prize fights or contentions are permitted, and, as defendant is informed and believes, the character of the performance nightly given is such—although not inmoral or indecent—as to attract audiences composed almost entirely of men, to the exclusion of ladies and children; and that the sale of intoxicating liquors anywhere on the premises during, before, or after the performances would result at times in disorder, or worse. Therefore defendant alleges that "the place stated in plaintiff's applications was, and is, unfit for the vending of intoxicating liquors of any kind."

The defendant is advised by counsel, and believes, that the selling of spirituous liquors to any of the patrons of the theatre from the place in the basement of the building selected by plaintiff would be in violation of law, and particularly of section 4518 of the Compiled Laws of Utah, 1888, vol. 2, pp. 595. For that reason defendant is not authorized to grant plaintiff a license.

That the laws of the Territory prohibit any ring or prize fight; yet, as defendant was informed, the said Charles F. Reynolds & Co, (owners or lessees of the entire premises) did on the night of Wednesday, January 14th, 1891, permit a prize fight between one George Le Blanche, known as "The Marine," and Jim Williams, designated the "Champion of Utah," to take place at 11 o'clock; that a "ring" was pitched, a referee and seconds were chosen; that "the contest lasted for six rounds," and was for a prize in money.

Defendant avers upon its information and belief that exhibitions of the above kind would in the future be permitted in said theatre, and therefore submits that this is a reason why it should not now grant the license prayed for.

That in all the premises the defendant, in the exercise of its discretionary powers, acted fairly and for the best interests, and to preserve the morals, peace, good order and happiness of the people of the city, and especially of the particular neighborhood in which the Franklin Avenue Theatre is carried on. Hence defendant prays that the present application to the Court be dismissed with costs.

When the case was called on Attorney Dickson intimated that he was prepared to argue the case on demurrer, and after the reading of the defendant's answer at length by United States District Attorney Varian it was decided to let the matter stand over until two other short cases had been disposed of, in order to afford Mr. Dickson an opportunity to file his demurrer.

Upon the case coming up again about 11:30 it was found quite impossible to proceed owing to the continued noise occasioned by the steam in the pipes of the apparatus used for heating the court room, and after some talk of an adjournment it was finally decided that the sitting should be held in Chambers. Thence the judges and attorneys proceeded, occupying a room adjoining the Territorial Library.

In the course of his opening argument Attorney Dickson said it was contended that the City Council had the power, in its discretion, to grant or refuse this license. That power was now disputed, and the purpose sought was to have the point determined by the Supreme Court. His clients desired to test the validity of the answer of the defendants by demurrer. There was a good deal contained in it which, on the part of his clients, he did not admit, and a great deal that was irrelevant. A great many things charged to be true were matters over which the applicant had no control and in which he took no part. It would be admitted, he understood, for the purpose of argument, that the sale of liquor charged against the applicant was made under a misapprehension, he believing that the license had been voted by the City Council. Mr. Perry was not informed to the contrary, indeed, until his arrest, when the further sale was at once stopped.

Mr. Perry had not the least desire to show his contempt for the law by selling liquor without a license. Nothing was charged against his character. Counsel insisted that the legislature never intended to confer such absolute power upon a City Council as had been exhibited in this instance. There were seven votes given at the Council meeting before which Mr. Perry's application for a license came, in its favor, and seven against, and on this tie the mayor gave his casting vote against the petition. No reasons were assigned for the refusal to grant the license, although requested.

Attorney Dickson said it would be seen from reading the petition and the return thereto that the applicant had complied with all the requirements of law; that the theatre was under the management of Mr. Reynolds, and that the applicant had nothing to do with that place; that there was no connection between the theatre and the saloon. It was given as a reason why the application should be refused that there were two churches within a block of the theatre, but they were not on the same street. The street, by the way, was not strictly a business street, there being a theatre, a saloon and stores already there. The question was whether the City Council, without giving any reason whatever, could refuse an application for a liquor license, in spite of the fact that the applicant had complied with every requirement of law The Legislature never intended to confer upon the Council any such power. This application was refused, the vote being a tie and the mayor voting against it. The mayor could not know what actuated the members of the Council in voting against the application. Such a course would allow the Council to give to its friends a monopoly of the business. It was a case of arbitrary and tyrannical discrimination which the law would not countenance. Mr. Dickson closed by citing a number of authorities in support of his position, and at the close of his argument a recess was taken until 2 o'clock.

When the sitting was resumed in the afternoon, Col. Merritt, city attorney, opened for the defense. After going over the points of the answer, he remarked if the intention of the Legislature was not to give the Council the power to regulate and restrain the granting of licenses; "if they are not to say who shall and who shall not have a license, why, in heaven's name, didn't they say the gates are open to all who may apply, and put the granting of licenses in the hands of some clerk whose only duty shall be to issue the license without question?" Mr. Merritt quoted from Pennsylvania decisions and from California rulings in support of his position.

Mr. Varian next addressed the court. He contended that under the charter the Council had a right to prohibit the sale of liquors in certain localities. The Council cannot grant a license to sell liquor in a bad house. They must refuse this. If they have the power to prohibit and deny in one place they have in another. The Council had declined to issue a license to the theatre until satisfied that no liquor was to be sold. It was the fear that liquor would be dispensed to the patrons of the theatre that prompted this precautionary measure. If they have a right to take away a license for disorderly conduct, they have a right to deny a license primarily. The law states that no liquor shall be sold in the auditorium or lobby of any place of amusement. In this case the Council has a discretion which they cannot be forced to abandon. If the Council has no power to deny a license, the legislative act on license compels every one of them to vote aye whether he wants to or not. The speaker contended that even though the Council had not given good reasons, if they were presented at this time they were valid and binding, and the court should so rule.

Judge Powers made the closing argument on the part of the plaintiff. He said he did not contend that the Council had not the power to regulate the liquor traffic, but that such regulation must be uniform. A man could not be refused a license at the mere whim or caprice of the Council. While it was urged that it would be a bad thing to have a saloon so near to a church, the fact remained there was already a saloon directly opposite this theatre. The account of a boxing match at the theatre is not material at all, and the return was simply buncombe. The law made it mandatory on the Council to issue the license in this case. Granting that the Council had the power to regulate, how was that power to be exercised? It must be by general ordinance, so that it would apply to all alike. The return admitted that there was no communication between the saloon and the theatre. What was the difference whether a man came out of the theatre and went down in the basement and took a drink, or walked a few steps across the alley to the saloon which the Council had licensed? The answer was not an answer at all. It did not show anywhere that the Council had ever shown this court sufficient deference to consider its order. The return was not even signed by any member of the Council, except Mr. Scott. The return should have been made by the body itself.

Judge Powers having concluded his argument, the case was taken under advisement.

WASHINGTON, Jan. 24.—No change in the condition of Senator Hearst.