

Title of the Cause.

ment prior to execution was in the county jail. By the new, in the penitentiary. By the old, the sheriff was the hangman. By the new, the warden. Under the old, no one had a right of access to the condemned except his counsel, though the sheriff might, in his discretion, permit any one to see him. By the new, his attendants, counsel, physician, spiritual adviser and members of his family have a right of access, and no one else is permitted to see him. Under the old, his confinement might be absolutely solitary, at the discretion of the sheriff, with but a single interruption. Under the new, access is given to him as a matter of right, to all who ought to be permitted to see him. True, access is subject to prison regulations; so, in the jail, the single authorized access of counsel was subject to jail regulations. It is not to be assumed that either regulations would be unreasonable, or operate to prevent access at any proper time. Surely, when all who ought to see the condemned have a right of access, subject to the regulations of the prison, it seems a misnomer to call this "solitary confinement," in the harsh sense in which this phrase is sometimes used. All that is meant is, that a condemned murderer shall not be permitted to hold anything like a public reception; and that a gaping crowd shall be excluded from his presence. Again, by the old law, the sheriff fixes the hour within a prescribed day. By the new, the warden fixes the hour and day within a named week. And these are all the differences which the court can find between the two statutes, worthy of mention.

Was there ever a case in which the maxim, "*De minimis non curat lex*," had more just and wholesome application? Yet, on account of these differences, a convicted murderer is to escape the death he deserves and be turned loose on society.

I am authorized to say that MR. JUSTICE BRADLEY concurs in this dissent.

SAVAGE, PETITIONER. No. 6, Original. Petition for a writ of *habeas corpus*. Argued and submitted January 15, 1890. — Decided

Opinion of the Court.

March 3, 1890. MR. JUSTICE MILLER delivered the opinion of the court. This case is in every respect the same as that of *In re Medley, Petitioner*. By petition to us we are advised that Savage was indicted by the grand jury of Arapahoe County for the crime of murder in the first degree, charged to have been committed on the 25th day of June, A.D. 1889, by killing one Emanuel Harbert; and that on the 23d of October thereafter he was found guilty by the jury of murder in the first degree. A similar judgment to that in the case of Medley was passed upon him, and he was remanded to the custody of the warden of the penitentiary of the State of Colorado under an order of precisely the same character as that in the case of Medley. It will thus be seen that the same statute involved in that case was the authority under which the court of Colorado rendered its judgment and committed the prisoner to the care of the warden of the penitentiary; that this statute came into force after the commission of the offence of which Savage was convicted, and is, therefore, *ex post facto* in its application to his case. The same order, therefore, that we have directed to be entered in Medley's case will be entered in this case, releasing the prisoner from the custody of the warden, after due notice to the attorney general of the State of Colorado.

On consideration of the application for the discharge of the petitioner, James H. Savage, the writ of habeas corpus, directing J. A. Lamping, warden of the state penitentiary of the State of Colorado at Cañon City, Fremont County, State of Colorado, to produce the body of the said James H. Savage before this court, and to certify the cause of his detention and imprisonment, having been duly issued and served, and the said J. A. Lamping, warden as aforesaid, having certified that said James H. Savage is detained in his custody under and by virtue of a writ issued out of the District Court of Arapahoe County, State of Colorado, and the cause of said imprisonment having been duly inquired into by this court upon the return of the said writ of habeas corpus heretofore issued herein, and counsel having been heretofore heard and due consideration having been had:

It is now here ordered by this court that the imprisonment of said James H. Savage under said writ issued out of the District Court of Arapahoe County, State of Colorado, is without authority of law and in violation of the Constitution of the United States, and that the said James H. Savage is entitled to have his liberty. Where-

Syllabus.

upon it is hereby ordered that the said James H. Savage be, and he is hereby, discharged from said imprisonment.

It is further ordered that the said J. A. Lamping, warden as aforesaid, do notify the Attorney General of the State of Colorado of the day and the hour of the day when he will discharge the said James H. Savage from imprisonment, and that such notice be given at least ten days before the release of the prisoner.

BRADLEY, J. and BREWER, J., dissenting.

Mr. Walter Van Rensselaer Berry and Mr. Henry Wise Garnett (with whom was Mr. A. T. Britton on the brief) for petitioner.

Mr. Henry M. Teller, and Mr. Aaron W. Jones, Attorney General of the State of Colorado, submitted on their brief.

JEFFERIS v. EAST OMAHA LAND CO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF NEBRASKA.

No. 1539. Submitted January 13, 1890. — Decided March 10, 1890.

A fractional section of land, on the left bank of the Missouri River, in Iowa, was surveyed by United States surveyors in 1851, and lot 4 therein was formed, and so designated on the plat filed, and as containing 37.24 acres, the north boundary of it being on the Missouri River. In 1853 the lot was entered and paid for, and was patented in June, 1855, as lot 4. Afterwards, by ten mesne conveyances, made down to 1888, the lot was conveyed as lot 4, and became vested in the plaintiff. About 1853 new land was formed against the north line, and continued to form until 1870, so that then more than 40 acres had been formed by accretion by natural causes and imperceptible degrees within the lines running north and south on the east and west of the lot, and the course of the river ran far north of the original meander line. The defendant claimed to own a part of the new land by deed from one who had entered upon it. The plaintiff filed a bill to establish his title to the new land, claiming it as a part of lot 4. On demurrer to the bill; *Held*,
(1) The bill alleging that the land was formed by "imperceptible de-