

Lancaster Intelligencer.

SATURDAY EVENING, DEC. 10, 1881.

HOW JUDGES DISAGREE

AND CALL EACH OTHER "LEARNED BROTHERS."

How the Lancaster County Court Got Back at the Delaware County Court.

Some little amusement has been created in the legal circles of this state, beyond the borders of our own county, by a spirited controversy between Judge Livingston and Judge Clayton, of Delaware county, the nature of which and the novel manner in which it is carried on can best be learned from the following recital of facts:

On April 5th, 1879, Judge Livingston delivered an opinion in the case of the county of Lancaster vs. the Lancaster county national bank, in which he held that where part of the capital of a national bank is invested in a building used for banking purposes, and the bank pays into the state treasury the tax of one per cent, prescribed by act of assembly, upon the par value of all its shares, the building can not be taxed for county purposes, although the cashier occupies the part of the building not used for banking as a residence.

Subsequently a somewhat similar question arose in the common pleas of Chester county, Judge Clayton, of Delaware county, sitting for the adjudication of the case stated. It was the county of Chester vs. national bank of Chester county, and on the facts nearly like those in the case of the Lancaster county bank, Judge Clayton decided:

A dwelling house and lot, owned by a national bank and occupied by its cashier as a residence, although paid for out of the profits of the bank, and where the bank has paid to the state six mills tax on the par value of its shares under the act of 1879, is liable to the ordinary tax of real estate, for county purposes.

So, also, is its lot and bank building used entirely for banking purposes. Farmers and Drivers' bank vs. Greco county, followed.

The relief of bank stock in the hand of share holders from local taxation is ample compensation for the bank's trouble in collecting the six mill tax under the act of 1879.

Lancaster county vs. Lancaster County national bank, 10 Lancaster Bar 185, dissented from.

In making his dissent from Judge Livingston's opinion Judge Clayton rather brusquely said:

The supreme court of the state have decided that the banking house of a national bank, though built from the profits of the institution and used only for and indispensable to the purposes of the institution, is taxable for county purposes, notwithstanding the payment of the ten mill tax provided for by act of March 31, 1870.

Commissioners of Greco county vs. Farmers and Drivers' national bank of Waynesburg, 7 Leg. Gaz. 147, s. c. 3 Leg. Chro. 91. The case has not been officially reported; from which we must infer that the supreme court considered the question too self-evident a proposition of law to need advertisement to the people or the profession. The case arose under the act of March 31, 1870 (Purd. Dig. 143, pl. 97), and as the act of June 7, 1879, is but a supplement or re-enactment of the former act, substituting six instead of ten mills as the amount of tax to be paid on the shares of stock, the decision, of course, applies to the latter act as fully as to the former. True, Judge Livingston, in the case of Lancaster county national bank, decided the other way, but he was, however, in direct conflict with the higher court, it is of no authority.

The editor of the Lancaster Intelligencer, in publishing this deliverance of the Delaware county judge took occasion to say, editorially:

It will be seen from a careful comparison of the above cases that there is no conflict between them; that where the bank building is purchased with the profits or earnings of the bank, it is taxable for the tax for county purposes, but where it is purchased with and represents both capital and profits it is exempt from such taxation; and that the opinion of Judge Livingston, delivered April 5th, 1879, is not in conflict with those of the supreme court.

Now comes Judge Livingston's turn. It has happened recently that in the abundant litigation of the Lyeoeming Mutual insurance company against persons whose premium notes it held Judge Clayton, in passing upon what description of property is required to enter judgment on these notes, against the real estate insured, decided that "the description of the property required by the proviso of the act to be filed with the note, must be sufficiently specific to designate the property with reasonable certainty, so as to distinguish it from other property of the insured in the same neighborhood. Where the description is defective the judgment will be stricken off." In the case before him he struck off the judgment because the description was an insufficient compliance with the law, but incidentally made this allusion to the rights conferred upon the company by the law under which it operates:

The 3d proviso of the same section declares, that before any execution shall issue, it shall be the duty of the officers of said company to cause to be made out a statement of the amount of premiums received, and the manner in which the money of the company has been expended, and file a copy thereof, attested by the oath or affirmation of the treasurer, in the office of the prothonotary of such county wherein members reside who are to be affected by the issuing of the execution.

The last proviso is the only redeeming feature in the above choice specimen of special legislative favoritism, but if the statement filed in this case is a true specimen of the one usually furnished in such cases, even this last proviso is delusive, for it gives no information except by five general lumped accounts, the smallest item being for \$31,711.81.

If the motion were only to set aside the execution, this statement would certainly be held insufficient. The motion, however, is to strike off the judgment, which renders it unnecessary to consider any irregularity, except such as affects the judgment itself.

In the case of this same insurance company vs. Levi Sensenig, in our court, the question recently came up to be decided by Judge Livingston, what is a sufficient statement of receipts and expenditures to be filed by the company to entitle it to issue execution, as provided in the 3d proviso of the section quoted above. Judge Livingston held that "the proviso, which requires, before execution shall be issued against its members, that a statement of the amount of premiums, received, and the manner in which the money of the company has been expended, to be made out, and file a copy thereof, etc., does not mean an item-

IN THE FAR WEST.

A TRIP TO NEW MEXICO.

The Land of "Nana" and "Billy the Kid."

Western Life and Manners--In the White Oaks Camp.

Our esteemed young fellow-citizen, Mr. Eugene H. Flinn, of the firm of Hess & Flinn, recently made a trip to New Mexico, from which he returned last Sunday, having had an eventful experience, and to a representative of the INTELLIGENCER, who interviewed him the other day, he gave a highly interesting and intelligent account of his trip to a section which few, if any of our citizens have ever visited, though it has been made famous by romantic stories of men and things, which Mr. Flinn seems to have had special opportunity to test and verify for himself. In company with some friends from Wilmington, Del., and Topeka, Kan., who have mining interests in the new and very promising White Oaks camp region, he traveled hence, via St. Louis, Kansas city and Topeka to Las Vegas, New Mexico, where they stopped off for a day. This is a Mexican town of about 11,000 inhabitants. The structures are all adobe, or one-story mud houses, with the exception of a two-story hotel built of frame. The enterprise of the place is entirely in the hands of such Americans as are to be found there. Travelers are told a story of one of the waiters which is calculated to make guests observe due deference to those who stand behind their chairs in the dining room. A commercial traveler incautiously called for an egg, outside the prescribed bill of fare, which he had already eaten through. The African expostulated, and when the extravagant guest retorted somewhat tartly the waiter pulled his revolver and shot him dead in his chair. Flinn and his party found satisfaction within the four corners of the bill of fare. That waiter has a permanent situation. His affable services are not to be lightly dispensed with by an enterprising landlord.

A twelve hours ride took them from Las Vegas to Socorro, and a mile walk from the railroad station landed them at the leading hotel in this town of 2,000 inhabitants, at two o'clock in the morning. The floors of the hostelry were earth and its walls mud. Through a dark and dirty passage they were conducted into a somewhat illumined but no less dirty "office," where a bank of mud made the bar and a few flickering lights furnished the gambling tables. The "rooms" to which the guests were shown were very like cells located in a cellar. Those who were given there were not expected to undress, and made their beds with their blankets. Socorro is a silver mining region and has about 2,000 people, who make up a classic teristic Mexican town, with adobe buildings entirely. The manners of the place were illustrated to the party by a story told by a young man from the East, who incautiously wore a stovepipe hat on the street soon after his arrival. He was halted with an inquiry as to how much space there was between his head and the top of his hat; he replied a few inches and walked off. At thirty paces or so his interrogator must have fired at him, as at that distance the young man from the East suddenly experienced the sensation of having the whole top of his hat blown off.

From Socorro Mr. Flinn started to drive, by the stage route, following an old and a six shooter in his belt, but his hand generally rests on the butt of a trusty mining camp, 125 miles away, beyond the Sierra Madre mountains and across the Otero range. Only one of his party had been over the route, and that was some years before. Two others had started on ahead by a private conveyance, and some miners were following in the stage. The quartette in the "backboard" had to cross the Rio Grande about half mile from Socorro. It is a little wider than the Conestoga, and a turbid, sluggish stream. The big ferry boat had been stolen and the party experienced great difficulty in fording their horses across, not succeeding in getting them over for several hours. They drove to the Otero mountains, some 40 miles, by 11 o. m., and having lost the trail, were frightened at finding themselves in a canyon, which they had reason to believe was occupied by hostile Indians, then on the warpath. They wrapped themselves up in blankets and slept under the wagon. That is, they tried to sleep. They thought of the Indians, they heard the coyotes, and wished they were home.

In the morning they retraced their way and got back on the stage route. The second night they reached the "Mountain Station," a cave in the side of the mountain, in charge of a villainous looking ranchman and while they slept on a bed of logs the fire and his burning gaze zest to their lodging experience. The next day they drove across the lava bed, a black deposit, extending like a river from the crater of an extinct volcano, about 500 feet above the plain. The deposit of what was once a molten mass runs some 75 miles across the plain, winding and widening, like a stream of water, and a mile and a half wide at the narrowest place. The deposit looks like rough, black cinder, burst into fragments, and some places piled up 100 feet high. The depth of the mass is not ascertained, but there are fissures in it so deep that stones thrown down the chasm, bounding from side to side, cannot be heard striking the bottom. The road across it is marked with "monuments," set up at intervals of some paces, so that it can be defined on a dark night. At one place there is a tunnel formed in the lava bed, 600 or 700 feet long and 7 feet high, admitting of the passage of a full grown man and easily seen through from end to end.

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White Oaks had been troubled with a mine jumper known as "Judge Thompson's son," who used to pounce down upon claim and sell every promising mine he could get hands on. At that time he was threatened with lynching, and yesterday Mr. Flinn received a letter from some of the companions who were with him on the trip, which informs him that since he came east young Thompson has been caught and duly hanged. His father has organized a gang to hang the lynchers and White Oaks society promises to be quite gay during the holiday season.

"Nana," the Apache chief of great fame, was lately a prominent figure in that section. Mr. Flinn brought home with him the last buffalo skin which Nana tanned and gaily decorated with the insignia of his blood-thirsty tribe. Another of the party got Nana's horse and the "Kid's" saddle.

One of the most interesting personages met was Pat Garret, sheriff of Lincoln, who killed "Billy the Kid," and who was a fellow passenger with Mr. Flinn on his return from White Oak to Socorro. He was accompanied by his scarcely less distinguished deputy, Poe, and a prisoner in irons, whom they had caught in Texas, and were taking to Lincoln. The culprit had been a stage driver and drove the stage into a gulch where he "held up" for his confederate highwaymen, until they had robbed the mails and tourists, killed a passenger and made off on the horses with their plunder. Garret is a man about six feet five inches tall, slim, wears a moustache and is good looking and graceful. He is reserved and has an almost melancholy expression; and well he may, considering his life and apprehensions for the future. He has rendered wonderfully brave and efficient service for law and order, has captured many desperadoes and killed several. For this he has received the approbation of the better class of people in the territory, and after he slew the "Kid" the towns and camps which were rid of the outlaw made up \$45,000 for Garret. But he is never safe from the vengeance of the class he has so often risked his life to extirpate. He carries a Winchester rifle strapped around him and a six shooter in his belt, but his hand generally rests on the butt of a trusty mining camp, 125 miles away, beyond the Sierra Madre mountains and across the Otero range. Only one of his party had been over the route, and that was some years before. Two others had started on ahead by a private conveyance, and some miners were following in the stage. The quartette in the "backboard" had to cross the Rio Grande about half mile from Socorro. It is a little wider than the Conestoga, and a turbid, sluggish stream. The big ferry boat had been stolen and the party experienced great difficulty in fording their horses across, not succeeding in getting them over for several hours. They drove to the Otero mountains, some 40 miles, by 11 o. m., and having lost the trail, were frightened at finding themselves in a canyon, which they had reason to believe was occupied by hostile Indians, then on the warpath. They wrapped themselves up in blankets and slept under the wagon. That is, they tried to sleep. They thought of the Indians, they heard the coyotes, and wished they were home.

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One of the most interesting personages met was Pat Garret, sheriff of Lincoln, who killed "Billy the Kid," and who was a fellow passenger with Mr. Flinn on his return from White Oak to Socorro. He was accompanied by his scarcely less distinguished deputy, Poe, and a prisoner in irons, whom they had caught in Texas, and were taking to Lincoln. The culprit had been a stage driver and drove the stage into a gulch where he "held up" for his confederate highwaymen, until they had robbed the mails and tourists, killed a passenger and made off on the horses with their plunder. Garret is a man about six feet five inches tall, slim, wears a moustache and is good looking and graceful. He is reserved and has an almost melancholy expression; and well he may, considering his life and apprehensions for the future. He has rendered wonderfully brave and efficient service for law and order, has captured many desperadoes and killed several. For this he has received the approbation of the better class of people in the territory, and after he slew the "Kid" the towns and camps which were rid of the outlaw made up \$45,000 for Garret. But he is never safe from the vengeance of the class he has so often risked his life to extirpate. He carries a Winchester rifle strapped around him and a six shooter in his belt, but his hand generally rests on the butt of a trusty mining camp, 125 miles away, beyond the Sierra Madre mountains and across the Otero range. Only one of his party had been over the route, and that was some years before. Two others had started on ahead by a private conveyance, and some miners were following in the stage. The quartette in the "backboard" had to cross the Rio Grande about half mile from Socorro. It is a little wider than the Conestoga, and a turbid, sluggish stream. The big ferry boat had been stolen and the party experienced great difficulty in fording their horses across, not succeeding in getting them over for several hours. They drove to the Otero mountains, some 40 miles, by 11 o. m., and having lost the trail, were frightened at finding themselves in a canyon, which they had reason to believe was occupied by hostile Indians, then on the warpath. They wrapped themselves up in blankets and slept under the wagon. That is, they tried to sleep. They thought of the Indians, they heard the coyotes, and wished they were home.

In the morning they retraced their way and got back on the stage route. The second night they reached the "Mountain Station," a cave in the side of the mountain, in charge of a villainous looking ranchman and while they slept on a bed of logs the fire and his burning gaze zest to their lodging experience. The next day they drove across the lava bed, a black deposit, extending like a river from the crater of an extinct volcano, about 500 feet above the plain. The deposit of what was once a molten mass runs some 75 miles across the plain, winding and widening, like a stream of water, and a mile and a half wide at the narrowest place. The deposit looks like rough, black cinder, burst into fragments, and some places piled up 100 feet high. The depth of the mass is not ascertained, but there are fissures in it so deep that stones thrown down the chasm, bounding from side to side, cannot be heard striking the bottom. The road across it is marked with "monuments," set up at intervals of some paces, so that it can be defined on a dark night. At one place there is a tunnel formed in the lava bed, 600 or 700 feet long and 7 feet high, admitting of the passage of a full grown man and easily seen through from end to end.

On the way the travelers encountered herds of antelopes and fired all their ammunition at one herd a half mile long; and in the atmosphere of that region, apparently only a few hundred yards distant, but never hit an animal. They may have been further away than they seemed; at any rate the hunters explained their bad marksmanship by discovering that some time before they had "raised" the sights on their Winchester rifles and forgot to lower them before shooting for a half hour over the heads of the antelopes. Some bear were encountered in the mountains; and plenty of wild turkey and pheasant; but the most dangerous animal met was the lively flea, which infests all the Mexi-

can towns and makes it pleasant for the lodger in every bed room. The third night Willow Springs was reached, and as one of the horses to the backboard had given out, the quartette exchanged places with the miners in the stage which here came up to them, and let the workmen come along in the private conveyance. Flinn's party pushed on to the miners' camp and reached White Oaks at 4 a. m. It is a camp of 500 population, no women, in the vicinity of numerous silver mines, one gold mine, plenty of coal beds and little water. There is one store and numerous gambling houses have grown up in the eighteen months of its existence. Near White Oaks are the "Little Chinaman," "Red Chief," "Little Nell," "Little Mac" and other promising mines from which our Lancaster prospector brought home a trunkful of rich specimens that he got out for himself and knows all about. Pushing on to the most remote of these mines, 30 miles from White Oaks, near Water Canyon they came into the country over which lately ranged "Billy the Kid" and his famous gang, and Flinn counted 23 decomposing, some almost fleshless, bodies of men thrown into a gulch, who had been victims of the lawlessness incident to these new regions.

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