

## JUDGES TELL WHY BONDS ARE LEGAL

Full Text of the Supreme Court Opinion Which Settled a Much Vexed Question.

### LAW AND ADMITTED FACTS.

**BOTH ATTESTED BEYOND SPECULATION OR CONTROVERSY THE VALIDITY OF THE ENTIRE MILLION DOLLAR ISSUE.**

The written opinion of the supreme court in the bond case, in which it is held that the city's special water and power bond issue, amounting to \$1,000,000, is legal, was handed down late Saturday evening. It was written by Chief Justice Barth and was concurred in by Justices McCarry and Straup. It follows:

#### TEXT OF THE OPINION.

In the Supreme Court of the State of Utah—State of Utah ex rel. George E. Bliebheck, plaintiff, vs. Salt Lake City, a municipal corporation; Richard P. Morris, mayor of Salt Lake City; John S. Critchlow, city treasurer; Fisher S. Harris, city treasurer, defendant.

Per Curiam. This is an application to obtain from this court a writ of prohibition restraining Salt Lake City from paying, recouping and recovering, from persons negotiating or selling the municipal bonds hereinafter referred to.

The material facts, as presented by the petition of the relator and the answer of the defendants, are as follows:

On the 31st day of November, 1904, the city council of said city did pass an ordinance, which was approved by the mayor of the city, which did provide for and ordered a municipal election for the purpose of submitting to the qualified electors of said city the question of incurring a bonded indebtedness to the amount of \$1,000,000 for the purpose of making necessary extensions in the water supply of the city, to a permanent and adequate increase in the water supply of the city. The present supply during the minimum flow, which is approximately 16,000,000 gallons per day, is estimated to be about one-half enough to properly supply the present needs of the city. Notices of such special election was given out on the 3rd day of January, 1905, and thereafter the returns of said special election were duly canvassed by the city council of said city, and it was declared by the said city council that sufficient votes had been cast by qualified electors to authorize the issuance of the bonds.

#### VOTERS ALL KNEW.

Previous to said election for the purpose of presenting to the qualified voters of Salt Lake City the object and purpose of the issuance of said bonds and a plan to be pursued for the acquisition of an additional water supply and an extension of the sewer system, an address, under the authority of the mayor and council of Salt Lake City, was issued to the taxpayers of Salt Lake City, a copy of which is attached to and made a part of the petition herein, and in which address it is pointed out and shown that the present water supply of the city is derived from four separate sources,即, the Jordan River and the quantity of water that each supplies daily during the minimum flow, as follows:

Gallons.	
City creek .....	4,861,134
Emigration creek .....	1,869,003
Parley's creek .....	4,262,149
Utah lake reservoir .....	45,561,869

Of this total daily quantity, only the creek (Jordan) water, 16,94,554 gallons, is suitable for drinking and culinary purposes. The remainder 43,569,000 gallons, which comes from the lake reservoir, is suitable for drinking and household purposes, and can only be used for irrigation and kindred uses. The only sources from which the city can obtain an additional supply of pure water for drinking and household purposes are Mill creek, Big Cottonwood, and Little Cottonwood, three mountain streams which flow into the valley from nearby mountains on the east. The daily supply of these creeks during the low water season is as follows:

Gallons.	
Mill creek .....	5,631,214
Big Cottonwood .....	17,883,553
Little Cottonwood .....	5,837,867

#### ENRICHMENT WITH FARMERS.

The water of these streams has already been appropriated and is used by a large number of individuals, and a considerable amount of high priced land is adjacent to the city. Two-thirds of the land upon which the water is now being used lies below the city's canal through which its Utah lake reservoir water is conducted and there are no physical difficulties in the way of irrigating the lands with water from the canal. The owners of these farms will exchange their entire supply of water for water containing free water from the canal referred to, and the city has taken options from the farmers for the exchange in this manner of one-half the water of Big Cottonwood creek. Negotiations are pending by which it is expected that practically all of the waters of Big Cottonwood, Mill creek and Little Cottonwood will be acquired by exchange or lease as soon as the necessities of the city shall require. The terms of exchange are as follows: The city is to pay a bonus of \$10 per acre to the farmers and give them during the irrigation season an additional quantity of 25 per cent more canal water than it receives of mountain water, or, if it receives no mountain water, to "grant, bargain and sell" to the city all the farmers' rights to the perpetual use of the mountain water, but in case default is made by the city in furnishing the exchange water from the canal, in that event they reserve the right to use the mountain water, but only during the time the default continues, and the city reserves the right to furnish the exchange water continually for a period of six months, and then it is optional with the farmers whether the city's right to the use of the water under the sale shall be terminated or not. The ability of the city to perpetually furnish the farmers the required amount of Utah lake water for exchange is not now conceded. The money which will be obtained from the sale of the bonds in question, with the exception of about \$70,000, to be used in repairing

TEA  
Get it good; the price need not be high. Fine is high-price; not very.

Your money returns your money if you don't like Billings' Tea.

## Bon Ami

The Best Scouring Soap Made

A Scouring Soap  
A Metal Polish  
A Glass Cleaner

## CITY LIGHTED BY GRASS FIRES.

Mountain Sides to North and East  
Swept by Conflagrations  
Last Night.

## DESTRUCTIVE IN SOUTHEAST.

Did Considerable Damage to Fields of  
Grain, Buildings and Electric  
Power Poles.

the city's canal from the Utah Lake reservoir and in payment of the bonus to the farmers as a compensation for the exchange of water to be used by the city in the construction of the necessary conduits for the conveying and turning into the city's present waterworks system the water received in exchange from the farmers, and for extending the city's sewer system.

#### ABOUT SECURING TITLE.

The most serious objection urged by relators to the proposed issue and sale of the bonds in question is that the water rights will be finally obtained by the city under the option contracts when completed and effected by sale and exchange are not absolute rights, but that such sale and exchange are subject to forfeiture in the event of non-payment of rent, and the interest which the city will finally acquire from sale and exchange of the waters by virtue of the option contracts is not such an ownership and control as is contemplated by section 4, article 11 of the constitution of the state of Utah, which, so far as material here provides as follows: "That any contract for supplying such city or town with water, artificial lights or sewers, when the work for supplying such water, light and sewers shall be owned and controlled by the municipality."

In determining the question presented by relators' petition, we must consider the foregoing provisions of the state constitution in connection with section 4, article 11 of the same instrument, which is as follows: "No municipal corporation shall, directly or indirectly, lease, sell, alien or dispose of any waterworks, water rights or sources of water supply now or hereafter to be owned or controlled by it in whole or in part, except by its own purchase or by lease, with or without option, or by exchange, now or hereafter to be acquired by any municipal corporation, for supplying such city or town with water, artificial lights and sewers, when the work for supplying such water, light and sewers shall be owned and controlled by the municipality."

Another heavy importation is that in the springtime this year was wet, and an abundant crop of grass on all the hill benches was the result. Now the grass is dry and dead, and whenever the malicious youngster with his matches, or the engine with its spark or even the careless camper with his camp fire passes through a grass area, there is a contagion that except over vast areas, and even crowds down upon the outlying ranches and hay stacks. Last night fires lit up the mountain sides to the north, to the east and to the southeast of the city, and the grass was irreparably damaged, and ponds, timber, and trees, and shrubs, charred vistas form the city's background.

The most destructive fire was that in the southeast. It raged from early yesterday afternoon till late in the night, and threatened fields of grain, as well as valuable buildings belonging to the city water company, the lumber company, the Hribalshaus quarters. A heavy loss was Henry Carrigan, who has a camp east of the state prison. About 200 acres of his meadow was destroyed and over half a mile of fence.

Another heavy loss was Fred Gisler, who has a ranch at Eleventh south between Thirtieth and East. The flames came down from the hills and destroyed a haystack containing about 12 tons of hay, and did considerable other damage.

Further out in the foothills, when it became evident that the city water company would not be able to put out the fire, citizens, mostly miners, William Pratt of the mine, picked up a score of trunks, and with buckets and soaked gunny sacks, and a 600-foot hose line, succeeded in preventing the spread of flames in this direction.

Perry Kaubaha saved the property at his quarry station by breaking a window, and jumping out and lighting the fire with wet gunny sacks and buckets. They worked heroically for three hours, and their efforts were successful, although the smoke at times was so dense as to almost suffocate.

The Rich Light & Railway company paid the list of losses to the extent of four high tension poles. The prompt action of the company saved the damage from becoming serious as the poles were burned off at the ground and threatened to bring the heavy wires to the earth. A short time later, a train was dispatched to the scene when the trouble was first reported, and new poles were placed in position whenever burned ones were loaded. The current was shut off for a few minutes only while the wires were being connected with the new poles.

The first to the north kept the residents of that section up until after midnight watching the spectacle of the heights ablaze, and fearful that the fire might find its way down to the populated districts. The flames were evidently started here by either malicious or careless persons, and no one of them paid any attention to it. The fire extended from the ridges behind Ensign peak down almost to the quarries and sand pits on the north hill sides. So far as learned, no damage was done except that valuable grazing was destroyed for the season, and a great deal of young shrubbery was burned in the hollows.

#### DEPARTMENT RUNS.

Station No. 4 of the fire department made three runs Sunday afternoon, and station No. 2 made another. The fires were of small size and the loss was but little in each case. The first call was to the residence of Charles Larson, 51 West First South street, a fire having broken out in the residence through the actions of a small boy with matches. The carpet, woodwork and windows of one room were destroyed.

Two grass fires in the southeastern part of the city, one of great size, the first being from the home of Frederick Gisler, whose house was saved, and the second from the state university grounds, where the athletic fence was in danger. The tinker office and a few yards of fence were destroyed.

Department No. 1 made a run to the residence of Edward Howe, 426 Sixth street, where a rubbish fire had spread to a small frame building. The fire was extinguished before much damage was done.

#### IS NOT ENRICHMENT.

We are of the opinion that when sales and exchanges of the rights of the respective parties are made in and to the use of the waters, the forfeitures clause, being but a condition subsequent, is not obnoxious to the vesting of title and ownership in the city to the mountain water, which it has received in exchange for the sale of water, it is held that the real estate is sold upon a condition subsequent as the farmers propose to do in this case, the transfer is transferred to and remains in the grantee until a breach of the condition and a re-entry by the grantor, that is, such a sale carries with it all the attributes and incidents of absolute ownership until the condition is broken.

Taylor vs. Remsen, 50 N. Y., 282. Neil vs. Long Island R. R. Co., 100 N. Y., 283.

Neil vs. Baltimore & N. Y. R. R. Co., 19 L. R. A., 550, and cases cited in 15 Cys. 690.

1. Jones Real Prop. in Conn., sec. 625.

2. Shottuck vs. Hastings, 29 Mass., the rule is tersely and, as we think, correctly, stated, as follows: "A deed of land upon conditions, subsequent to the conveyance of the title, does not remove the fee simple, but it removes the right to the estate, subject to the conditions, and the title is still in the grantor." See also President A. M. Cannon and his brother David, a small squad of them, sure to beat the noted young stars pitted against those stalwarts of the 15 more.

I hope the present employees had a glorious time all together, and then take a retrospective glance of 55 years to come, and when we all the Deseret News 110 years old, and not very old either; and what?

We have had some severe flood damage in the last here in Delta and hundreds of acres of sugar beets and potatoes have ruined the crop, and the people are irrigating. Some one estimated that half a million dollars would not pay for the loss and the amount of labor put on banks and levees to stop the overflow. Indeed, North Delta has just escaped by hair's breadth, almost utter ruin.

Applying the foregoing principles of law in the admitted facts in this case, we have no hesitancy in saying that the right and title of the city to the water it will receive from the farmers by the exchange which may be contemplated will constitute ownership and will come clearly within the foregoing provisions of the state constitution.

There are other objections made to the issue and sale of the bonds by the relators, but as the questions raised by such objections are without merit and in no way affect the validity of the bonds, we deem it unnecessary to discuss them.

As heretofore stated in an oral opinion in which our conclusions were announced, in this case, we are of the opinion that the provisions of the constitution and the statutes authorizing the issue of this character of bonds have been substantially complied with and that the bonds in question are valid.

The petition of relator will, therefore, be denied.

It is so ordered.

WM. M. COWLEY.

#### Scratch it on Your Slide With a Nail.

Coffee does injure many  
people. There's but one  
way out. Quit and use

**POSTUM**

"There's a reason."

Your money returns your money if you don't like Billings' Tea.

Billings' Tea.

shake hands with the evangelists, and thank them for the words of spiritual cheer they had spoken during the evening.

#### A NEW ANESTHETIC.

"Cyclohexylamine-hexamethylphosphoramide" is the avocational title of the latest anesthetic, in order not to unduly alarm his patients. Dr. Fourneau, its discoverer, says: "Stoane's" is injected into the spinal fluid, and within five minutes produces complete anesthesia in the body below the point of injection. The patient, however, does not lose consciousness. Its effects last for two hours, and its side effects are negligible. The results have not been observed, though it has been tried for some time in more than one Paris hospital.

English doctors are reluctant to experiment with it. "Once you have injected your patient with the new liquid," says Prof. F. R. G. St. John, yesterday, "you have no more control over it, but with Parsons' anesthetics it is possible to stop the administration before the danger point is reached. As the quantity needed of any anesthetic varies with the individual patient, the importance of this control may be easily seen."

In addition, there is always a danger of septic poisoning in hypodermic injections, and in this form of injection—into the spinal fluid—the consequences would be most disastrous." London Daily Mail.

Cures Old Sores.

Washington, May 5, 1905. Parliament Snow Liniment Co. of our New Line Liniment cured an old sore on the side of my chin that was supposed to be a cancer. The sore was suddenly and spontaneously removed with the liniment, which did the work in short order. My sister, Mrs. Sophia J. Carson, Allegheny, Pitts Co., has a sore on her breast, and cancerous. Please send a box of the Cancer Liniment. Price \$1.00 per bottle by druggists. Our book of priceless value to all women sent free. Address BRADFIELD REGULATOR CO., Atlanta, Ga.

**BABY'S VOICE**

Is the joy of the household, for without it no happiness can be complete. How sweet the picture of mother and babe, angels smile at and commend the thoughts and aspirations of the mother bending over the cradle. The ordeal through which the expectant mother must pass, however, is so full of danger and suffering that she looks forward to the hour when she shall be born again.

Every woman should know that the danger of child-birth can be entirely avoided by the use of Mother's Friend, a scientific liniment for external use only, which toughens and renders pliable all the parts, and assists nature in its sublime work. By its aid thousands of women have passed this great crisis in perfect safety and without pain. Sold at \$1.00 per bottle by druggists. Our book of priceless value to all women sent free. Address MOTHER'S FRIEND, MOTHER'S FRIEND

## Keith-O'Brien

## Sweet Peas

Display and Sale on  
Tuesdays and Fridays

Arrangements have been perfected for the handling of sweet peas during the sweet pea season.

Large shipments of choice flowers, fresh from the garden, will reach the store every Tuesday morning and Friday morning.

Beautiful display of sweet peas, loose and in bunches, in mixed and straight colors, and in all varieties.

They will be furnished in quantities for luncheons, teas, and other decorations.

Sweet peas will be sold by the bunch, each containing 110 to 125 long stems.

The price will be 15 cents a bunch, or two bunches for 25c. Special quotations in large quantities.

## Boys' Hats.

White Canvas Hats, streamer and binding in brown and blue. Suitable for boys 2 to 6 years—50c for . . .

You are cordially invited to visit the Basement and try a cup of delicious coffee.

## Hosiery and Underwear.

Ladies' and Misses' Fine Underwear, Hosiery and Corsets at price reductions which will make you happy when you see the excellent qualities of the Goods.

MISSES' FINE RIBBED VESTS, white, low neck and no sleeves, high neck and short sleeves, also high neck and long sleeves—regular price 25c

Sale at . . . . . 50c

MISSES' FINE RIBBED PANTS, white knee lengths, with wide leg, lace trimmed, also tight fitting—regular price 35c. Sale at . . . . . 40c

MISSES' FINE RIBBED SUPPORTERS, white, regular price 35c. Sale at . . . . . 25c

MISSES' FINE RIBBED BALDWIN UNION VESTS AND PANTS FOR SUMMER. Regular price 35c. Sale at . . . . . 15c

MISSES' FINE RIBBED SUPPORTERS ON SALE AT . . . . . 10c

INFANTS' FINE SOFT ROLL SHOES in all the latest fashions for summer. Regular price 75c. Sale at . . . . .