

News of North Dakota

MISTAKE SAVES LIFE OF WOMAN

Young Man Goes to House to Kill Her and Chokes Another Instead.

White Earth, N. D., Oct. 16.—An assault, by mistake, on the person of Mrs. Alice Moore, living alone on Hill street in this village, probably saved the life of Mrs. Major Buck, who was formerly a resident in that property. Between 10 and 11 o'clock in the evening a young man, who has been making White Earth his stamping ground for some time, is suspected of having forced open the side door and on entering, grabbed the old lady by the throat and would probably have choked her into insensibility, had he not noticed his mistake in time. Before leaving he explained to her that he was looking for another party. In the scuffle the brute loosened one of her teeth besides leaving deep scratches on her cheeks where he had sunk his finger nails. The dead was not discovered until late when Mrs. Moore was finally able to go to a neighbor's for assistance, to whom she confided the story of the outrage. This gave the fiend a chance to make his get-away, probably going to Williston.

NEW AUTO TRAIL IS BEING MAPPED

Dickinson, N. D., Oct. 16.—The "Black Trail" is a proposed new auto route from Hettinger through Dickinson and on north to Williston. It will run past Ta-ho-Kouty battlefield, which congress will be asked to make a national park. It will tap the Yellow trail at Hettinger and run through the famous Bad Lands along the Little Missouri river.

LEADER OF CROOKS TO GET FIVE YEARS

Minot, N. D., Oct. 16.—J. J. King, head of a ring of crooks that has been operating in Divide county, along the Canadian border, today was sentenced by Judge Leighton to five years in the North Dakota penitentiary, when he pleaded guilty to the charge of robbery. Harry Lewis, a boy, companion of King's, was sentenced to fifteen months on a plea of guilty. The couple was captured by Divide authorities.

EVERY THREE MINUTES ONE DIES IN THE U. S.

The Anti-Tuberculosis Society illustrates the frightful toll of consumption by extinguishing a light every three minutes, and shows that it is the man or woman, girl or boy, who neglects colds, whose blood is impure, who feels weak and languid, who is the very one to contract tuberculosis—and none are immune. During changing seasons, or after sickness, blood-quality is most important, and if you and your family will take Scott's Emulsion after meals it will charge your blood with health-sustaining richness, quicken circulation, and strengthen both lungs and throat. Scott's is free from alcohol—easy to take—it cannot harm. Get a bottle today. Scott & Bowne, Bloomfield, N. J.

ROBBERS ENTER STORE, GET \$175

LeMoure, N. D., Oct. 16.—Citizens of Berlin were rather surprised to discover that G. M. Lewis's store had been burglarized and about \$175 in currency, silver and checks taken. The burglar or burglars had broken into the N. F. section house where they had procured tools to aid in their nefarious work. They had forced entrance through a window leading into Mr. Lewis's office. They had apparently proceeded by twisting off the handle of the safe to make a hole for the insertion of the nitro-glycerine "dope." The explosion of the charge thoroughly shattered the door of the safe. Several checks were left intact at the bottom of the drawer. Sheriff Powers was summoned but so far no clue to the robbers has been found.

"J. C. R." AGAIN HAS DISAPPEARED

Dickinson, N. D., Oct. 16.—"J. C. R." the man of mystery, has dropped out of sight. He came here three months after disappearing from the Oak Forest, Ill., sanitarium and took treatment under physicians at the home of his supposed sister, Mrs. May Moran. Many of the doctors there recognized him as the missing J. Allen Caldwell. Recently a benefactor gave him a netted \$11 ticket for Glendive and he is present whereabouts have become as much of a mystery as that veiling his real identity and history.

Supreme Court Decisions

From Barnes County. Minnesota, St. Paul & Sault Ste. Marie Railway company, a corporation, appellant, vs. W. H. Stutsman, et al., the board of railroad commissioners of the state of North Dakota, and W. F. Cushing, secretary of said board, respondents. Syllabus: From a judgment of the district court that said railway company construct a crossing over their tracks near the village of Fernal in Barnes county, the company appeals. Held: (1) Under the record there is no question open on this appeal concerning the jurisdiction or authority of the state board of commissioners of railroads to order in the crossing at the place in question. Thereafter, on the case was tried upon the merits and on testimony taken in district court. Nowhere in the record, prior to appeal, was jurisdiction of the district court challenged. The parties could confer jurisdiction of the subject matter upon that court, and have done so, without objection. And no question of jurisdiction arises upon the record, the parties being held to the theory of trial as had below. (2) On the merits involving the facts, the judgment was justified. Appeal from the district court of Barnes county. Coffey, J. Affirmed. Opinion of the court by Goss, J.

From Cass County. Northern Savings Bank, a corporation, plaintiff and respondent, vs. Joe M. Kelly and the Courier-Forum Publishing company, defendants. Joe M. Kelly, appellant. Syllabus: Suit upon promissory note, with failure of consideration, wrongful transfer of said note, and entry, lack of consideration. Certain rulings of the trial court assigned as error. The proof of endorsement made by the president of the defunct Courier-Forum Publishing company together with the admissions of the answer and the possession of the note by plaintiff, make a prima facie showing of endorsement and ownership. (2) It was error in the trial court to reject the offer of the defendant to show an agreement with the Courier-Forum Publishing company to the effect that said note would not be valid unless a consolidation of the Courier-

News and Forum was effected. This evidence was competent to show a defense in the hands of the original holder of the note, and is competent to show the custody of the books of said defunct corporation and for the purpose of showing any knowledge that the witness may have had of the subscription to the stock of said corporation. Defendant was given a certain written instrument, wherein it was agreed that the note should be invalid unless certain conditions were to subscribe \$15,000 to such corporate stock, or the defendant's note should be invalid. The defendant should have been allowed to prove the failure to secure those subscriptions. (3) It was error in the trial court to exclude questions asked of the president of the plaintiff tending to show that at the time of the purchase of the note he knew of the defendant's failure to subscribe to the stock of said corporation. Defendant was given a certain written instrument, wherein it was agreed that the note should be invalid unless certain conditions were to subscribe \$15,000 to such corporate stock, or the defendant's note should be invalid. The defendant should have been allowed to prove the failure to secure those subscriptions. (4) It was also error in the trial court to exclude questions asked of the president of the plaintiff tending to show that at the time of the purchase of the note he knew of the defendant's failure to subscribe to the stock of said corporation. Defendant was given a certain written instrument, wherein it was agreed that the note should be invalid unless certain conditions were to subscribe \$15,000 to such corporate stock, or the defendant's note should be invalid. The defendant should have been allowed to prove the failure to secure those subscriptions. Appeal from the district court of Cass county, Pollock, J. Reversed. Opinion of the court by Burke, J.

From Hettinger County. Carl West, plaintiff and respondent, vs. Farmers State Bank of Bentley, N. D., a corporation, defendant and appellant. Syllabus: Action for damages for alleged conversion of grain and also for alleged wrongfully obtained possession of a real estate and chattel mortgage. Evidence examined and held: (1) That the plaintiff consented to have his grain sold and the proceeds delivered to the bank, inasmuch as there was no wrongful conversion. (2) That there were no misrepresentations made to, and relied upon by, plaintiff, by the bank or its officers. The undisputed testimony is that the bank cashier explained fully and fairly his proposition to an interpreter. This is the testimony of both the cashier and the interpreter. The only claim made by defendant is that the contract as translated to him was different from that which was furnished by plaintiff himself and there is no evidence of any conspiracy between plaintiff and said interpreter. Appeal from the district court of Hettinger county, Crawford, J. Reversed. Opinion of the court by Burke, J.

From Dickey County. Jakob Quaschnick, plaintiff and respondent, vs. Alton Blodgett, Jr., et al., defendants; Alton Blodgett, Jr., alone, appellant. Syllabus: Plaintiff's actual open and notorious possession of real property under an unrecorded contract for deed under which he has paid the taxes, made valuable improvements, leased for a period the buildings thereon and paid rent to no one, cannot be said to be consistent with title in another so as to deprive him of the benefit of the rule that actual, open and notorious possession is notice to the world of the equities of one in such possession. (2) In a controversy, to the priority of their respective claims between plaintiff who is in actual, open and notorious possession of real property under an unrecorded contract for deed, and appellant, who is the assignee of a mortgage subsequently executed and delivered by plaintiff's grantor to appellant's assignor; held, that appellant's mortgage lien is subject to the equities of plaintiff. (3) Plaintiff's possession was not only notice of his equitable rights to the subsequent mortgage, but it was also notice to appellant as the assignee of such mortgage, and knowledge of the terms of plaintiff's contract and of the fact of his having given his mortgage installments of the purchase price will be imputed against him. (4) The fact that plaintiff paid to appellant two interest installments on the debt secured by appellant's mortgage does not, under the facts disclosed, estop him from now asserting his prior equitable rights. (5) Appellant's contention that in purchasing this assignment of the mortgage he was protected under the recording act against the equities of plaintiff under his unrecorded contract for deed; held, for reasons stated in the opinion, wholly without merit. (6) While plaintiff, after receiving notice of appellant's mortgage, was

bound to recognize appellant's rights to make that mortgage a lien on the property in his hands, it is not his duty to pay and satisfy such purchase money under such purchase contract for value, appellant's rights under his mortgage being subordinate to the rights of the holder of such notes. (7) Appellant is not entitled to be subrogated to the rights of prior lienholders, whose claims it is contended were paid out of funds advanced by plaintiff under his unrecorded contract for deed; held, for reasons stated in the opinion, wholly without merit. Appeal from the district court of Dickey county, Frank P. Allen, J. From a judgment in plaintiff's favor, Defendant Blodgett appeals. Affirmed. Opinion of the court by Fisk, C. J.

From Dunn County. Keldo Massett, plaintiff and respondent, vs. R. B. Schaffner, defendant and appellant. Syllabus: (1) Where appellant in a law case fails to challenge the correctness of the lower court's ruling by any specification or assignment of error, his appeal presents nothing to the supreme court for consideration. (2) A return made pursuant to a writ by a justice of the peace on an appeal to the district court cannot be later impeached by a certificate of the justice thereafter made and filed with the clerk of court. (3) Even if such statutory return were thus subject to impeachment, it is held that such certificate wholly does not impeach the same and that the judgment of the justice was in all respects regular upon its face. (4) The record discloses that the judgment was returned following Peterson vs. Hansen, 16 N. D. 192—it is held that this was a compliance with the statute. Appeal from the district court of Dunn county, Crawford, J. From a judgment in plaintiff's favor, defendant appeals. Affirmed. Opinion of the court by Fisk, C. J.

TO BE HELD. By Mrs. Athol of the Minneapolis Club. I remember when I was a kid in school, I used to get a letter from my mother, and she would say, "I got so that I could get a better school, and I naturally got very proud of myself. I am still convinced that 'Nothin' but success' is a corking sentence in a copy book. But on the ball field? Scarcely quite as apt as 'Note your P's and Q's' or be careful. My worst boner came as the result of a bit of success, and it happened when I was playing with the Chicago White Sox. You'll remember that I played on the infield one day and that I chased flies the next. Oh, I was a utility man all right. I had got into a red-hot series with the Red Sox. There was no special reason for the feeling which existed for, as I remember it, we were both out of the pennant hunt. But some day I applied myself in the first game, there was a big argument, and everybody got sore on everybody, and it was a great, big fight between eight-teen men. Well, in the second game some Boston fellow hit a base hit to right and when I picked up the ball and threw it, I saw the manager take a longer lead off first, and I threw him out before he could get back. Everybody cheered, my pals told me I had pulled a corker, the manager complimented me, the other fellows did a lot of cheering, and I felt fine. In the next game Jake Stahl hit one to the same spot. It was a beautiful low drive, and I got into the first bound, Jake turned first as usual and I bluffed the throw to second. That I had in mind was to duplicate the play of the day before. Jake took a longer lead off first, but he didn't get so far away that he couldn't get back. So I bluffed to throw to first, and I applied myself in the first game, there was a big argument, and everybody got sore on everybody, and it was a great, big fight between eight-teen men. 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