This will be Slope counties contribution towards the installation of the Yellowstone Trail, one of the greater of the national highways.

## WOMAN DESTROYS HER FARM HOME

Hazen, N. D., May 5.—While Mrs. John Clark and child were resting fire started in a shed at the rear of their farm home near here. It spread rapidly and the building was totally destroyed, Mrs. Clark being awakened by smoke and with her baby barely escaped from the burning home. The loss is about $2,000.

## TAYLOR ORGANIZES JOINT SOCIETY

Taylor, N. D., May 5.—Co-operation between business men and farmers in this vicinity has been furthered by the successful organization of the Farmer's Progressive club. Bi-weekly business meetings and dances are held. A co-operative creamery is now considered and will be, it is believed, organized at a meeting to be held Saturday, May 8.

## KILLS LYNX FAMILY NEAR DICKINSON

Dickinson, N. D., May 5.—When Frank Miller saw a bob-cat or lynx about half a mile from South Heart he returned home for his rifle. An hour later he came back to the town lugging the carcasses of an old pair of bob-cats and three young ones. The lynx family is presumed to have strayed into this section from the Killdeer mountains.

## LAY OUT ADDITION TO TOWN OF BEULAH

Beulah, N. D., May 5.—This town is growing so rapidly that townsite promoters have engaged an engineer to lay out an addition to the original townsite.

**BIG MASONIC GATHERING.**

Mandan, N. D., May 5.—About 200 Masons gathered here yesterday for a ceremonial "Homecoming" of Mandan lodge No. 8, A. F. & A. M.

**NEW GOLF CLUB.**

Dickinson, N. D., May 5.—Work has practically been completed today on the new home of the Dickinson Golf club.


We Successfully Compete With the Mail Order Houses

**SPECIAL**

**Good News to the Ladies**

HAVE JUST RECEIVED ANOTHER NEW SHIPMENT OF LADIES' SUITS AND COATS. WE INVITE YOUR INSPECTION. THEY ARE THE VERY LATEST OUT. OUR PRICES ARE LOWER THAN WHAT YOU EVER DARED TO HOPE FOR.

**LADIES' COATS**

All Wool Poplin and Silk Lined . . $6.90
New Novel Styles, Checked . . . $5.90

These are all real bargains and we ask you to come early or they will be gone.

**LADIES' SUITS**

This shipment consists of very nifty and novel styles, rich patterns and good workmanship. While they last

$10.50 and $12.50

**GIRLS' HATS**

A beautiful assortment of trimmed hats. Your girl will go wild with joy when she sees them.

25c, 45c, 69c and 98c

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-J.C. Penney Co. Inc.-
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If It Comes From The Golden Rule It Is Certain to Be Correct


# Supreme Court Decisions

**From Mercer County.**

John O'Leary, plaintiff and appellant, vs. F. W. Schoenfeld, the Dayton-Clark Land Co., defendants, and Emma Tipple and Maria R. Tipple, defendants and respondents.

Syllabus: (1) Where a second mortgagee purchases at the sale under a foreclosure by the first mortgagee, a third mortgagee whose mortgage expressly states that it is given subject to such second mortgage, must, in order to redeem from such purchaser, not only pay the amount of his purchase with 12% interest together with the amount of any assessments of taxes which such purchaser may have paid thereon after the purchase and interest at the same rate on such amount, but must also pay the amount of the second mortgage lien with interest, and a tender to the sheriff of the mere amount of the purchase with interest which is not consented to or accepted by the second mortgagee will not affect a redemption under section 7754, compiled laws of 1913, even though the second mortgage may not be yet due.

(2) Section 7756, compiled laws of 1913, applies merely to redemptioners and not to purchasers.

(3) In an action to determine adverse claims the plaintiff must recover upon the strength of his own title and the failure to show such title will be fatal to his action.

(4) A general denial which is filed in an action to determine adverse claims in which the plaintiff alleges title in fee in himself puts in issue such title.

(5) The erroneous insertion in a mortgage of the name of an adjoining county will not invalidate the instrument where the section, township, range and state, in which the land is located are correctly stated.

(6) The courts will take judicial notice of the location of land which is decsribed in an instrument and in so far as the county is concerned, provided the section, township, range and state are correctly stated therein, even though the wrong county is mistakenly inserted.

(7) There is a presumption in favor of the regularity of taking depositions and of the proper performance of duty by the officer taking them, and a motion to suppress a deposition should generally be denied where no prejudice is shown which arises from the defect complained of.

(8) The word "transmit" as used in section 7900 of the compiled laws of 1913 and in relation to the transmission of depositions by the officer taking them to the clerk of the district court of the county in which the action is pending, does not mean the personal carrying by the officer, nor necessarily the sending through the mails, but is satisfied by any means selected by such officer which will secure the safe transfer of the document without its being tampered with by anyone.

(9) A court does not abuse its discretion which refuses to suppress a deposition for the mere reason that it was carried to the clerk of such court by one of the attorneys interested in the case and where the evidence shows that such deposition was addressed and sealed and promptly delivered and that when delivered to such clerk such seal was unbroken and where there is no evidence whatever or attempt to show that said deposition has been changed or mutilated in any manner.

Appeal from the district court of Mercer county, Nuchols, J.

Action to determine adverse claims to real property. Judgment of dismissal. Plaintiff appeals.

Affirmed. Opinion of the court by Bruce, J.

**From Richland County.**

H. P. Remington, plaintiff and respondent, vs. John Geiszler, defendant and appellant.

Syllabus: From a recovery by verdict of $1,000 damages for alleged slander of plaintiff by defendant, the latter appeals.

(1) The defense was that the alleged slanderous statements were true and their utterance was admitted in six of the eight instances charged. The court instructed the jury fully as to the plaintiff's side of the case, but failed to instruct as to the effect of the proof of the truth of the alleged slanderous statements. Held error.

(2) The court's instructions permitted the jury to disregard the testimony of witnesses impeached on immaterial matters, and constituted a misinstruction concerning impeachment of witnesses.

(3) Error was committed in the instructions given on credibility of witnesses, the court instructing upon the weight of the testimony.

(4) The jury were not given a plain instruction upon an alleged privileged communication made by defendant to the state's attorney in his attempt to procure issuance of a warrant of arrest.

(5) Error was committed in refusing to permit plaintiff to be examined as to whether he made statements to persons named, at times and places shown; that the alleged slanderous statements did him no injury.

(6) The truth or falsity of the alleged slanderous statements turned on whether a promissory note given by defendant to one C., but drawn by Remington in his office in the presence of defendant, C and the stenographer of plaintiff, Amanda Nelson, when drawn, contained an interest bearing clause. Defendant claimed it was to bear no interest. It was negotiated, and, when presented to defendant, contained a provision calling for interest at 12%. The alleged slander consisted of statements made by defendant accusing Remington of having changed the note after its delivery by insertion of the words "interest at 12%." The jury by their verdict found Remington had not altered it. Amanda Nelson was called as a witness of plaintiff and testified to having seen defendant sign the note and Remington then hand it to C., who put it in his pocket; and that Remington did not have the note in his possession after it was signed, the parties then leaving Remington's office. The effect of this was to disprove any opportunity of Remington to change the note after it was signed. In the cross-examination it was shown that there was a discussion concerning interest when Geiszler signed the note. She was then asked in cross-examination whether she "heard Geiszler say to Remington and C. that he would give his note without interest." The answer was excluded as without the scope of proper cross-examination. Held error, as such a statement, if made, could be shown to characterize the acts done and as bearing directly upon the important issue of fact in the case.

(7) It cannot be said that the jury would probably have returned the same verdict had these errors not been committed. The judgment appealed from is ordered set aside and a new trial granted.

Appeal from the district court of Richland county on change of venue from McIntosh county; Allen, J.

Opinion by Goss, J.

**Ward County.**

State of North Dakota, respondent, v. George F. Hart, appellant.

Syllabus:

1. A defendant in a criminal action has no constitutional right to a preliminary examination, but this right is only statutory.

2. A complaint made before a magistrate for the purpose of a preliminary examination only, does not require the same certainty in the statement of the offense as an information, indictment, or complaint upon which the accused is tried.

3. Such complaint is sufficient, as a basis for examination, where after stating the time and place, it names or describes an offense in general terms, and sets out such facts of the offense as will fairly apprise a person of average intelligence of the nature and cause of the accusation against him.

4. By entering a plea of not guilty to an information, the accused waives all defects and irregularities which may be objected to by motion to quash or set aside the information.

Appeal from the district court of Ward county; Leighton, J. George F. Hart was convicted of the crime of adultery, and appeals.

Affirmed.

Opinion of the court by Christianson, J.

**Williams County.**

State of North Dakota, plaintiff and respondent, v. Ira Crary, defendant and appellant.

Syllabus:

1. The finding of jury on a disputed question of fact is binding upon the appellate court, if there is any substantial competent evidence to sustain such finding.

2. A motion for a new trial on the ground of misconduct of a juror is addressed, largely, to the sound judicial discretion of the trial court, and the appellate court will not interefere unless it is shown that such discretion has been abused.

3. This rule, also, applies to a motion for a new trial on the ground of newly discovered evidence.

4. In the instant case it is held that this court cannot say that the court abused its discretion in denying a new trial. It is, also, held that the evidence is sufficient to sustain the verdict.

Appeal from the district court of Williams county, F. E. Fisk, J.

Ira Crary was convicted of the crime of grand larceny, and appeals.

Affirmed.

Opinion of the court by Christianson, J.

**Benson County.**

The John Miller company, a corporation, plaintiff and respondent, v. John A. Minckler, et al., defendants and appellants.

Syllabus:

This action was pending undetermined for six years and was subject to dismissal under the statute providing that causes so pending for five years may be dismissed, when plaintiff's attorney procured an order of reference. The defendant defaulted in appearance before the referee who heard the cause and who returned findings and conclusions, upon which a default judgment erroneously was entered without an order therefor or confirmation of the findings. All this was irregular and in the absence of the defendant and without his knowledge. Soon afterwards plaintiff moved to vacate the judgment and to confirm the findings, and for an order directing re-entry of the judgment. While this motion, duly served, was pending, defendant by a counter-motion moved to dismiss for non-prosecution under section 7598 C. L. 1913. Both motions were heard simultaneously. The court vacated the erroneous judgment, but conditionally confirmed the findings and directed re-entry of the judgment and denied defendant's motion to dismiss for non-prosecution. Defendant perfected two appeals, one from the order denying his motion to dismiss and one from the judgment entered upon confirmance of the referee's findings. Held:

1. The order denying the motion to dismiss is a non-appealable order.

2. The appeal from the judgment will permit review of the propriety of the order denying motion to dismiss for non-prosecution.

3. Section 7598 is analogous to the ordinary statute of limitations and is a statute in repose, which to avail must be invoked.

4. The motion to dismiss came too late because at the time it was made and heard the cause was conditionally in final judgment and proceedings for its final determination were pending and immediately before the court. Further delay was then impossible and the reason for the statute had ceased to exist, and the provisions of the statute were not applicable. The The court could not in the face of the motion for judgment conditionally granted have found the cause to be one to which the statute in question could apply.

An appeal from the district court of Benson county; Burr, special judge.

Affirmed.

Opinion of the court by Goss, J.

**Pierce County.**

Lilly Moeller, plaintiff and respondent, v. City of Rugby, a municipal corporation, defendant and appellant.

Syllabus:

Action for damages for injury by defective sidewalk. Defense contrib defective sidewalk. Defense, contributory negligence.

1. Plaintiff made a trip over a known dangerous sidewalk upon a dark night and encumbered herself with a bundle of clothes, upon one arm, a framed diploma upon the other, and an electric light bulb in each hand. Under the circumstances, disclosed by the opinion, plaintiff was guilty of such contributory negligence as precludes her recovery in this action.

Appeal from the district court of Pierce county, Burr, J.

Reversed.

Opinion of the court by Burke, J. Christian, J., being disqualified, did not participate, Hon. W. J. Kneeshaw, judge of the district court of the Seventh judicial district sitting in his stead, by request.

**From Cass County.**

P. H. Louva, plaintiff and respondent, vs. I. D. Worden, defendant and appellant.

Syllabus:

1. In an action by a real estate broker to recover commissions on the sale of defendant's lands, plaintiff alleges in his complaint two inconsistent contracts covering the amount of the agreed compensation. At the commencement of the trial defendant moved for an order requiring plaintiff to elect upon which contract he would rely, which motion was denied. Held, error.

2. Where the owner lists real property for sale with a broker at a net price, such broker, in the absence of an express contract to that effect, is not entitled to receive as a commission all the selling price in excess of such list price, but is merely entitled to a reasonable commission not exceeding such excess.

Appeal from district court, Cass county; C. A. Pollock, J.

From a judgment in plaintiff's favor, defendant appeals.

Reversed. Opinion of the court by Fisk, C. J.

**From Sheridan County.**

The First National Bank of McClusky, a corporation, plaintiff and respondent, vs. Louis Meyer, defendant and appellant.

Syllabus:

1. One who signs a promissory note on the face thereof as an accommodation maker and who receives no personal consideration for the same is primarily liable to the payee on such note as a joint maker under the provisions of section 8914 and section 7076, compiled laws of 1913, even though such payee knows at the time of the signing and delivery of the accommodation nature of the transaction. Such accommodation maker when sued upon such note cannot plead as a complete defense and a release, the fact that the payee may have theretofore sued his joint maker on such note and in such suit partially compromised with a garnishee defendant but can only offset as against said note the amount which was actually received and collected by the said payee.

Appeal from the district court of Sheridan county, Nuessle, J.

Action to recover on a promissory note. Judgment for plaintiff. Defendant appeals.

Affirmed. Opinion of the court by Bruce, J.

**From Burleigh County.**

Richard Wyldes, an infant, by J. M. McLaughlin, his guardian, plaintiff and respondent, vs. E. G. Patterson, defendant and appellant.

Syllabus:

1. Where a fact may be positively and accurately proved by a simple mathematical demonstration and computation, it is not error to exclude photographs and other testimony which seeks to controvert the established laws of mathematics.

2. The distance back upon the roof of a building where a man standing on such roof comes within the range of vision of a person standing in the street can be mathematically demonstrated to a certainty and the court may take judicial notice of what the results of the mathematical computation necessary to establish the fact would be.

3. The doctrine of the assumption of the risk only applies to risks which the plaintiff knows and appreciates or which in the exercise of due care he should have known and appreciated.

4. Where an accident occurs through the premature lowering of an elevator upon which the plaintiff is placing a wheelbarrow and the evidence shows that the engineer who operated the engine which raised and lowered the elevator relied upon a system of signals which the foreman in control of the plaintiff had a short time prior to the accident ordered discontinued and the plaintiff himself was led to believe that such system was not in operation and that the engineer would not rely thereon but would use every precaution to give him ample time to draw back from said elevator, it can not be said as a matter of law that such employe assumed the risk of the confusion of methods of operation which arose from the failure of the master to arrange for a common system and to make it known to all of the parties concerned.

5. It is not error to refuse to allow photographs to be introduced in evidence where the premises involved are within three blocks of the court house and an inspection is both practicable and possible.

6. The admission or rejection of photographs is largely within the discretion of the trial court and whether they are sufficiently verified or whether they may be useful to the jury are preliminary matters which are addressed to him.

7. Photographs are received, as merely an aid to the jury in applying the evidence and if they tend to confuse rather than aid the jury, they should be excluded.

8. To be admissible in evidence, photographs should simply show conditions existing at the time in question and photographs which show more than this and with men in various assumed situations in order to illustrate the claims and contentions of the parties should not be admitted.

9. The doctrine of res ipsa loquitur will apply where the accident occurs through the breaking of a steel cable 300 feet in length and where such cable is not produced upon the trial by the defendant nor is any proof introduced of its condition or inspection prior to the accident and the action was begun within three months of the time when such accident occurred and the only excuse for its non-production is that counsel does not know where it is.

10. If the negligence of the master or of one for whose conduct the master is answerable mingles with that of one who stands in the relation of a fellow servant to the servant receiving the injury or if the negligence of the master or his representative is the proximate or efficient cause of the injury, the master will be liable and will not be allowed to escape liability on the ground that the injury also proceeded from the negligence of one for whose conduct he was not answerable.

11. The mere withholding or failure to produce evidence which, under the circumstances would be expected to be produced and which is available, gives rise to a presumption against the party withholding it. The courts recognize and act upon the natural inference that the evidence is held back under such circumstances because it would be unfavorable.

12. Where the defendant does not ask the court to eliminate questions which are raised in the pleadings from the jury's consideration, he can not complain that an issue raised by such pleadings is improperly submitted to the jury.

13. The burden of establishing the defenses of contributory negligence and the assumption of the risk is upon the defendant.

14. The charge of a court to a jury is entitled to a reasonable interpretation. It is to be construed as a whole in the same connected way in which it is given and upon the presumption that the jury did not overlook any portion but gave due weight to it as a whole. If when so construed it presents the law fairly and correctly and in a manner not calculated to mislead the jury, it will afford no ground for reversing the judgment although some of its expressions, if standing alone might be regarded as erroneous or because there may be an apparent conflict between isolated sentences, or because some one of them, taken abstractly may have been erroneous.

Appeal from the district court of Burleigh county, Nuessle, J.

Action for personal injuries. Judgment for plaintiff. Defendant appeals.

Affirmed. Opinion of the court by Bruce, J. Burke and Christianson, JJ. concur. Fisk, C. J. and Goss, J. dissent.

**From Foster County.**

Walker & Co., a corporation, plaintiff and respondent, vs. W. E. Hopes, defendant and appellant.

Syllabus: The issue of fact arises on a counter-claim for damages through unfit materials used and improper installation of a furnace. Defendant offered testimony tending to show that four years after the furnace was installed, when for the first time the asbestos covering over it was removed, it was found that the dome was cracked and broken. This was excluded, although sufficient foundation was laid from which the jury might have inferred therefrom that the furnace was cracked and in unfit condition when installed. Held:

The exclusion of such testimony was error and was not cured or waived.

From a judgment of the district court of Foster county, Coffey, J., defendant appeals.

Reversed and new trial granted.

Opinion of the court by Goss, J.

**HOW TO ESCAPE INSOMNIA.**

(By H. Addington Bruce.)

(Author of "The Riddle of Personality," "Psychology and Parenthood," etc.)

I have been asked by a victim of insomnia:

"Is it not true that a person with a tendency to wakefulness can do much to help himself by systematically quieting his mind before going to bed?"

Undoubtedly this is the case, and to all sufferers from sleeplessness I commend the advice contained in one of Dr. Oppenheim's admirable "Letters to Nervous Patients:"

"A great deal depends upon the right use of the evening hours. On no account let yourself occupy them with anxious forebodings about the night.

"But on the other hand, it is not wise to take up your mind with too exciting thoughts, as the strong after-impression of feeling and fancy may counteract the tendency to sleep.

"You must find out for yourself whether a quiet game (cards, halma, chess or patience), the reading of a serious or an amusing book, the perusal of an illustrated paper, or a chat with a friend will be most certain to give you that tranquility of mind through the vestibule of which you will pass into the temple of sleep."

There are some helpful physical aids which may also be employed in preparation for sleep.

Many people are kept awake by cold feet. The use of a hot-water bag, placed at the bottom of the bed, will be found beneficial through promoting the circulation of the blood in the feet.

Other persons, especially if they sit up late at night, and then retire without eating anything, are kept awake by abdominal discomfort, due really to hunger. A few crackers or a glass of warm milk, taken just before going to bed, will be found helpful to insomniacs of this type.

But such expedients as these, it should be added, ought not to be employed as a regular thing. Otherwise one will become a slave to them, and in the end may find it impossible to sleep without the artificial aid of the hot-water bag, the cracker, or the warm milk.

It is in the cultivation of a serene, confident attitude in which there is no room for fear of sleeplessness, that the best preparation for sleep consists.

Take sleep for granted, and sleep will come to you with all its blessings.

**STUDY GETTYSBURG.**

Gettysburg, Pa., May 5.—The senior class of the United States military academy at West Point is here today to make a study of the movements of the two armies and the tactics used by them in the battle of Gettysburg. Many points of the field were visited and lectures were given at several places, the speakers pointing out why certain movements were made. The cadets, who number about 164, will return to West Point on Wednesday.

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