DESERET EVENING NEWS.

Monday, April 6, 1891.

Copy for advertisements which are expected to appear in the Evening News should be in the business department not later than 12 M.

Notice of a change in standing cards must be given in advance.

Copy for advertisements must be in before 12 M.

FRAGMENTS.

Dr. F. E. Kenner, of Manti, dropped in for a short time today.

Mr. W. H. King, city attorney of Provo, is sojourning at the White House.

The Dutch concert in the Federal Court room this evening promises to be well attended.

Nothwithstanding the great crowds on the streets of the town yesterday, it was a very quiet, orderly day.

All the hotels of the city are crowded with visitors just now, and many persons have been unable to obtain accommodation where sought.

Mayor Scott is at present in Colorado in a business tent, but is expected back in time to attend tomorrow night's City Council meeting.

Elder F. D. Chandler, of the Bureau Mission, made a brief call today. The gentleman was the first publisher of that paper several years ago, but it has been in other hands since.

The doors at Wonderland are open from 1 to 10 o'clock and the attractions are, in the curio hall, the medical museum and the cosmorama, and in the theatre the Rinkhardt and the Marshall Sisters.

Thirteen undelivered messages at the Western Union Telegraph Office for W. F. Dalton, Thomas Cox, Mrs. M. Thompson, Miss Edward Wagner, A. McDonald, Mrs. H. C. Morris, Mrs. Mary Ann, Herbert P. Hinckley.

Elder Benjamin Goneskin will deliver a lecture under the auspices of the Y. M. M. I. A. of the Twenty-fifth Ward, on Wednesday evening next, at 7:30, on the question, the subject, "Living-stone and Stanley." The public are invited.

On Saturday afternoon the joint city and county building committee met and resolved to advertise Sedgwick for plans for the proposed new building. It was also decided that the building shall consist of three stories and a basement, and have four fronts, the cost not to exceed $250,000.

Yesterday afternoon, about 3:15, an alarm was sent in to the newspapers of the fire brigade. But there was not much in it. An old chimney had fallen in the rear premises on Third South and Second East Streets, caught fire, but the flames were very soon extinguished.

The semi-annual conference of the Female Relief Society will be held tomorrow, April 7, in the morning in the Tabernacle, and in the afternoon in the Salt Lake Assembly Hall. Meetings at 10 a. m. and 2 p. m. All presidents of officers, Bishops and the people generally are cordially invited to be present.

About noon yesterday, a runaway team came down the street from the Temple Street. At the Deseret News corner, the team made a sharp turn south on Brigham Street, colliding with a hack and buggy. Will Brooks, Young Brooks had a lady with him in the buggy, and both were thrown out upon the street. The lady was hurt considerably, but Mr. Brooks was unhurt.

Refutation.

We are in receipt of a number of letters from Snoflaki refuting the story which has been going the rounds of the eastern press about a family by the name of Thomas having to leave that place in consequence of a persecution from the "Mormons." We have not space to produce any of them today but will recur to the subject soon.

The Golden Gate Special.

The Pennsylvania Golden Gate special train No. 2, with Mr. Lord in charge, got in from the west at 8 p. m. yesterday and left for the east, over the D. & R. G. Western, at 1 p.m. today. There were fifty passengers and thirty more had been left on the coast. The train left New York about three weeks ago and went through to San Francisco by the southern route; it consisted of a dining and a baggage car and three sleepers.

A Street Car Incident.

As car No. 8, on the Salt Lake City Railroad, was making its way up Second South Street, at about 10:30 on Saturday evening, quite an excitable time was witnessed at the corner of Fifth East. The car seemed to give a jerk, then a blue fire burst out in the center of the floor, which turned until the car could be stopped. When the car was again started, another fire burst out in the southwest corner of the car, and the switch box in that place was thrown open. The car was full of smoke, and the passengers were pretty badly scared. After about twenty minutes delay for repairs, the car proceeded on its way.

At It Again.

Willard Carter, somewhat well known herefabout, especially to officers of the law, boarded a Rapid Transit car running west on South Temple Street, Saturday night, and after riding a short distance pulled out a pistol and threatened to shoot the conductor. He was finally pacified, and went out of the car, for which he "laid in wait" for a while, but the circumstance having reached Marshal Young, his mischief was cut short and he now knows the inside of the bars. A notice of his trial appears in our police court report.

The Proposed Castle Valley Railway.

The articles of association of the Castle Valley Railroad Company were filed with Auditor Pratt Saturday afternoon. The capital stock of the road is fixed at $1,000,000, of which amount stock has been subscribed in the sum of $1,500 per mile and 10 per cent. paid into the treasury of the company. The capital stock is $1,000,000, divided into 10,000 shares of $100 each, and have been taken as follows:

B. W. Driggs, Jr.	1
Alexander Johnson	1
J. F. Smith	1
Geo. R. Barton	1
O. P. Pratt	1
W. Ingram	1
Joseph Morrow	1
E. M. Cummings	1
Norman Nelson	1
Ed. Peck	1
Mikado Pass	1

PIONEER SQUARE

Can Be Sold By the City to James H. Bacon for Depot Grounds.

JUDGE ANDERSON SO DECIDES.

The Opinion Delivered in the Third District Court Today.

Shortly after the opening of the Third District Court this morning Judge Anderson delivered his opinion in the case of W. L. Pickard et al. vs. Salt Lake City et al., in which plaintiffs sought to enjoin the defendants from selling Pioneer Square to James H. Bacon. In the opinion it was ordered that the application for an injunction against the defendants be denied and the complaint dismissed.

The full text of the decision is given below:

In the Third Judicial District Court Utah Territory.

W. L. Pickard, plaintiff vs. Salt Lake City, a municipal corporation, George M. Scott Mayor of said Salt Lake City and James F. Jack, Recorder of said City, defendants.

Answer of

This is an application by the plaintiff for an injunction to restrain the defendants from executing any contract, and especially with one James H. Bacon, which would convey or attempt to convey the lots of Block 45, Plat "B," Salt Lake City Survey, situated in Salt Lake City, Utah, and commonly known as the Old Fort Block, or Pioneer Square.

The facts alleged by plaintiff in his complaint so far as it is necessary to set them out are, that he is a resident of Salt Lake City, a taxpayer in said City, and owns real property therein abutting on the above mentioned premises, and brings this action in behalf of himself and of all others who may hereafter choose to unite with him in the action.

The complaint also alleges that Salt Lake City is a municipal corporation created and existing under the laws of Utah and an act of Congress; that the defendant George M. Scott is Mayor and the defendant James F. Jack is the recorder of said city, and that during the different years in question a council composed of fifteen members. That at a regular meeting of said City Council held on the 3rd day of March, 1891, a resolution was adopted by said Council to the effect that said city would convey said premises by good and sufficient deed to said James H. Bacon, for the sum of one hundred and fifty thousand dollars when two hundred miles of railroad shall have been completed westward from this city, said railroad to be completed and in operation within two years, during which time the title to said property shall remain in said city; that the work of construction of said railroad is to be begun within ninety days, and no extension of the time within which the work is to be begun and completed shall be granted, and the said Bacon is to bind himself to hold the city harmless against all costs in case the right of the city to convey said property shall be contested in the courts or otherwise. The complaint further alleges that thereby was the be simple title to said property, which has been held and used by said city is a public park, and that it has been dedicated and appropriated for the uses and purposes of a public park; that the action of the City Council in this matter is a violation of their trust and authority and of an act of Congress approved July 30, 1886, entitled "An act to prohibit the passage of local or special laws in the territories of the United States, to limit territorial indebtedness, and for other purposes;" it is also alleged that the price at which it is to be sold to Bacon is inadequate, to wit: $150,000, while the property is worth more than $500,000; and that unless the said City Council be joined and restrained they will execute a contract with said Bacon which will be a cloud upon the title of the city to the property and will be a fraud upon the property upon the fulfilment of the terms of the resolution by said Bacon.

A temporary restraining order was issued against the defendants, and they were notified to appear and show cause why the injunction should not issue as prayed.

The defendants appeared and filed a demurrer to the complaint, upon the ground that the complaint does not state a cause of action.

At the time of filing the demurrer the defendants also filed an answer, in substance denying that the premises in controversy have ever been dedicated or appropriated to the uses or purposes of a public park, or that it has ever been or is used as a park, or that the inhabitants of the city have ever been permitted to use the premises in the same as a park; deny that the action of the Mayor and City Council in passing the resolution granting the said property to said Bacon was in violation of their trust or authority; deny that $150,000 is not a fair valuation for said property; deny that the sale of said property is in violation of any law or statute or the rights and interests of the people of Salt Lake; deny that plaintiff is entitled to the relief prayed for or any relief whatever; deny that the defendants should be restrained from selling the premises in question as contemplated by the action taken by the said council, or that the plaintiff is entitled to recover his costs or to have the restraining order prayed made perpetual.

The answer also denies all the other allegations of the complaint.

The demurrer was overruled and the cause heard on the complaint and answer, and the affidavits and documentary evidence presented and filed by the respective parties.

After the filing of the complaint and before the hearing, over 1,000 citizens, Sharp, W. W. Riter, James C. Walbek, A. G. Gunzer, and Spencer Clawson have filed herein their petition averring that they are resident property holders and taxpayers within said city, and offer to contribute to the expense of this cause and ask the benefit of the relief sought and their names were added to that of W. L. Pickard as plaintiffs herein.

The questions arise in the determination of the case:

1st. Has the city the right to sell and convey its real estate owned by it?

2d. If it has this right, has it heretofore dedicated or appropriated the land in controversy to the uses and purposes of a public park, in such a manner and to such an extent as to take away its right to now sell it?

3rd. If the city has the right to sell real estate owned by it, which has not been dedicated or appropriated to the uses and purposes of a public park or other public purpose or use, is there any law in the manner of making the sale in the present case, or in the price to be received, or in the conditions of sale to be attached to making the proposed sale, to authorize a court of equity to interfere to prevent such sale?

It is alleged in the complaint and admitted by all that the city holds the premises in controversy in a fee simple title. The evidence shows that the city purchased the land in question of Brigham Young on the 14th day of March, 1878, from one H. Morris Young, and received a deed from him in accordance of this sale. The records of the City Council pertaining to the purchase of this land did not show that it was not bought for any special or designated purpose, and the deed from Young to the city is in the ordinary form of deeds, and contains no restriction upon the rights of the city in regard to the use or disposition and imposes no trust upon the city in respect thereto, or any kind whatsoever, but it is a deed in fee simple of the property, by a perfect and unencumbered title, free from any limitations or trusts, except such as may be imposed by the laws of the land, by law, or dispensed of by the general good of its inhabitants.

The charter of the city contains the following provision, viz: "The inhabitants of said city by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, to defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive, hold, and enjoy, or sell and convey of property real and personal for the benefit of said city, both within and without the corporate boundaries, to improve and protect such property, and to do all other things in relation thereto as natural persons. Comp. Laws, 1888, p. 139.

By the charter then, it will be seen, the city is given the power, in express terms, to purchase or sell real estate for the benefit of the city. But if the charter was silent on the subject the city would have the implied power to purchase, hold, and alienate or dispose of property.

Dillon on Municipal Corporations, Vol. 12, sections 61 to 64 inclusive.

But it is contended that the complained sale is in violation of Section 2 of An Act of Congress, approved July 30, 1886, which provides: "That no Territory of the United States, now or hereafter to be organized, or any political or municipal corporation or subdivision of any such Territory, shall hereafter loan or lend any subscription to the capital stock of any incorporation or company or association having corporate powers, or in any manner pledge its credit to, or use it for the benefit of any such company or association, or borrow any money for the use of such company or association." That this law of Congress is no manner affects the power of the city to make the sale in question is too obvious to admit of serious argument. By the sale of this land the city makes no subscription to the capital stock of any corporation or company, nor does it lend its credit, nor will its credit be thereby used for the benefit of any company, association or individual; nor does it thereby borrow any money for the use of any such company, association or individual. The congressional enactment referred to was intended to prohibit the loan of the credit and power of the Territory, or of any municipality within it, to aid of private corporations or associations by subscribing to the capital stock of such corporations, or loaning its credit, or in any of the ways mentioned in the act, to aid or lend a helping hand to such corporations, whereby burdens would be imposed upon the inhabitants of such Territory or municipality for the benefit of such private corporations or associations; but the statute in no wise affects the power of the city to sell or dispose of any of its property, although one of the objects of such sale or disposition may be to encourage or promote the building of a railroad, or any other public enterprise which will greatly benefit the inhabitants of the place.

It is contended that the city has dedicated the block of ground to the uses of a public park and has thus placed it beyond its power to now sell it to private parties. All that has ever been done in the way of dedicating or appropriating the ground for a public park, as shown by the evidence is, that in March, 1885, it was leased to one John Reading for a period of five years, one of the conditions of the lease being that Reading was to plant trees "in and around said square as per plan submitted," and it is shown by the affidavit of Reading that there are now about one thousand trees growing on and around the block. He was also to grade the ground sufficiently to enable him to irrigate the trees. The Mayor and City Council also offered for lease for the improvement of the public parks and squares," offering the following premiums to the successful competitors:

For plan of Liberty Park	$100 00
For plan of Washington Square	50 00
For plan of Pioneer Square	50 00
For plan of Pioneer Square, partly designed	25 00
Total	$225 00

The evidence also shows that $10 was paid to W. H. Rhodes as a premium for furnishing the best plan for improving Pioneer Square.

It is also shown that in 1879 the City Council passed a resolution changing the name of the property from that of "Old Fort Block," by which it had previously been known to "Pioneer Square."

In the other hand it is shown that from the time the ground was purchased in 1878 until the present time it has been kept enclosed by a fence and the public have been excluded from all use or enjoyment of it as a public park or otherwise; that Reading used it for the cultivation of fruits and vegetables and that at the end of his lease it was again leased to him by the city for another period of five years at $200 per annum, which last lease expired January 1st, 1891.

It is not shown that by resolution, ordinance or otherwise, the City Council ever dedicated or appropriated this land to the uses of a park nor any other public use; nor is it shown that any money has ever been expended on it to improve it for such use except the $10 paid Jones, nor that anything has been done by way of improving the ground looking to such a use of it, except the planting of the trees referred to, and the planting of the trees would be equally appropriate to it should it be used for other purposes than as a park.

These facts are far short of what is necessary to constitute a dedication of this ground to a park or other public use.

The evidence only shows that the council at one time contemplated that at some future time they might dedicate the land to the use of a park and improve it and use it for such purpose.

The Supreme Court of California, in the case of San Francisco vs. Canavan 42 Cal. 541, says: "It is one of the essential elements of a good dedication, that it shall be irrevocable, and that the land shall be forever dedicated to the public use which is designated, provided the public see fit to use it for that purpose." Again the court says: "To constitute a valid and complete dedication, two things must concur, to wit: an intention by the owner, clearly indicated by his words or acts, to dedicate the land to the public use, and acceptance by the public of the dedication. This acceptance is generally established by the use of the public for the purpose to which it has been dedicated. . . . This use must be of such duration that the public interest and private rights would be materially impaired if the dedication were revoked, and the use by the public discontinued. See also Washburne on easements, Sections 117 and 120. But even if there had been a dedication, still it would be within the power of the city to sell or dispose of it, as it holds the legal title and has the permission of legislative authority to sell it and it has never been used by the public, and the public interest or private right would be materially impaired by such sale.

Brooklyn vs. Armstrong, 48 N. Y., 274.

Kings Co. Ins. Co. vs. Stern, 101 N. Y., 416.

Brooklyn Park Comr's vs. Copeland, 100 N. Y., 493.

And even if the square had been dedicated by the city as a public park, it would be competent for the city, under its police power, and in the exercise of its duty to protect the health and safety of its citizens, to sell it, if it should be deemed necessary for such purpose.

But it is contended that the price to be obtained is inadequate, and the sale should be enjoined on that ground. If on the other hand it is conceded that the land in question is worth the sum of $500,000, as some of the affidavits have filed as to the value of the square, wherein its value is variously given at sums varying from $100,000 to $150,000, the price to be paid by these affidavits being $150,000.

On behalf of plaintiff the affidavit of George A. Mears is filed, in which he offers to pay $200,000 for the property, in two years, and to give a bond to that effect together with a certified check of $10,000, as a forfeit in case he fails to take the property, and James Sharp and James T. Little file their affidavits in which they swear that in their opinion the property is worth $500,000, and they jointly offer $500 for an option on it for two years at that price, and which $500 is to be forfeited in case they fail to take and pay for it.

Assuming that these offers are made in good faith and that the parties making them are able to carry out their offers, still it might be much more advantageous to the people of the city for the property to be sold for the consideration of $150,000, as the other parties at $200,000, if thereby an important railroad can be caused to be built into the city which could not otherwise be secured. But, be that as they may be, it is a matter with which the courts have nothing to do and in which they can not interfere. It is the judgment of the opinion from the evidence that $150,000, is a fair valuation for the property in view of other considerations connected with the sale. But if it is not, it is a matter over which the city council has absolute control and as long as the action of the council in this matter is not corruptly, its acts cannot be called in question in the courts. A court of chancery may interpose the law definitely prescribes what the council shall do, quite compliance with the law as thus defined, but with the wisdom of sound policy in the management of the city's business the courts have no jurisdiction or power of supervision.

It is also argued that the city is only authorized to sell to the highest bidder. The law does not require sales to be made in that way except lands acquired under the tax sale act. The statutes have been borrowed from private parties at private sale, the manner of selling it is a matter within the discretion of the city council.

For the reasons given in the foregoing opinion it is ordered that the application for an injunction against the defendants be denied and the complaint be dismissed.

ALLEGED FELONIST.

Allen, the Notorious Sport of Many Names, on Trial for Ballot Box Stuffing.

The case of W. J. Allen, the famous foot-racer, ex-pugilist, bartender, alleged ballot box stuffer, and all-round sport of many aliases, was called up before Judge Anderson shortly before noon today.

Assistant United States Prosecuting Attorney Varian appeared for the Feds and Judge Powers and Attorney Dickson for the defendant.

Allen is accused in the indictment of the crime of felony, alleged to have been committed on the 14th day of July, 1889, while acting as presiding judge at Poll No. 2, in the Fourth Election Precinct, at the Salt Lake City Hall, John G. Mitchell, J. C. Murphy, H. P. Johnson, Solomon S. Dickinson, Louis Martin.

Other jurors were challenged and excused for having formed an unpalatable opinion as to the guilt or innocence of the defendant and for various other pretexts, which in the opinion of the counsel for either side were sufficient grounds for disqualification.

The list of the names of the jurors present that now been exhausted, and an adjournment was taken until 2 o'clock, when the work of choosing another juror (there being only one more required) was proceeded with.

OTHER PROCEEDINGS.

Frederick Trimmer vs. Elizabeth Lane Hyde et al; order made appointing Martin Hyde guardian for defendants.

W. H. Gibson vs. De Witte R. Lowe; motion for new trial allowed.

Lewis Beets et al. vs. G. S. Erb et al; restraining order issued against defendant.

BEFORE JUDGE ZANE.

Aaron Keyser vs. Wilcher Jones; order vacating confirmation of sale; decree and satisfaction and permission to file supplemental complaint for relief of petitioner allowed.

N. W. Fiske vs. M. Blackburn; judgment entered according to report of referee.

J. H. Hammer vs. M. Blackburn; same order.

COUNTY COURT MATTERS.

The Coroner's Accounts to be Investigated.—Petitions and Appropriations.

A session of the County Court was held on Saturday afternoon and evening, Judge Bartch presiding. The following business was transacted:

Clerk Allen was ordered to pay to the treasurer the sum of $23.75, being the amount found on the person of a pauper who had been and was being cared for by the county.

An order was made appropriating $100 to A. J. Burt on pauper account.

Jacob Gibson asked for the use of gravel from the gravel beds on Eleventh East, between Twelfth and Thirteenth South streets, offering to put certain stones in good condition if the county would furnish the gravel. Selectman Howe was appointed a committee with authority to act and report the proposition, if deemed advisable.

Mrs. Grice presented an oral petition asking for a release of taxes on land sold by the county, belonging to her. Petition denied.

According to the instruction of the County Commissioners, Commissioner Howe was present and reported in detail the cost of the inquest over the body of one Simpson, held a short time ago.

D. M. Morgan, a pauper, asked for a railroad ticket to Albion, Idaho. Sheriff Burt was instructed to purchase the ticket if he refused to do so unless the money was forthcoming. On motion of Selectman Howe $100 was appropriated to the Deseret Museum.

A claim by C. P. Brooks for services rendered as a surveyor, was presented and allowed.

The Utah and Salt Lake Canal Company asked that the county remove the filling from their canal. Referred to Selectmen Howe and Cahoon.

J. H. Rutan, Jr., asked for an official map of plat E. The petition was granted and the county surveyor instructed to survey and make a plat of the same.

APPROPRIATIONS.

The following appropriations were made:

Andrew J. Hoag	3 00
Sarah Ann Hoag	3 00
Hannah Hoag	3 00
Hannah Young Kelly	3 00
Mary Young Kelly	3 00
Ann Young Kelly	3 00
A. C. Smith & Co.	2 50
C. A. Hawkins	2 00
Deseret News	2 00
Deseret Museum	2 00
St. Mark's Hospital	2 00
Salt Lake Herald	2 00
Salt Lake Tribune	2 00
J. C. Taylor	2 00
Salt Lake Times	2 00
Rocky Mountain Bell Telephone Co.	18 50
Rocky Mountain Bell Telephone Co.	18 50
Rocky Mountain Bell Telephone Co.	18 50
Rocky Mountain Bell Telephone Co.	18 50
Salt Lake City Water Works	2 00
Salt Lake City Water Works	2 00
Salt Lake City Water Works	2 00
Salt Lake City Water Works	2 00
J. H. Rutan	2 00
Deseret News Co.	2 00
Salt Lake City Water Works	2 00
Rocky Mountain Bell Telephone Co.	45 00
Rocky Mountain Bell Telephone Co.	45 00
Rocky Mountain Bell Telephone Co.	45 00
Herald Co.	2 00
Herald Co.	2 00
Deseret News Co.	2 00
Deseret News Co.	2 00
Salt Lake City Water Works	2 00
Salt Lake City Water Works	2 00
Salt Lake City Water Works