ROYAL

—Absolutely Pure—

The greatest American baking powder. Sold the world over and approved by the highest authorities for its healthfulness.

WON ON AN ERROR

Continued From First Page.

this corporation were various. Some of them owned stocks in some, and none in others of their corporations, which were to be controlled by the Consolidated mines. Some owned large shares of the stocks of one or two of the corporations, and small shares or none in the others. Some of the stocks were very valuable, and some of them were of little value. As they proposed to convey all these stocks to the new corporation in exchange for its stock, it became necessary for them to fix the relative values of the stocks in their corporations in order to determine the relative amount of the stock in the new corporation which each of them should receive. Since the amount of this stock which each of the Merritts would receive depended upon the relative value of the stock which he held in the original corporations to the value of that held by all the Merritts, he was deeply interested in the decision of this question. But as Rockefeller was to have a mortgage on all the property of the new corporation for the price of his securities, it was not so important to him what relative or estimated values were placed upon the securities which the Merritts were to put under the mortgage. When the question of the values of the stocks held by the Merritts arose, the defendant informed them that he would leave the determination of that matter to them, and directed them to put their own cash valuation on their property, and upon certain property upon the Missabe range that was to go into the consolidation which he held options to purchase from the Merritts. Thereupon they made estimates of the values of their various stocks, and wrote a letter to the agent of the defendant in which they set them forth. The values fixed by this letter were taken as the basis of the issue of the stock of the new corporation to the individual members of the Merritts, and were carried forward into the contract of Aug. 28, 1893, with the approval of the defendant and without change, except that the relative value of the stock of one of their corporations, for the purchase of which the defendant had a prior contract or option, was raised $200,000.

PROVISION OF THE CONTRACT.

The contract provided that the consolidated mines should acquire the stocks of the Merritts at the rates named in the letter and recited in the contract; that it should pay for them with $2 of its own stock for $1 of these values; that it should acquire the securities of the defendant at the prices which were specified in the contract, and which in the main had to be fixed, and that it should pay him for those here in question with its mortgage bonds at 90 per cent of their par value. The first article reads: "Messrs. Merritt & Wetmore and the Consolidated mines covenant and agree that the Consolidated mines will forthwith acquire the following named interest in the following mentioned properties, hereinafter set forth, to wit: Sixty-one (61) per cent of the capital stock of the Mountain Iron company, at the rate of $3,500,000 for the entire property," and then follows in the same article the description of the other stocks to be acquired from the Merritts, with the exception of the stock of the railway company, and the rates at which they were to be taken in exchange for the stock of the new corporation. The third article, without an exception which it contains, which is not material to the question of damages, reads: "The Consolidated mines will pay for the properties above mentioned in its capital stock, at the rate of 50 per cent of the par value thereof, that is to say, $2 of such capital stock for every dollar of cash valuation, as stated above." The only valuation stated above consisted of the rates at which the stocks of the Merritts were to be taken by the Consolidated mines, to which reference has been made. The allegation of the plaintiff that he was induced to make this contract by the false and fraudulent representations of the defendant as to the financial standing of the Penokee corporation and the Spanish company, and that the securities of those companies were in fact worthless, was supported by some evidence, and for the purpose of this discussion will be taken as established. The contract was performed. Bonds of the Consolidated mines to the amount of $1,699,851, payable in ten years with 5 per cent interest, were issued to the defendant for his stocks, trust notes and bonds of the Penokee corporation and the Spanish company, and for $2,599,149 for his other securities, about which no complaint is made, so that the mortgage indebtedness of the Consolidated mines became $4,299,000. These bonds were secured by a first mortgage on all the property of the new corporation. In January, 1894, the Penokee corporation and the Spanish company were financially embarrassed, and on Jan. 18, 1894, the defendant surrendered to the Consolidated mines its first mortgage bonds of the par value of $2,146,505.34 and took in exchange for these bonds and their secured interest, stock of the corporation at its par value, although it was then worth but 10 per cent of that value. Bonds to the amount of $1,699,851 of those so surrendered had been issued on account of the securities of the Penokee corporation and the Spanish company, and the balance on account of the securities about which no complaint is made. At the same time, the defendant took back from the Consolidated mines 640 shares of the West Superior Iron and Steel company which he had sold to that corporation under the contract of Aug. 28, 1893, and surrendered to it its first mortgage bonds of the par value of about $652,800, which he had taken therefor. In this way the mortgage indebtedness of the Consolidated mines was reduced in January, 1894, from about $4,290,000 to about $1,500,000. In February, 1894, the Merritts sold a large portion of all of their stock in the Consolidated mines to the defendant, at its market value, which was then 10 per cent of its par value. During all this time until the sale of the stock in February, 1894, the plaintiff had continued to own the stock in the Consolidated mines which he the Merritts, and they held a majority of its obtained under the contract of Aug. 28, 1893, the president of that corporation and a majority of its directors had been members of stock. Its board of directors had in January, 1894, unanimously adopted the resolutions which authorized the issue of the stock of the corporation and its exchange at par for the bonds and accrued interest which the defendant had received for the securities of the Penokee corporation and the Spanish company, and which authorized the reduction of its mortgage indebtedness by this and other exchanges of securities from $4,299,000 to $1,500,000.

VALUE OF CONSOLIDATED STOCK.

During all this time, as far as the record discloses, the market value of the stock of the consolidated mines was 10 per cent of its par value. The Consolidated mines issued its stock under the contract of Aug. 28, 1893, to the amount of $21,000,000, and the property it received for this stock, reckoned at the rates specified in the contract, was worth 50 per cent of that amount, or $10,500,000. Upon this record the plaintiff was induced, by the false representations of the defendant, to take stock in the new corporation to the amount of $2,967,632 and to part with stocks in his original corporations, which, at the rates specified in the contract, were worth 50 per cent of the amount of this new stock, or $1,483,816. The stock he received in the Consolidated mines was actually worth but 10 per cent of its par value, or $296,763.20. The defendant offered and was refused permission to prove that the actual value of the stocks which the defendant gave for his stock in the Consolidated mines was no greater than the value of the stocks he received, namely, $296,763.20. For the purposes of this discussion, the statement contained in this offer, must now be deemed to be the fact. Scotland County vs. Hill, 112 U. S., 183, 186. Under this state of facts the effect of the rulings of the court below upon the question of damages was that, if the jury found the deceit to be proved, as they did, the plaintiff was entitled to recover the difference between the value of his original stocks, at the rates specified in the contract, $1,483,816, and the actual value of the stock of the Consolidated mines, which he received, $296,763.20, or $1,186,042.20, notwithstanding the fact that the actual market value of the plaintiff's original stocks was never more than the actual value of the stock of the new corporation, which he received for them. Their effect was to permit the plaintiff to recover of the defendant as damages, if the jury saw fit to allow as much, four times the actual market value of all the property he had parted with, because in an agreement for the exchange of stocks, the parties had stated its value for the purposes of the exchange, at five times its actual value. Can these rulings be sustained?

The true measure of the damages suffered by one who is fraudulently induced to make a contract of sale, purchase or exchange of property is the difference between the actual value of that which he parted with and the actual value of that which he receives under the contract. It is the loss which he has sustained and not the profits which he might have made by the transaction. It excludes all speculation and is limited to compensation. Smith vs. Bolles, 132 U. S., 125; Busterud vs. Farrington, 36 Minn., 320; Reynolds vs. Franklin, 44 Minn., 30, 32; Stickney vs. Jordan, 47 Minn., 262; Fixen vs. Blake, 47 Minn., 540, 542; Wallace vs. Hallowell, 56 Minn., 501; Woolenslagle vs. Runals, 76 Mich., 545; McAleer vs. Horsey, 35 Md., 439; Buschman vs. Codd, 52 Md., 202, 209; High vs. Berret, 23 Atl. Rep. (Penn.), 1004. These propositions are unquestioned, and counsel for the plaintiff insist that they were properly applied to measure the damages in this case. They maintain that the plaintiff and the defendant agreed, by the contract of Aug. 28, 1893, that the actual value of the plaintiff's original stocks was an amount of money which was equal to 50 per cent of the par value of the new stock which he received, or to $1,483,816, and that the defendant is thereby estopped from proving any other value for them in this action. But there can be no binding contract between parties unless their minds meet and assent to the terms of the agreement. Did the minds of the parties to the contract of Aug. 28, 1893, ever meet or assent to the proposition that the property described therein was of the actual market value there specified on a sale of it for cash or that any of them would pay for any of it at the rates there named in money, or its equivalent, either under the contract or otherwise? One of the most satisfactory tests to ascertain the true meaning of a contract is made by putting ourselves in the place of the contracting parties when it was made and then considering, in view of all the facts and circumstances surrounding them at the time of its execution, what the parties intended by the terms of their agreement. When their intention is thus made clear it must prevail in the interpretation of the instrument, regardless of inapt expressions or careless recitals. Accumulator Company vs. Dubuque Street Railway Company, 27 U. S. App., 364, 372; 12 C. C. A. 37, 41, 42; 64 Fed. Rep., 70, 74.

APPLYING THE TEST.

Let us apply this test to this contract. It is true that in the antecedent negotiations, in the letter by which the Merritts estimated the value of their property, and in the contract itself, the parties sometimes referred to the values which they fixed as cash valuations, and as the amounts at which they would be willing to buy or sell the property, but it is also true that the letter by which the values of the original stocks of the Merritts were fixed, declares in express terms that the signers have "tried to place a relative value on each of the mines;" that the values there stated are their "estimate of what the different properties ought to bring in the consolidation," and that the contract itself is not in terms that these properties were worth the amounts there stated, but that the consolidated mines should acquire the stocks described at the rate of the values there recited to pay for them in its own stocks at 50 per cent of their par value. None of the parties to the contract were buying or selling or contemplating the purchase or sale of any of these securities for cash or its equivalent. The defendant was not buying or intending to buy any of the stocks or property of the Merritts. They were not selling or intending to sell their stocks under this agreement. They were simply exchanging the stocks which they owned in several corporations for stock in a single corporation, which they intended to control, and which was to own the same property that they then held and more. The defendant was not selling, and the Merritts were not buying his securities for cash, but he was simply exchanging them for mortgage bonds of the new corporation, which the Merritts were to control, payable in ten years from their date, with interest at six per cent per annum. Here then were the promoters of a new mining corporation fixing values at which one set of parties would exchange their individual stocks in several corporations for $21,000,000 of stock in the new corporation, and the values at which their new corporation would exchange its ten year bonds to the amount of $4,299,000 for the securities of another party. Undoubtedly they might have found and agreed what the market values of all these securities were on a sale for cash, and they might have contracted that these securities should be deemed of the values which they stipulated in all controversies that should subsequently arise under the agreement. But casual expressions and loose recitals cannot be permitted to establish such a contract. Nothing short of a plain stipulation to that effect ought to be permitted to prove it, in view of the fact that the determination of actual values was not necessary to the completion of the pending negotiations. There is no such express stipulation in the contract. The finding of the actual market value of these securities was not the object which the parties sought to accomplish by, or the intention with which they fixed the values specified in the contract. They did not intend or attempt to fix the values of the securities of the Merritts in cash, but their values in the stock of the consolidated mines at 50 per cent of its par value. They did not intend or attempt to fix the values of the securities of the defendant in money, but their value in ten year bonds of the consolidated mines at 90 per cent of their face. In view of the situation of the parties to this contract when it was made, their surrounding circumstances, the object which they were seeking to attain and the terms of the letter and of the agreement, it is plain to us that this was the extent of their contract as to the values of the stocks which they described in it. The evidence convinces us that their minds never considered or met upon the question of the actual market value of any of these securities, and that they never intended to, and never did make any binding agreement upon that subject. The defendant, therefore, did not contract that the market value of the plaintiff's stocks was $1,483,816 in cash or in anything but the stock of the consolidated mines at 50 per cent of its value.

Was he estopped from proving its actual market value? He was not estopped by any agreement as to the value because, as we have seen, he had made no such agreement. An estoppel in pais arises when one who is ignorant of the material facts which condition a subject is intentionally or recklessly induced by the false representations or action of another to change his relation, so that he will be injured, if he who made the false representations is permitted to prove the truth. If a vendor represents to a purchaser that a tract of land contains ten acres more than it actually measures, and thereby induces him to buy and pay for it at the rate of $30 per acre, he is estopped from showing that the land was of less value, because the purchaser has actually paid and lost $30 per acre upon the ten acres that did not exist. If the plaintiff had induced the defendant to purchase some of his property for cash by false representations, he would have been estopped from denying that such property was worth what the defendant had actually paid for it, because that would have been his actual loss. The plaintiff was not misled or induced to make the contract by any misrepresentations of the refendant on the subject. The defendant made no representations as to the value of the plaintiff's original stocks, and he and his associates fixed their own estimates of these values and they were embodied in the contract. The evidence relative to these values presents none of the essential elements of an stoppel in pais.

WHAT THE DIFFICULTY WAS.

The difficulty with the rule applied by the court to measure the damages in this case seems to be its failure to note the difference between the actual value of the plaintiff's stocks and the value at which they were estimated in the contract for the exchange of securities. In a simple transaction this difference seems clear and radical. If A, by the false representation of good title to a lot that is actually worth $1,000, induces B to give him a lot of the same value in exchange, B's damages must be the actual value of the lot which he conveys. If in their contract of exchange of the lots and in their deeds, they estimate and recite the value of each lot at five times its actual value, that fact cannot multiply or increase the damages of B. He loses no more than the thousand dollars, the actual value of the lot he parts with. As long as he accepted A's lot in payment for his, he may be permitted to maintain that his lot paid the debt of $5,000 which he incurred to A for the latter's lot, because that was the contract. But the moment he brings his suit for damages and thereby undertakes to collect the value of his lot or any part of it in money, instead of in land, he is limited to its actual market value and to his actual loss. The extent of the defendant's agreement as to the value of the plaintiff's stocks was that they were worth $1,483,816 in the stocks of the Consolidated mines at 50 per cent of their par value, in consideration that the plaintiff agreed that the defendant's securities were worth $4,299,000 in first mortgage bonds of that corporation at certain percentages of their par value. As long as the plaintiff was content to pay the defendant for his securities in these bonds and to accept the stocks of the new corporation for his original stocks, these estimated values stood. But when in this suit for damages he undertakes to convert a part of the payment for his original stocks from stock of the Consolidated mines into money, he must be limited in his recovery to the actual market value of his original stocks in cash and thus to the actual loss he has sustained. In an action for damages for material misrepresentations which induce an exchange of property, the difference between the actual market value of the property which is parted with and the actual market value of that which is received under the contract, and not the difference between the price of the property parted with fixed in the agreement of exchange and the actual value of that received, is the true measure of the damages. Reynolds vs. Franklin, 44 Minn. 30, 32; Fixon vs. Blake, 47 Minn. 540, 542; High vs. Berret, 23 Atl. Rep. (Penn.) 1004.

The disregard of this rule resulted in a recovery which violated the fundamental principles by which damages are measured in actions of this character. One of these is that such damages must be merely compensatory and must not be speculative. The defendant was bound to make good to the plaintiff the actual loss which the latter had sustained by reason of his misrepresentations, but he was not required to pay him his estimated or expected prices for his stocks, if these prices were higher than the actual value of his property. The injury was that the Consolidated mines was caused to issue its first mortgage bonds for $1,619,851 for worthless property and thereby the value of the stock of the plaintiff in this corporation was depreciated in value and in this way he was damaged. Obviously the Consolidated mines must have been damaged before the plaintiff could suffer from this cause and he could suffer no greater damage than such a part of that which the corporation suffered as his stock was of the entire amount of the stock issued by that corporation. Suppose that the defendant's securities in the Penokee corporation and the Spanish company were worthless and that the Consolidated mines issued its bonds for them to the amount of $1,619,651, what loss did it sustain? What would fully compensate it for this loss? If the corporation had actually paid $1,619,851 for these worthless securities, it is clear that the re-payment of that amount would completely compensate it for its loss. It could not suffer any greater loss by promising to pay this amount and never paying it. The plaintiff had less than one-seventh of its stock and his share of full compensation for this injury could not possibly have been more than one-seventh of $1,619,851 and interest, or $231,407.28 and interest. But he recovered a verdict for $940,000 and this recovery imports a damage to the corporation of at least $6,580,000 for issuing bonds for $1,619,851. In our opinion, these damages far exceeded the just measure of full compensation for this injury. They could not have been limited to the actual loss, but must have consisted in large part of the difference between the sanguine estimates of the values of mining and railway stocks made by their owners for the purposes of exchange and the actual values of those stocks. They must have been composed more largely of bright anticipations of prices which the owners of the stock hoped to realize from them than of the difference between the actual values of the stocks which were exchanged. In other words, they were speculative rather than compensatory damages.

COURT'S RULINGS FATAL.

Another universal rule for the ascertainment of damages in casses of this character is that they must be the natural and proximate consequence of the injury. They may not be so remote that the wrong-doer might not have reasonably expected them under the circumstances of the particular case. Jex vs. Straus, 122 N. Y. 293, 301; 1 Sutherland on damages, 21; 1 Sedgwick on damages (8th Ed.), 142; 2 Greenleaf on evidence, 256; 1 Addison on Torts, 6; Ryan vs. N. Y. C. R. R. Co., 35 N. Y., 210; Knight vs. Wilcox, 14 N. Y., 413, 416; Hutchins vs. Hutchins, 7 Hill, 104; Lynch vs. Knight, 9 H. L. Cas., 577. Who could have reasonably expected that the fraudulent increase of the mortgage indebtedness of a corporation, that had issued stock to the amount of $21,000,000, from $2,579,149 to $4,299,000 would injure the corporation and depreciate the value of its stock $6,580,000, or more than four times the increase of its mortgage debt? Who could have anticipated such an amount of damages as the natural or probable result of an injury that would have been fully compensated by the payment of less than one-fourth of that amount to the corporation? These questions seem to us to be susceptible of but one answer. We are convinced that damages so enormous could not have been reasonably expected to follow from, and could not have been the natural or probable consequence of so relatively small an increase of the mortgage debt of so gigantic a corporation. This view is confirmed by the fact that the reduction of the mortgage debt of this corporation more than $2,000,000 by an exchange of its first mortgage bonds and accrued interest for its stock at par in January, 1894, did not appreciate or change the market value of this stock by as much as one per cent of its par value.

The errors in the rulings of the court below relative to the measure of the plaintiff's damages, which we have been considering, are fatal to this judgment and necessitate a retrial of the case. There are many other assignments of error, and they present many interesting questions, but their consideration and decision would not change the conclusion at which we have arrived. The judgment below must be reversed with costs, and the case must be remanded to the court below, with directions to grant a new trial, and it is so ordered.

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The thermometer is down! So are Schoch's prices. Always whittled way down till the profit looks like almost nothing. On top of that our big purchases at **First Hands** for cash make the cost of the goods to us way below other dealers. The advantage in **Your** favor is a big one.

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Bars ROSE QUEEN SOAP for

25 CENTS.

15 More Cars of Winter Apples
at, per barrel,
$1.15.

One car of Willow Twig Apples at, per barrel,
$1.40.

One car of fancy Ben Davis Apples, per barrel,
$1.50.

5-lb jar fancy Creamery Butter,
$1.00.

Michigan Cider, per gallon,
10 Cents.

6 quarts Cape Cod Cranberries,
25 Cents.

10-lb bag Buckwheat Flour,
20 Cents.

35 bars White Seal Soap,
$1.00.

New California Prunes, per pound,
5 Cents.

New Orleans Molasses, per gallon,
20 Cents.

Matchless Mop Wringer and Pail,
$1.50.

New Sauerkraut, per gallon,
15 Cents.

Large Hickory Nuts, per peck,
25 Cents.

New English Walnuts, per pound,
12½ Cents.

50-gallon Galvanized Iron Oil Tank,
$5.00.

Rattan Door Mats, each,
60 Cents.

Clothes Baskets, each,
50 Cents.

Wash Benches, each,
70 Cents.

Western Washing Machines,
$2.50.

Onions, per bushel,
25 Cents.

Rolling Pins,
10 Cents.

5-lb caddy fancy Japan Tea,
$1.25.

THE ANDREW SCHOCH GROCERY CO.
Corner Seventh and Broadway.

WHITE IS ON TRIAL

THE MAN WHO SHOT TILLIE SCHRUMPF IN JULY LAST.

FACES HIS VICTIM ONCE MORE.

HEARS HER TELL OF HIS DESPERATE ATTEMPT ON HER LIFE.

HE IS CHARGED WITH ASSAULT.

Both the Defendant and the Young Woman Have Gotten Over Their Wounds.

Henry B. White was placed on trial in the district court before Judge Brill yesterday. White is the Northfield man who shot Miss Tillie Schrumpf at the residence of C. H. Botkin, Hamline, Sunday, July 26. He was indicted for assault in the first degree. White called at the Botkin residence and inquired for Miss Schrumpf. He had been there before and it was supposed was a relative of the woman. She was sent to the door and after they had talked a minute or two she started back into the house. He pulled a pistol and fired at her. The shot went through the fleshy part of her arm and into her side and she fell.

Excited by the shot, the people came running after White, to apprehend him, when he put the pistol to his body and made a desperate wound. He has been treated at the hospital until lately, and appears to be recovered. The girl also recovered and was in court.

The forenoon was occupied in the effort to secure a jury. Mr. Donnelly is appearing for the state.

Tillie Schrumpf was called when court convened and told the story of the shooting. She is a plain, modest looking young woman and told of her acquaintance with White up to the time he shot her.

C. H. Botkin was the next witness. He said he was home when White called and hearing three revolver shots ran out the door. White had a revolver in one hand and drawing another weapon with another hand pointed them at the witness and said: "Damn you, I'll kill you too." Botkin ran back into the house and out of the back door. Some of the neighbors nad meanwhile come up and grabbed White. He was disarmed.

Thomas Montgomery was called and testified to being attracted by the shots.

Court adjourned with Mr. Montgomery on the stand.

REAL ESTATE AGENTS.

Decision of Importance to Them in Supreme Curt.

Among the decisions handed down by the supreme court yesterday, the opinions in which were demanded written by Chief Justice Start, is one which will be of interest to those who have real estate transactions. The decision is the only reversal of the local lower court in yesterday's lot, and the parties thereto are prominent Minneapolis men. Hobart is a real estate agent and C. K. Sherburne was formerly proprietor of the Windsor hotel. The decision tends to the protection of real estate owners and purchasers against the operations of voracious middlemen. The syllabi of yesterday's decisions are as follows

Marcius B. Hobart, respondent, vs. Charles K. Sherburne, appellant.

All agreements between a real estate agent or broker and a proposed purchaser touching the subject matter of his employment, which are not dsclosed to the principal, should be scrutinized closely, and if not found compatible with entire integrity and good faith toward the principal they will defeat the agent's claim for commission from his principal. Evidence considered in the light of this rule and held that the verdict in this case is not sustained by the evidence. Order reversed. —Start, C. J.

Mattie Miller, respondent, vs. St. Paul City Ralway Company, appellant.

Evidence as to the defendants negligence in suddenly starting its street car before the plaintiff was safely aboard of the car whereby she was injured, considered and held to sustain a verdict for her.

Held, further, that the damages awarded are not excessive. Order affirmed. —Start, C. J.

In re assignment of Lambert Bros, Ezra F. Lambert et al., appellant, vs. Scandinavian-American Bank of St. Paul et al., respondents.

1. Laws 1895, chapter 67, providing for the absolute discharge of insolvent debtors from their debts, construed, and held; that a creditor, who appeared in this case in obedience to the citation, issued and served as provided in such act and answered, first, that his debt was contracted before the passage of the law, and, second, that the insolvent had within six years prior to his assignment, disposed of his property to defraud his creditors, did not thereby waive his right to insist on hs first defense, that his debt was excluded by the constitution from the effect of the law.

2. Held, further, that where a promissory note was given before the passage of the act, but the time of payment was extended after it took effect, the original contract to pay the debt, represented by the note, was not superceded by the contract of extension, and that the act is not operative as to such debt.

3. Notice of appeal must be served on each adverse party, as to whom it is sought to review in this court any order or judgment, although he did not appear in the action or proceeding in the district court. Order affirmed. —Start, C. J.

Stillwater & St. Paul Railroad Company, appellant, vs. City of Stillwater, respondent.

The charter of the defendant provides that where land is taken by the city for public purposes by condemnation proceedings, if the owner thereof fails to furnish an abstract of title showing himself to be entitled to the damages awarded, the amount thereof shall be apportioned and set apart in the city treasury for the party showing himself entitled thereto.

Land belonging to the plaintiff was so taken and the money awarded for its damages so appropriated and set apart, and more than twelve years thereafter the plaintiff, for the first time, furnished such abstract, and upon a refusal of its demand for the payment of the money, brought this action.

Held, that the action is not one to enforce a trust withn the meaning of General Statutes 1894, section 5,136, subsection 7, and that it is barred by the statute of limitations. Judgment affirmed. —Start, C. J.

Jenny Cain, respondent, vs. C. W. Mead, appellant.

1. Held, that the verdict is sustained by the evidence.

2. The plaintiff testified that she paid a third party a certain sum of money for a specified purpose, and took his receipt therefor, which she produced and identified, and it was then received in evidence in connection with her testimony as to the fact of such payment. Held, its admission was not an error.

3. Certain requests to charge the jury held to have been properly refused for the reason that they would have been, if given, liable to mislead the jury as to the law applicable to the case. Order affirmed. —Start, C. J.

Board of Trustees of Ripon College, respondent, vs. Charles W. Brown. appellant.

1. When the trial court orders a verdict in view of and based upon the entire evidence, or the evidence on some particular issue, the whole of such evidence must be incorporated in a settled case or bill of exceptions if a review of the order is sought in this court.

2. Appellate courts will give to a bill of exceptions or a settled case, including the judge's certificate thereto, a reasonably liberal construction, but they will not by construction supply material defects therein; hence where it is necessary to have the entire evidence or the evidence on a particular issue included in the record, it must clearly and affirmatively appear from the face of the bill or case that such is the fact. Held that the bill of exceptions in this case does not comply with this rule, and that the question of correctness of the trial court's direction to the jury to return a verdict for the plaintiff cannot be reviewed.

3. Held that the trial court did not err in receiving parol evidence in aid of the construction of the defendant's alleged contract, contained in the deed to him, to pay the plaintiff's mortgage, or in not submitting the question of such construction to the jury.

4. Upon the simple issue as to whether a party has paid taxes upon land, the receipt of the county treasurer is prima facie evidence of such payment. Judgment affirmed. —Start, C. J.

STORM OF YESTERDAY.

It Is But a Foretaste of Coming Winter.

There was real wintry weather yesterday, and the snow was of a persistent, durable nature. It was the first effective snowfall of the season. The storm began at an early hour in the morning and increased in vigor during the day. It was not merely local, but extended very generally through the West, and caused the delay of several of the trains from the coast. The district of the Northwest between Minneapolis and Alberta, B. C., was generally invaded by cold weather, the temperature varying from twenty-four to four degrees above zero, the latter registeing the temepature of Alberta in the morning.

Snow fell in Duluth, Huron, Qu'Appelle and Battleford. Elsewhere the conditions were cloudy without snow. Locally there was an east wind, twelve miles an hour.

The railroads suffered less than might have been supposed. The heaviest fall, according to the reports obtained last night, seemed to have been on the Chicago, Milwaukee & St. Paul line, in the vicinity of Milbank, where the snow lay to a depth of one and a half feet, and was still falling. The trains were all on time however.

The evening reports from the Northern Pacific offices were favorable. Snow was falling throughout the western part of the state, but was not very heavy and did not drift. This caused no delay, the tracks being easily cleared, and all the early trains arrived on schedule time, including both passenger and cattle trains.

The east bound train over the Soo Pacific line from the coast, suffered the heaviest delay. Due at 6 p. m., it did not arrive until 8:30, being two hours and thirty minutes late. It was four hours late on the Canadian Pacific division, but made up one and a half hours. The eastern division of the Soo line was not affected.

The Great Northern trains were running on time and the line was in good working order. The 7:30 o'clock passenger due this morning was reported all right, running at good speed. The snow along the line is not very heavy.

Coming from the east, the 8 p. m. passenger train of the Chicago & Great Western was delayed fifteen minutes.

The Chicago, St. Paul, Minneapolis and Omaha lines were working satisfactorily, the Western trains, passenger and freight, running on time. A collision at Magnolia, on the Western division, near Luverne, delayed traffic several hours, but there was no report of anything more serious.

The Minneapolis & St. Louis road experienced no delays, there being little snow along its line.

The local street railway was not disabled. The chief difficulty was in stopping and starting the cars, a thin coating of ice forming on the rails and slipping the wheels. Matters grew worse rather than better toward night, although the service remained unbroken.

The storm developed Sunday in the country southeast of Kansas and extended yesterday morning as far north as the upper portion of Nebraska. Its influence extended last evening all through the Northwest, and was slightly felt in the region of the Great Lakes. The greatest interference lay in the territory to the north along the Canadian border, both north and south. The predictions provide continued snowfall today, with colder weather tonight.

PALM GARDEN PLEASANTRIES.

They Are Obnoxious to the Tenants Upstairs.

A. Weinholzer, proprietor of the Palm Garden saloon at Eighth and Wabasha streets, will appear before Judge Orr this morning to answer a charge of keeping a disorderly resort. The complaint upon which the warrant was issued is sworn to by Frederick C. Wagner. The complaint sets up that Weinholzer suffers, permits and invites evil disposed persons to come to and remain at his place, drinking large quantities of intoxicating liquors. This, the complaint alleges, causes swearing, quarreling, tippling, reveling, and makes loud noise and disturbances in the night as well as the day time. The particular date when this all occurred at the place is given as Nov. 5 and two months prior to the date.

F. C. Wagner, the complaining witness, is identified with the A. O. U. W. order, which has a lease on the upper part of the building, and those interested in the renting of the halls claim that the saloon seriously interferes with the renting of the upper part of the building. Something like $3,000 has been expended by the order in fitting up the halls and the running of the saloon has interfered with the money-making part of the rentals. An attempt will be made to prove that there are undesirable and criminal classes constantly in the saloon, and that undesirable characters make it a practice to encroach on the parts of the building leased by the Workmen. Weinholzer says he is not worried over the matter, and contends that his patrons and customers are respectable.

CAN NOT FOOL HIM.

State Auditor Dunn Scouts the Chippewa Falls Yarn.

A Minneapolis paper yesterday published what purported to be a special dispatch from Duluth charging that the cruisers in the employ of the state land department, instead of investigating the timber frauds, were prospecting for iron ore on the government lands. The "special" also charged a Chippewa Falls firm with the frauds which the cruisers recently reported. State Auditor Dunn saw the alleged special, and he was nearly ready to talk when a Globe reporter asked him about it yesterday.

"It's a lie. Duluth lumbermen are amused, are they?" he said, quoting from the "special," which lay on his desk before him. "When I get through with them they may think it's some one else's laugh. Chippewa Falls firm, eh? I don't want to say just where this firm is located or who it is, but I don't mind telling you that when they pay for that lumber, and I think they are responsible for the value of that timber, I don't think the check will be drawn on a Chippewa Falls bank. Duluth lumbermen amused? Oh, yes! Think I don't know who cut it, eh? And as for this iron ore business, I want to tell them that the crew which I had out in the northern part of the state prospecting was headed by Capt. Jonathan Chase, who has lived in Minneapolis for years, and has a reputation as a cruiser and prospector. I don't believe he spent his time prospecting on his own account while drawing pay from the state. We have just sent out another crew back of Tower, and they are not looking for iron ore, either, and if they find the same condition of things that was found by Mr. McClellan, the Duluth lumbermen may think the laugh is not so funny as it was."

CASS-CROW WING FIGHT.

Supreme Court May Appoint a Referee Today.

The supreme court will probably name a referee today to take testimony in respect to the proposed annexation of part of Cass county to Crow Wing county. The court has already this term declared its belief in the validity of the law under which the annexation of the territory was made, but there are certain conflicts in the testimony as to facts which remain to be cleared up, and the court will today hear a motion for the appointment of a referee to hear the testimony in the dispute. It is probably that for convenience'sake, some attorney living in the northern part of the state will be named.

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MOST PERFECT MADE.
A pure Grape Cream of Tartar Powder. Free from Ammonia, Alum or any other adulterant.
40 Years the Standard.

(Silk Headquarters of the Northwest.) Globe—11-10-96

Mannheimer Bros.

Sixth and Robert Streets, St. Paul.

SILKS--ALL THIS WEEK!

CHOICE NOVELTY SILKS—in 11 great lots—19c, 29c, 39c, 49c, 59c, 69c, 79c, 89c, 98c, $1.18, $1.39—actually worth 50c, 75c, $1.00, $1.25, $1.50, $1.75, $1.85, $2.00, $2.25, $2.50 and $3.00.

There are hundreds of kinds of really fine, choice-styled Silks. You will do well to buy now for future use. Silks at these prices can't last always.

Fine Black Silks at About Half Usual Prices.

49c for rich Black Peau de Soie, extra heavy and excellent for wear. Never been offered here under 75c.

69c for fine Satin Brocaded Gros Grain and fine quality Brocaded Satins—same quality we have been selling, and they were good value, at $1.

79c for Wide Heavy Black Taffeta—the rustling kind—recommended for wear—always sold for $1.00.

98c for Very Lustrous Heavy Black Satin Duchesse, full 27 inches wide; recommended to give excellent service; always sold for and good value at $1.50.

$1.18 for large elegant designs in Extra Heavy Black Brocade Satins and Gros Grains; most of these sold right here for $1.75 and $2.00.

ANOTHER DRESS GOODS SALE

This week—all the seasonable novelties—many of them exclusively here only. A partial list:

COLORED DRESS GOODS.

Homespun Cheviots, all pure wool, in all the leading autumn mixtures, 40 inches wide, excellent value at 50c a yard. Our Special Price.......... **31c**

Bourette Novelties, Armure Checks, two-toned Diagonals, Scotch Suitings, with Silk bugs, worth 75c a yard, for **47c**

Panama Suitings, extremely stylish, in red and black, brown and black, green and black, purple and black, olive and black, 44 inches wide, well worth $1.00 a yard, for.......... **75c**

BLACK DRESS GOODS.

Wonderful bargains in Extra Super French Serge—jet black only—full 49 inches wide, all pure wool, the 50c a yard kind. Our special price.......... **27c**

Novelties in Tufted Mohairs, Bourettes, Marage Zibelines, Canvas Broche, Granite Ground Jacquards, Wide Wale Diagonals and Wide Wale Cheviots, 50 inches wide—excellent values at $1.25 a yard. Our special price.......... **75c**

Camel's Hair Cheviots, 48 inches wide, at $1.25, $1.50 and $2.00 a yard.

Pierola Cloths, the latest novelty for Skirts and Costumes, 44 inches wide, the $2.00 quality, for.......... **$1.50**

MILLINERY DEPARTMENT—We are showing all the seasonable novelties, including the latest Paris fads—Large Hats handsomely trimmed with exquisite combinations of velvet and silk flowers, the favorites being asters, roses, sweet peas, violets and foliage. A large assortment of Birds, Coques, Quills, Wings and Aigrettes.

We are Sole Agents for Butterick's Patterns and Publications.

NEW POST AT BISMARCK.

Gen. Merritt and Party Leave to Locate It.

Gen. Wesley Meritt, commander of the Department of the Missouri, U. S. A., arrived in the city yesterday accompanied by a party of officers from Chicago, en route to Bismark, N. D., to decide upon the location of a new military post to be erected at that city and for which an appropriation from congress has been secured. Gen. Merritt and party left at 2:45 o'clock in the afternoon in a special car attached to the Northern Pacific overland train. R. B. C. Bement accompanied the party.

TO THE SALARY PLAN.

County Officers Will Switch at New Year's.

The county commissioners at their adjourned meeting yesterday directed the county auditor to furnish a statement giving a complete list of his clerks and the salaries paid each. After the first of next January all the county offices, save that of the clerk of courts, will be conducted on a salary basis, all fees going to the county. The board of county commissioners will therefore fix the salaries paid to county officials.

The board is to open the Cleveland road through Rosetown and Mounds View.

Prominent Lawyer Dead.

BRIDGETON, N. J., Nov. 9.—Col. William E. Potter, one of the best known lawyers in New Jersey, died today after a prolonged illness. He was one of the six officers detailed to deliver the colors surrendered by Lee's army to Secretary Edwin M. Stanton at Washington May 1, 1865. He was a delegate to the Republican national convention of 1868 and 1876 and an elector on the Garfield ticket in 1880.

LOCAL NOTICES.

After Election

Those who have remained home to vote will find pleasant recreation by taking a trip over the Wisconsin Central lines, when going to Ashland, Milwaukee, Chicago or the East and South. Through Pullman sleepers on night trains. Cafe Parlor Cars on day trains. Homeseekers' excursion and settlers' rates to the South and Southwest. For particulars call at city ticket office, No. 373 Robert st.

Phillips' California Excursions.

Two through cars weekly from St. Paul via the Minneapolis & St. Louis railroad, "Albert Lea Route." Tuesday's car runs via Kansas City, and thence through Texas, New Mexico and Arizona. Thursday's car runs via Omaha and through Colorado and Utah. For full particulars apply ticket office, 396 Robert street, corner Sixth street.

Santa Fe Route—California Limited.

Leaves Kansas City Thursdays and Sundays at 9:50 a. m., reaching Los Angeles in 56 hours and San Diego in 60½ hours.

The equipment of this splendid train consists of superb vestibuled Pullman palace sleepers, buffet smoking car, and dining car. Most luxurious service via any line.

Another express train, carrying both palace and tourist sleepers, leaves Kansas City at 2:25 p. m. daily for Los Angeles, San Diego and San Francisco.

Inquire of C. C. Carpenter, Pass. Agt., 513 Guaranty Loan Bldg., Minneapolis, Minn.

Homeseekers' Excursions

Tuesdays, Nov. 17, and Dec. 1 and 15, via Chicago Great Western (Maple Leaf), at rate of one fare for the round trip, with $2 00 added, to nearly all points in Iowa, the Southwest and South. Good twenty-one days. Stopovers on going trip. See C. E. Robb, C. P. and T. A., Fifth and Robert streets.

Par Excellence California Route.

Phillips' excursions, every Tuesday and Thursday, to California points via Albert Lea route. Through cars, finely upholstered, polite attendants, cheap rates. Apply 396 Robert street, corner Sixth street, for full information.

THROUGH CALIFORNIA SERVICE

Via "The Milwaukee."

A fine Pullman Tourist Sleeping Car now leaves Minneapolis at 8:25 and St. Paul at 8:35 every Saturday morning and runs through to Los Angeles, Cal., via Kansas City and the Santa Fe System, without change, arriving at destination 1:25 p. m. following Wednesday.

The journey via this route is through a very interesting portion of America, and the hardship incident to winter travel through the more northerly climate is avoided.

Rate per double berth $6.00 through. For berth reservations, further information as to rates, etc., apply to "THE MILWAUKEE" agents, or address J. T. Conley, Assistant General Passenger Agent, St. Paul, Minn.

ANNOUNCEMENTS.

TO THE STOCKHOLDERS OF THE ST. Paul & Northern Pacific Railway Company: Notice is hereby given that pursuant to a resolution of the board of directors of the St. Paul & Northern Pacific Railway Company, adopted at a meeting held in the City of St. Paul, State of Minnesota, on the 15th day of September, 1896, a special meeting of the stockholders of the St. Paul & Northern Pacific Railway Company will be held in the City of St. Paul, State of Minnesota, on the 20th day of November, A. D. 1896, and that the business to be transacted at said meeting will be to pass on a proposed sale of all the railway, land grant and other property of the St. Paul & Northern Pacific Railway Company to the Northern Pacific Railway Company, and the terms of such sale, if a sale shall be decided upon. Dated 17th day of October, 1896. Charles F. Coaney, Secretary of St. Paul & Northern Pacific Railway Company.

DIED.

PAYTE—In St. Paul, Minn., Nov. 8, 1896, at the family residence, No. 326 Maple street, Charles Freeman, aged eighteen years, youngest son of Eliza and the late William T. Payte. Funeral from St. Peter's church today at 1 o'clock. Interment at White Bear, Minn.

M'CORMICK—John, at his late residence, 439 Eighth street, Sunday, Nov. 8, aged 56 years. Funeral from above residence Tuesday morning, Nov. 10, at 8:45 o'clock. Service at St. Mary's church at 9 o'clock.

MARRIAGES. BIRTHS. DEATHS.

MARRIAGE LICENSES.

Louis Luger	Gertrude M. Lahr
Joseph Koppy, Stearns county	Theresa Weinhandl
Charles J. Larson	Selma Nold
Henry Slovetsky	Sarah Kosofski
Thomas O'Connell	Margaret A. Traney

BIRTHS.

Mr. and Mrs. Joseph Ek	Boy
Mr. and Mrs. Albert Liberg	Girl
Mr. and Mrs. Axel Davidson	Boy
Mr. and Mrs. Andres R. Kruger	Girl
Mr. and Mrs. Elenterio Daddario	Girl
Mr. and Mrs. Patrick Sexton	Girl
Mr. and Mrs. James Lucy	Boy

DEATHS.

Mrs. Benjamin Swartwont, city hospital	53 yrs
John McCormick, 439 East Eights st	54 yrs
James Lynch, 246 Dunedin Terrace	76 yrs
William Lewis, 455 North Fort st	83 yrs
Carolina Salchow, 916 Case st	56 yrs

AMUSEMENTS.

METROPOLITAN,
L. N. SCOTT, Manager.
TONIGHT,
Mat. Tomorrow! Prices, 25c & 50c.
Mr. Donald Robertson AND Miss Brandon Douglas
In the Romantic Tragedy in four acts,
THE MAN IN THE IRON MASK.
Adapted by Donald Robertson.

METROPOLITAN,
L. N. SCOTT, Manager.
Three Nights and Saturday Matinee, BEGINNING THURSDAY, NOV. 12.
Presented Here After 200 Nights in New York. 100 Nights in Boston. 100 Nights in Chicago.
THE GAY PARISIANS
A Refined High-Class Comedy. The original New York, Boston and Chicago cast.
MANAGEMENT—CHARLES FROHMAN.
Prices, 25c, 50c, 75c and $1.00.
Saturday Matinee, 25c and 50c. No higher.
Reserved Seats selling now.

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Matinee Tomorrow.
Next Sunday Night — Gus Heege in "A Yenuine Yentleman"
McKEE RANKIN and a Great Company in "NEW YORK AS IT IS."

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Piano, violin, guitar, banjo and mandolin taught. Lessons given in drawing and painting. Call or send for prospectus.