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CHARLES W. PENROSE, EDITOR.

Tuesday. . . . May 17, 185

LIQUOR-DEALING AND MUNI-CIPAL POWERS.

Tus singular rulings in the Third District Court on the liquor and billiards caves, as we anticipated, have aroused hostility to the ordinance of other cities besides Sale Lake The liquor dealers of Ogden, encouraged by the rulings here, entered in-to a combination for the perpose of bringing down the leense fee for the retailing of intoxicants to a mere nominal sum. They engaged legal services, and aged by the rulings here, entered in-

They engaged legal services, and held the statute constitutional in an its provisions, to the Supreme Court its provisions, to the Supreme Court of the United States, and the latter court, in an able opinion by Justice Clifford, held that it conflicted with the Constitution of the United States in this feature of discrimina-ter was referred to a joint committer was referred to a joint committee-that on licenses and that on municipal laws, with the city attorneys. These gentlemen met with the petitioners and their attorneys, and after some discussion the latter concluded to modify their petition to a request for the reduction of the liquor license fee to \$75 per quarter, one-half of the present anount.

Messrs. Richards & Williams, City Attorneys, by request the committee, embodied their views of the subject in a written opinion, which was adopted by the committee, reported on Friday, May 13th, to the Ogden City Council, and formally adopted by that body, which also declined to make the required reduction.

This legal opinion is so clear and forcible, is so well fortified by authorities, and covers the ground of dispute so fully that we present it in our columns in full. It also meets the case of this City

and the liquor dealers here, sustains the position taken by the NEWS on this important question, and completely-if not designedly-refutes the arguments of Judge Hunter in relation to it. The ideas that a license fee cannot be collected for tax revenue, and that the taxing as well some one or more of the multiforn

as the licensing power over liquor dealers is not vested in the City Council, as advanced by his Honor, are here thoroughly exploded.

license, regulate and tax certa's and comployments. Con-efful trades and employments a dis-to be conserved between the power and the power to first. In such former right, unless such appears on the legislative intert, does not uthority to prohibit, or to use the a mole of taxation with a view to

This standard author again says, vol. 2, sec. 609;

Vol. 2, set, out.
"The tailing power is to be distinguished from the police power, the general nature of which has before boen adverted to. The power to license and regulate particular branches of business or matters is usually a police power, but when license for or canotions are plainly imposed for the sale or main particular branching they are, in effect, taxes," I'return they are, in effect, taxes, "I'return they are in effect, taxes," I'return they are in effect, taxes, "I'return they are the power to license or to subject to police regulations, does not give the powers to tax distinctly for invenia purposes, but it may give the power when such appraises from the nature of the subject matter and upon the whole charter or enaturent to have been the legislative will, but not otherwise."

In the case of Ward vs. Maryland,

12 Wallace 423, the Supreme Court of the United States had under advisement a statute of the State of

dents, but as perfectly within the legitimate sphere of State legislation in all other respects, and the Su-preme Court throughout its opinion calls and treats it as a tax,

In the case of Mason vs. Trustee In the case of Mason vs. Trustee of Lancaster, 4 Bush 407, the Su-preme Court of Kentucky had this license question before it on a sta-tute conferring on the Trustees of the town the right "to tax and the right to license all taverns within the limits of said town," and fixing the tax therefor at not exceeding \$200, and for which the Trustees re-quired the sum of \$125 The Court, by Chief Justice Williams, said:

"The legislative power of raising revenue for the State or local communities has not been restricted by the State constitution not inhibited by the Federal Constitution. The power to raise revenue being unrestricted, this Court cannot interfere with the statutes whilst the endoments are conflued to such purposes, however impolitic it may seem. This licensing system has been so long exer-cised by this State, so generally adopted and exercised by our sister States and the United States, that we cannot doubt the constitution-al power in the Legislature to enact, such statutes; and whilst confined within revenue purposes, such statutes are beyond our conpurposes, such statutes are beyond our con

These elementary works and decisions leave the question in a clear and intelligible light, and they are supported by numerous other au thorities.

Whenever the fee for license leaves the domain of mere police regulation and enters the jurisdic tion of revenue, it ceases to be a mere license fee and becomes a

t unfrequently confer upon the power to horns and regu-the collateral consequences of this traffic are considered the Council in this way, they will have less con-

publican in majority, and New York abounds in sons quite as able as we to bear her message and commission in the Senate of the United States. With a protound sense of the obli-gation we owe, with devotion to the republican party and the creed of "fiberty and right," with reverent attachment to the great State whose interests and honor are dear to us, we hold

ROSCOE CONKLING, D THOMAS C. PLATT.

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DIED. On Saturday, May 14th, 1081, at half-past 1

r.m., of congestion of the lungs, ABRAHAM, ant son of Henry E. and Mary E. Pholps aged IT days.

SALT LAKE THEATRE.

THE

AND THE

Philharmonic Society

Notice purpose alone, still when all the objective alone, still when all the objective and the second of the second of the objective and the second of the objective and the second of the objective and the second of the objective alone of the objecti

NEW COMPANY! NEW STAR! HAVERLY'S ORIGINAL AND ONLY subject, as he was too much aston-NIDOW BEDOTT CUMEUY GU

ished with the news. There is no doubt among poli-ticians that Conkling and Platt have Direct from Haverly's 14th Street Thea-tre, New York, MR. CHARLES B. BISHOP. As the Inimitable Widow. Supported by the Original Celebrated Company of New York Artists.

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bound, and ever ready to bow. The legislature is in session. It is re-publican in majority, and New York: with an effort and a nervous, violent

make room for those who may cor-rect all errors we have made, and interpret aright all duties we have misconceived. We therefore enclose

our resignations, but incid fast the privileges as citizens and republicans to stand for the constitutional rights of all men, and of all representatives whether of the States, the nation or the people. We have the honor to be, very respectfully, your obedient servants,

y Gov. Cornell.

are dear to us, we hold it respectful and becoming to make room for those who may cor-rect all errors we have made, and interpret aright all duties we have

resigned purely for effect. The ma-chine now controls an absolute majority of the legislature. When Platt was elected the vote was divided in caucus between two ma chine candidates, Platt and Crowley. Now, however, no machine candidate will enter into the contest

Wednesday Ev'g, May 18, Havdn's Sublime Work

In which the Society scored such a Grand Triumph last week 137 All the ladies and gentlemen who so ably sustained the solo parts will reappear, together with the FULL CHORUS OF VOICES

EXCELLENT ORCHESTRA PROF. T. RADCLIFF. CONDUCTOR 127 Popular Prices of admission. No extra charge for Reserved Seats. 147

SALT LAKE THEATRE. Commencement of THE GRAND HAVERLY BOOM

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It is through the courtesy of Messrs. Richards and Williams that tax, hence the power to tax include we are able to present this well written document to our readers, most of whom, we are assured will peruse it with profit and satisfaction. It should be understood that the Charter of Ogden City includes the prohibitory power over the liquor traffic, a provision that is lacking in the Charter of Salt Lake City, and hence if the dealers of Ogden pro ceed too far in their attempts to override the very low rate of license which has been fixed upon in that city, the municipal authorities have it in their power to establish prohibition and close every drinking saloon within the corpor-ate limits. We do not say that this would be a politic proceeding in Og-den, unless the dealers take such a course as to provoke it, but we do think it would be a wise measure in many small cities of this Ter-ritory where it could be enforced and would really effect the object desired. Following is the text of the drinking saloon within the corpordesired. Following is the text of the opinion:

To the Joint Committees of Ogden City Council, on License and on acter Municipal Laws:

GENTLEMEN.-The legal question-presented in the several petitions of the merchants, bankers and saloon keepers of the city are identical in effect as to the right and power of the City Council to raise revenue by licensing their several occupations

and callings. Cooley, in his celebrated work on "Taxation," page 408, says:

"License fees may be imposed: ist. For re-rulation. 2d. For revenue. 3d. To give noncopoles. 4th. For prohibiton. The third furpose is inadmissible in any free govern-ment. * * The fourth purpose is entire-y admissable in the case of pursuits or indul-process which in their general effect are be-leved to be more harmful than baneficial to occurr.

Among these he rates the sales of gaming implements, the retailing of ardent spirits, etc. The same dis-tinguished author, on page 176 of his said work defines a license as a privilege granted, which must confer authority to do something which would be illegal but for the licen-e, and on page 408 he says:

"The terms in which a municipality is em-powered to grant licenses, will be expected to indicate with sufficient precision, whether the grant is conferred for the purpose of revenue, as whether on the other hand, it is given for muchility measure."

He says if there be a mere power

"The intendment must be that regulation is the object, unless there is some bing in the maginge of the grant, or in the dire-matan-ces under which it is made, indenting with sufficient certainty that the raising of re-venue by means thereof was contemplated. If a cevenue authority is what scenas to b-conferred, the extent of the tax, when not limited by the grant itself, must be under-stood to be left to the judgment and discretion of the municipal government, to be determinand to be left to the judgment and discretion the municipal government, to be determin-in the usual mode in which its legislative therity is exercised, but the grant of an ority to impose free for the purpose of a move would not warrant their being much heavy as to be prohibitory, therefore details

whether by direct ass license fee, or all combined, when The New York Legislature. the purpose is revenue, it becomes a ALBANY, N. Y., 16.-The clerk called the Senate to order this even all these modes of taxation, and when the power to raise revenue. When the power conferred is merely to license and regulate, it falls strictly within the purposes of policy only, but when the power is ng and read the following communication: I hereby designate Senator Ses-sions to preside at the evening ses-sion of the Senate. given, either expressly or impliedly, to tax, then it is for revenue purposes. And so long as the li cense fee is kept within revenue purposes, the discretion of the Coun-cil is unqualified and not liable to be subordinated to any other than the legislative power of the Territory. Senator Sessions then took the chair. On motion of Wooden the reading of the journal was dispensed with. there was a special order for toand especially so where there is no night, but as no one felt like enterlimit by general statute. The great infirmity of the legal propositions upon which these peti-

ng upon it he moved to adjourn Carried, and the Senate adjourned. At the session of the Assembly tions are based is that the power-conferred by your charter, and the purposes for which conferred, are not ommunication was received from the Governor concerning the letters of resignation of United States Senators Conkling and Platt, also the joint letter from the senators giving their reasons for resigning. The resignations and letter of explanation were read by the clerk. The chamber was crowded with spectators, among whom were many senstors. At the conclusion of the reading the chair announced the mes sage would be entered upon the journal.

it is not subject to legal attack; and this too is the case when the ordin-ance is silent, as ours wisely is, as to the purposes for which the fee is ex-When the resignations of Sena-tors Conkling and Platt was receiv-ed it was bulletined by the evening papers, but excited little interest. The hotels as usual on Monday were By sections 32, 35 and 37 of the quiet and empty, and those who talked of the matter simply wonder-ed what would be the next move. charter, express power is given "to license, tax and regulate auctioneers, merchants, retailers, grocers, ordina ries, hawkers, peddlers, brokers ries, hawkers, peddlers, brokers Later-Members of the legislature commenced arriving when some inpawnbrokers, money changers, hack ing, carriages, wagons, caris, drays, potters, billiard tables and pin alterest was manifested. No one, however, appeared to know what the result would be, not a few

And by section 7 of the Act o February 15, 1872, amending the charters of incorporated cities, "bankers, agents, expressmen, express companies, telegraphers, photogra-phers, assayers, smelters, crushers," and other like occupations or pursuits executive chambers beyond an exare added.

By section 31 of the charter, pow-er is given "to license, regulate, pro hibit or restrain the manufacturers sellers or vendors of spirituous of fermented liquors and others. Were this latter the only section of the charter and amendments, Indicating the legislative intent, we would say, as to this calling, the li-cense fee could not exceed the re-quirement for police purposes But there are so many sections which indicate revenue as em the licensbraced _ within ing power and purpose, that we cannot doubt that this calling is included, for we can parceive no reason, either moral or legal, why the Legislature should have intentionally exonerated this calling from license, for revenue purposes and the general burden of the city government, while the other and more harmiess, less expensive and less

listurbing callings are included. By sections 17, 18, 19, 28, 24, 25, 26, 28 and 29 of the Charter, general powers are conferred on the Council, such as are common to nearly all the citics in the United States, to pro-vide for the general police regula-

with Platt, and the opposition wi place no candidate in the field, i would show their weakness. There fore, the two senators will probably be re-elected unanimously. Anothe point on which much stress is laid is the fact that Platt, upon being elected, made a pledge to the anti-machine men which pledges are now in the possession of Chancey ALBANY, N. Y. M. Depew, who has threatened to make them public if Platt voted against Robertson. By means of WM. H. ROBERTSON, Prest. pro tem.

the resignation and securing a re-election Platt will escape the obligations he entered into, and will be free hereafter to obey Conkling without qualifications. Woodin said he understood

PRESS COMMENTS.

The Sun says: The resignation of the two New York senators is a highly sensational proceeding. The only argument that can be presented justifying such a manifestation is that as the republican administration and republican majority of the Senate have resolved to appoint to those offices in this State which controls the opinions and votes of the greatest number of more determined and uncompromising antagonists of Conkling and his followers, an antagonist who if at the same time the most cunning and most pertinacious of politicians, and as this seems to involve a policy of unsparing hostil-ity toward the two senators, it be-comes proper for them to return their trust into the hands of the legislature, in order that it may either adopt and commend this policy or, on the other hand, may con-demn the policy and set a seal of approbation upon the two senators by electing them once more to the offices which they have now resigned. It is a nove a novel as well as a very far reaching complication which Mr. Conkling the result would be, not a few thought both senators would be re-elected, and it was suggested that Conkling would be elected to fill the vacancy caused by the resignation of Platt. This would give him two years more than he had to serve. No information could be secured at overweitige observes becaused by the resignation of Platt. This would give him two years more than he had to serve. be beaten in the legislature as he has been in the Senate, will such a disaster crush him or will it make pression of a supposition that the news was correct. Several rumors were set afloat, among them one that there will be a union of anti him a greater man than ever? Events

will answer. The Brooklyn *Eagle* says: The manifest object as gam¹lers would say, is to force somebody's hand Whose hand? is the question. One Conklingites with the democration to elect one senator from fron their wing and one democrat The general impression is that both. the resigned senators will be reobvious effect of this maneuver will be to make the republican party of this state take sides without delay and either support Conkling or be split from stem to stern. elected, and thus show the legisla-tive endorsement of the position they occupied in order to counteract the influence of the resolutions of

split from stem to stern. The Staats Zeitung does not con-sider probable the re-election of sen-ators by the legislature as a vindica-tion for Conkling. In order to have his cause vindicated it would have been necessary for Conkling to postpone his resignation until after the legislature adjourned sing dis and go before the public at the next election of members of the assembly. Conkling men expect demothe Senate and assembly endorsing Sonator Robertson's nomination As soon as it was made known that the Governor Intended to send a let-ter of reasons for the resignation to the legislature great interest was manifested to learn what they were. Both houses were crowded with spectators, and when the senate ad rned, those in that chamber Journed, those in that chamber found their way into the assembly chamber. During the reading of the letter, spectators occupied all the standing room, and at the conclu-sion of the reading the Speaker was obliged to order the floor cleared so that business could be presented. Conkling men expect demo-crats in the United States nate will now hesitate to confirm Robertson and will renew their efort to elect Senate officers. Republicans should no longer be blind to the egotism of Conkling, who does not care for the wellars of his obliged to order the floor cleared so that business could be proceeded with. Conkling men are very reti-cent and will not intimate what is to be done. Anti-Conklingites are in high glee. The time for going into election to fill the vacancies will be fixed to-morrow. does not care for the wellare of his party if he cannot rule it. Republi-cans should use their best endeavors to getrid of Conkling and to that end they should influence the legis-listure. Although the battle for spolls, which overshadows every-thing in the party politics, is strongly illustrated by this event there is still a great principle at stake namely the rights of the Pre-

130 N. B. Monday, May 23, 24 and 25,



One dark grey MARE, about three years old, star in face, hund feet white, brander with an anchor on left hip and to on left

shoulder Which if not claimed within ten days will be sold to the highest bidder on Thursday May 28th, 1881, at 13 o'clock m., at the Dis trict Estray Pound in this city. JOSEPH HORNE, District Poundkeeper. District Poundkeeper Salt Lake City, May 17, 1881. LOST.

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