A HARD LEGAL GRIND

The Second Trial of an Interesting Action in Trover.

DAMAGES AGAINST A RAILROAD CO

The Scoville-Biddle Criminal Libel Case Goes to the Jury After Legal Argument.

Judge Bennet this morning made the closing argument for the defense in the trial of Elmer E. Biddle, the young Salt Lake attorney, charged with criminal libel, this being the third day of the investigation. Assistant District Attorney Orwell made the closing address for the prosecution, and after Judge Harris had briefly charged the jury, the case was given into their hands about 12:30.

As on the preceding days of the trial Frank E. McGlynn, lawyer Kinney and others who have figured so prominently in the matter were again in attendance.

VILE OBSCENE CARD.

The amount claimed by Ludwig F. Ellison from the Rio Grande Western Railway Co. was $100. The case was given to the jury late yesterday afternoon and this morning, in Judge Merritt's court, they brought in a sealed verdict, awarding the plaintiff $100, but $40 less than he had claimed.

A stay of thirty days was granted the other side to prepare their motion for a new trial.

The plaintiff sued to recover for the loss of eighty-one head of sheep, which were killed on the defendant company's line of road on January 30th, 1895, negligence being attributed to the defendants in having failed to keep their tracks in proper repair. The sheep got upon the line, and were run down by a locomotive and train of cars.

A TWICE TRIED ACTION.

The case of Louis Hyman and John A. Davis vs Simon Bamberger and G. J. Salisbury was then called up in Judge Merritt's court and a hearing began before a jury.

This is the second time the case has been tried in the district court, a new trial having been granted the plaintiffs, respondents, by the Territorial Supreme court, in April 1894.

It is an action in trover to recover damages for the alleged wrongful conversion of three promissory notes, secured by 2,000 shares of stock in the Dalton-Beck & Champion Mining company, the notes having been executed by John Beck in favor of the plaintiff Hyman. Plaintiffs alleged, in substance, that they were the owners of the notes on November 10th, 1891, that two of them were for $5,000 each and one for $4,719.24, bearing interest at 7 per cent per annum, and secured by the 2,000 shares of stock in escrow in the state Bank of Utah, to be sold at the request of the legal holder upon default of payment being made; that they were entitled to the immediate possession of the notes and stock; that on the date named the defendants, being in possession of the same, unlawfully disposed of and converted the notes and stock to their own use, to plaintiff's damage in the sum of $15,291.91.

The defendants denied these allegations and averred that on the 11th of May, 1891, plaintiffs executed and delivered to the defendant Salisbury two notes for the sum of $4,000 each, one November 11th, 1891, and severally delivered over the Beck notes and stock; that each of these notes expressed upon its face that the collateral security was deposited with defendant Salisbury, with authority to sell at public or private sale, at his option, and without notice or demand, on default in the payment of plaintiffs' notes; that any surplus arising from such sale should be refunded to plaintiffs; that plaintiffs neglected to pay their notes at maturity—December 11th, 1891; that on November 13th the defendant Salisbury served notice upon plaintiffs and the various banks and financial institutions of Salt Lake City that he would sell the securities on November 17th at public sale, and that at such sale the defendant Bamberger was the purchaser for $3,000, the purchase being made jointly for himself and the defendant Salisbury; that the amount due defendants on plaintiffs' notes was $9,719, that therefore upon the bidding of the purchase price, with plaintiffs' notes, was tendered to them and acceptance refused; that the sale was fairly made and the price received the full cash value of the securities; and that thereby they became the owners thereof and were ready and willing to deliver to plaintiff the balance of the purchase price over their notes.

The case was tried before a referee (Judge T. J. Anderson) who found, as a conclusion of law from the facts adduced, that the plaintiffs, at the time of and demand for the notes, were the owners of the collateral notes and stock, subject to the lien in favor of the defendants, for the sum of $9,719, and were entitled to the possession of said notes; that the defendants, by the wrongful refusal to comply with the plaintiffs' demand for their possession, unlawfully converted the same to their own use; and that the measure of plaintiff's damages was the value of the property converted—$9,000, less $9,719 lien thereon, or $700, for which sum he rendered judgment in favor of plaintiffs. Defendants having tendered the plaintiffs the balance due the latter, and they having refused to accept judgment in their favor for that sum.

The plaintiffs moved the district court to set aside the findings of the referee and grant a new trial, but the motion was overruled by Judge Zane (the then chief justice) and they appealed to the higher court.

The Supreme court, in stating its opinion—which was delivered by Judge Bartch, Judge Smith and Judge Henderson—held that the referee could not lawfully insert the amount of the lien from the amount of the damages, especially when no such demand was made in the answer. Having grave doubts as to the sufficiency of the lower court to pass upon the question of the measure of damages. They reversed the case and remanded it with directions to the court below to grant a new trial.

Jones and Schneider are counsel for the plaintiff, Rawlins & Critchlow and N. C. Hall for the defendants.

The trying promises to occupy a long time. It is in progress as the News goes to press.

AN EXPERT OPINION.

Prof. Mills offers a suggestion as to the Irrigation Board.

Editor Deseret News:

I was very much pleased to see your timely comment in the News last evening on the irrigation agitation. Allow me to say that I heartily agree with the most of what you propose—all except the board of control. I favor a board of arbitration to settle water disputes but does take entire motion of the water of the River. Be that board what it may, it appears to me it should be created by the Legislature and not by the Council. It may be quite necessary to change the number of members and this should be provided with the most care and expense. I think my idea we need five water commissioners. You make it four and the irrigation commission make it three. By all means if we have a board, let it have a charter by the Legislature. What do our irrigation men say?

A. A. MILLS.

Prof. Utah Exp. Station, Logan, Utah, Exp. Station.

Probate Court.

Judge Merritt and Salt Lake Judge M. Nally sang in the Probate Court on the grounds this morning. The new commissioners were sworn and all no public interest.

U. S. Marshal's Accounts.

Judge Merritt's court this morning approved quarterly accounts of U. S. Marshal Dygnan for the last quarter were presented by District Attorney Dunn, proved to be correct, and allowed.

AMUSEMENTS.

Professor Kinney at the University of Utah will be a very attractive affair and should draw a heavy audience. The admission is only 10 cents and a large attendance is looked for. In addition to a fine musical program there will be an attractive feature in the shape of living pictures which will be in charge of Miss Maud May Babcock. Miss Edith Kimball will have charge of the refreshment booth, Miss Ethel Lyon, the floral, Miss Katie de Pastoris, the Japanese, Miss Carrie Clinton, the Turkish, and Miss Winnie Sprague, the literary booth. There will also be a "wonderful fortune teller."

The Clive Concert.

The complimentary concert to be tendered Prof. W. C. Clive in the Fourteenth ward assembly hall, on Monday evening next, promises to be a most successful one from an artistic standpoint, and to many friends and the committee in charge point to the following choice program, and ask the public to assist them in making it so in a financial way:

Overture, "Tancredi" ..... Rossini
Mr. Joseph Morris.
Solo, "The Wind Hath Blown Cold" ..... Rice
Mr. John Swenson.
Recitation, "The Bridge" ..... Hood
Mrs. Lucy Stevens Kimball.
Violin solo, "Fantasy Caprice" ..... Dancla
Professor Joseph Ballantyne.
Recitation, "Lady Clare" ..... Tennyson
A. Pratt from "Money," engagement Tabernacle—Appearance in player on one string.
Solo, "Sweet Marie" ..... Stephen Adams
Mr. John H. Pratt.
Symphonic poem, "Ave Verum Corpus" ..... Gounod
Mr. Joseph Morris.
and 2nd Violin.
Mr. Clive.
Solo, "Ave Maria" ..... Gounod
Mrs. Ida A. Pratt.
Violin solo, "Fantasie Caprice" ..... Cole
Mr. Joseph Morris.
and 2nd Violin.
Mr. Clive.
Solo, "Ave Maria" ..... Gounod
Mrs. Ida A. Pratt.
Violin solo, "Fantasie Caprice" ..... Cole
Mr. Joseph Morris.
and 2nd Violin.
Mr. Clive.

Bricklayers' Meeting.

A meeting of bricklayers was held in the Board of Labor hall, 45 E. Second South, last evening. The meeting was called with the object of forming a union. A temporary organization was formed with Mr. T. Williams as chairman and Mr. B. A. Harbour as secretary. Another meeting will be held next Monday night, the 25th, to form a permanent organization.

An Unfortunate Mishap.

A serious accident is reported to have happened near Bingham Junction on Wednesday night. It appears that while Mr. and Mrs. Allsop were driving along the road about half a mile distant from the Junction their horse stumbled over an unfenced mining claim and, or upset, fell to death. Mrs. Allsop had one of her arms broken and received internal injury, her husband is said to have been badly bruised up.

Gymnastic Exhibition.

The public is invited to attend a free gymnastic exhibition at the Y. M. C. A. this evening. The exercises will consist of Indian club drill, horizontal bar work, flying rings, parallel bar drill and pyramid building. The idea of this exhibition is to illustrate practical body building, some attention by one of aggregation.

Horse Carried Down.

An unknown Swedish swedish at Bingham Junction, owned by a Mr. Davis, was overcome by the last midnight. The one is estimated at from $100. It is supposed that a drunk was had sought out for the purpose was fatal consequence of the exposure.

UTAH FIGURES IN BEET.

Veteran Council No. 1 of this City to Gather Saturday Evening, April 6th.

The date for holding the convention of American Veterans, Veteran Council No. 1, has been definitely agreed upon to coincide with arrangements made by the committee, consisting of W. H. Ribson, C. H. Banks, E. Petty, J. Keeling, B. Harper and H. Binder, the secretary, W. H. Brewer, is sending out invitations preliminary to the Democratic gathering to meet with the organization. The invitation in part is as follows: "We the above named, having recently organized under the Order of American Veterans, and enrolling first 40 members in the territory may become united with the order, whose rapid growth and prosperity in other states has created a reputation for the mentioned having been convinced that it will be of credit, benefit to all members of the territory, we have decided to call a meeting to all Veterans on Saturday evening, April 6th, at 7:30 o'clock. Meeting to be held at the Veteran Rooms, 8 Hall, No. 11 West Temple street, Salt Lake City, Utah."

The rules of the association are specifically stated as follows:

First—Organization for our general good of members between friendly and beneficiary.

Second—The consideration for mutual benefit.

Third—The securing from the town, the county and the territory, congressional and a good body of citizens more devoted on such cause.

Fourth—The procuring of the passage of proper laws, and their enforcement for the protection of worthiness throughout the Territory.

Fifth—To assist all to be members in case of injury, sickness, protection to widows.

Sixth—To procure a better and more uniform body, to which members and relatives of deceased members of said band may be benefited.

Seventh—To establish a proper and honest of right and a tribunal of justice, the protection of worthiness throughout the Territory.

Eighth—To assist all to be members in case of injury, sickness, protection to widows.

Ninth—To procure a better and more uniform body, to which members and relatives of deceased members of said band may be benefited.

Tenth—To establish a proper and honest of right and a tribunal of justice, the protection of worthiness throughout the Territory.

Eleventh—To assist all to be members in case of injury, sickness, protection to widows.

Twelfth—To procure a better and more uniform body, to which members and relatives of deceased members of said band may be benefited.

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