

THE DESERET NEWS.

TRUTH AND LIBERTY.

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FROM THURSDAY'S DAILY FEB. 28, 1888.

Name Withheld.

Some time since we received an obituary sketch of a member of the "Mormon" Battalion, but could not publish it because the writer failed to furnish his name; also to state the residence of the deceased. We published a brief statement in reference to this and other similar communications which had come to hand, explaining that they must be more specific and must be accompanied by the names of the writers. The author of the obituary sketch writes us again, stating the residence of its subject, and requesting that it be published, but still persists in withholding his name. We decline to publish obituary articles, nor other communications, unless we know who is responsible for the statements contained therein.

Probate Court.

Proceedings in the Salt Lake County Probate Court yesterday:
In the matter of the estate of Eliza Baddley, deceased; order made admitting will to probate, and appointing William Fuller executor.
Estate of Thomas Booth, deceased; order made appointing time and place to hear petition for letters of administration.
Estate of David Williams, deceased; same order.
Estate of Edward Davis, deceased; same order.
Estate of John Schiebe, deceased; decrees that due and legal notice to creditors has been given, made petition for final settlement of account and distribution to be heard today.
Estate and guardianship of Mary A. Murphy, et al., minors; order of sale of real estate made.

Extended to April First.

The following notes are self-explanatory:

SALT LAKE CITY, Feb. 28, 1888.
Editor Deseret News:

Herewith is a letter just received from Harper Bros. Will you kindly make known the contents through your paper and oblige the public and myself.
Yours truly,
P. L. WILLIAMS,
Commissioner of Schools.

Harper & Brothers, Publishers.
Chicago, February 23, 1888.

Hon. P. L. Williams, Salt Lake City Utah.

Dear Sir—I have just returned from the East and find your letter of some days ago on my table.

Agreeably with your suggestion, I take pleasure in extending the time of introduction on our books to the schools of your Territory to April 1st, and hope that such notice can be given of it in the papers and otherwise as to make it generally understood throughout the Territory.

Very respectfully,
W. J. DUTTON.

Hope this will prove satisfactory to your people,
W. J. B.

A Conductor Killed.

Red Cliff, Colo., Feb. 24.—Tom Coleman, a Rio Grande conductor, was shot in the office of the Eagle Hotel last night by C. E. Denny, a dentist. He received two bullets from a No. 28, one in the abdomen and the second in

the left side. He died at 9:25 this evening.

Rumor says Coleman overheard Denny remark that he had had his arm around the prettiest woman in town that day, and Coleman supposed it was a slur on Mrs. Coleman. Denny denied this, but was afterward attacked by Coleman, who struck him on the head, for which he was promptly fined by Justice Pat Tague. Partially intoxicated, Coleman sought his man again, renewing the fight. Denny, being overwhelmed, escaped and got a revolver behind the office counter, intending to go to his own room, as he says. Before he left the counter Coleman was upon him again, when Denny fired five shots and then gave himself up, saying he had to do it. Mrs. Coleman is not only above suspicion, but is a very estimable young lady. She has been a bride but one month. Denny is married, his wife being in the east. —Denver News.

LINCK GOES DOWN.

Judge Zane Leaves Him Where the City Placed Him.

HE CANNOT WORK THE LAND JUMPING SCHEME IN SALT LAKE.

The question in regard to the city lands, which was taken under advisement by Judge Zane till this morning, has received a definite settlement. There was no feeling of uneasiness on the part of the people as to the wrongfulness of the land jumper's position, nor any doubt that the Chief Justice would give the law fairly, and the decision is therefore no surprise, probably not even to the attorneys on the losing side. It is very satisfactory, however, from the fact that it is an

AUTHORITATIVE EXPRESSION

of the law in the premises.
The complainant in the case, John H. Linck, of Colorado, represented by his attorneys, J. R. McBride and Arthur Brown, asked the court to grant an injunction restraining the corporate authorities of Salt Lake City from preventing Mr. Linck carrying out his project of seizing the public lands. The matter was fully argued and today Judge Zane rendered a decision, in substance as follows, refusing to grant an injunction:

It appears this land was entered under the town site act, as the city of Salt Lake, by the city authorities; in 1871. On June 1, 1872, the patent was issued by the government to the Mayor. There was a large portion of the land embraced that was not actually occupied by residents, and a large portion has remained to the present time unplatted and unoccupied by actual presence. On the 11th of this month the complainant attempted to take possession of the land described in this complaint, consisting of probably more than thirty acres. On that day he went on the land and erected a wire fence and exercised other acts of ownership. The Mayor and others

REMOVED THE COMPLAINANT

and his improvements from the land forcibly. The question is whether the complainant had such rights as entitled him to the possession, and improve the land, and whether the court should protect him in that right. The government of the United States has passed an act known as a town site act; sec. 2387 provides as follows:

"Whenever any portion of the public lands have been or may be settled upon and occupied as a townsite, not subject to entry under the agricultural pre-emption laws, it is lawful, in case such town be incorporated, for the corporate authorities thereof, and, if not incorporated, for the judge of the county court for the county in which such town is situated, to enter at the proper land office, and at the minimum price, the land so settled and occupied in trust for the several use and benefit of the occupants thereof, according to their respective interests; the execution of which trust, as to the disposal of the lots in such town, and the proceeds of the sales thereof, to be conducted under such regulations as may be prescribed by the legislative authority of the State or Territory in which the same may be situated."

THE EXTENT OF THE ENTRY

is limited in sections 2389 and 2390 as follows:

"Sec. 2389. If upon surveyed lands, the entry shall in its exterior limit be made in conformity to the legal subdivision of the public lands authorized by law; and where the number of inhabitants is one thousand and over one thousand, shall embrace not exceeding twelve hundred and eighty acres; but for each additional one thousand, not exceeding five thousand in all, a further grant of three hundred and twenty acres shall be allowed.

"Sec. 2390. The words 'not exceeding five thousand in all' in the preceding section, shall not apply to Salt Lake City, in the Territory

of Utah; but such section shall be so construed in its application to that city, that lands may be entered for the full number of inhabitants contained therein, not exceeding fifteen thousand."

Congress doubtless understood that there would be a large part of the townsite that would not be actually occupied by residents at the time of entry. The question then arises as to the right of persons to that portion not occupied at the time of the entry, and after actual settlers had received their portion—as to the unclaimed lots. The occupancy mentioned was not confined to the actual occupants, it was the occupancy of the trustee—the city—for the use of the residents thereof, and that occupancy extended to the limits of the entry. A portion was for the actual occupants, and

THE LEGAL TITLE

to the remainder was in the city; that was the occupancy of the trustee—the constructive occupancy. The corporate authorities were authorized to enter the whole townsite in trust for the occupants. The law may be badly expressed, but doubtless refers to the land actually occupied, and that upon which there was a constructive occupancy. This land was to be disposed of as prescribed by the Legislature. Section 2391 says: "Any act of the trustee not made in conformity to the regulations alluded to in section twenty-three hundred and eighty-seven shall be void;" thereby prohibiting the trustee from disposing of the land except as provided for by the Legislature. In 1889 the Legislature made certain regulations. Section 3 provided for the rightful owner or occupant, within six months, making a statement of his claim to any land, and for the filing of that statement; it also

FOREVER BARRED

those who failed to file said statement from making any further claim. Section 10 provided that if there was any unclaimed land, the corporate authorities were to survey and plat it, reserving such grounds as were necessary for public purposes. It authorized the Mayor to sell such lots at a certain figure and under certain regulations.

The Legislature proceeded on the theory that the settlers were entitled to the lands they actually occupied, by paying the original cost of the lands and the cost of survey. It saved the rights of actual occupants, and regarded the unclaimed lots as held in trust for the common benefit of the residents of said city. When 2 or 3 persons desired to purchase the land that was unoccupied they were to be treated impartially, and the man willing to pay the highest price was to get it. The act of the Legislature is on

THE RIGHT THEORY.

The object of the townsite law is for the purpose of encouraging the growth of cities and towns. The greatness of a nation depends on the prosperity of its agricultural classes, mining classes etc.; the inhabitants of cities and towns are provided for to this extent. The government has sought to promote the prosperity of each class. It would seem that to say that the unoccupied land should be held for the common good and not individuals, is the proper theory. They all get the benefit. It may be sold to the highest bidder, the proceeds going to the public good. It is to go to the public schools, which are for the good of the public. This land is to be treated as the property, and held for the common benefit of all. This is just and equal, and is

THE SOUND VIEW

to take of it. It is in harmony with the theory of the government itself in section 2383 Revised Statutes of the United States. That section saves the rights of actual settlers, and the other lots are sold to the highest bidder. The view taken by the Legislature of Utah is in harmony with the view taken by the Government of the United States. This construction of the law is in harmony with the authorities on the subject. In the case cited, where the probate judge of the county in which Denver is situated, disposed of certain lots contrary to law, the court said the trust was a double one—for the occupants as individuals, and for the community. The unoccupied lands were held in trust

FOR THE COMMUNITY.

The trustee could not sell under the act of Congress, but under the laws made by the Legislature. Any sale outside of these regulations is void.

So it is with Salt Lake. The town authorities must dispose of the unclaimed lands according to the legislative acts. They have a double trust—for actual settlers, and for the community. The Mayor has undertaken to discharge this trust, and he must do so promptly. He has no right, nor have the corporate authorities any right to hold the land for generations, and prevent its settlement and occupancy. They have a trust to perform, which, as public officers, they must perform promptly. They

must survey and plat the unclaimed land promptly. This is the duty of the trustee, the Mayor. He must survey the land and plat it; dividing it into lots and laying out streets. Such portions as are necessary can be

RESERVED FOR PUBLIC PURPOSES,

and be disposed of in that way. The rest must be divided into lots and sold as provided by law, the proceeds to go to the public schools—to be devoted to the common good. The injunction asked for in this case cannot be allowed; it must be denied.

FROM WEDNESDAY'S DAILY, FEB. 23, 1888.

Telegraph Rates.

The Deseret Telegraph Company has made its rates from Salt Lake to all parts of Sanpete County, 50 cents; and to Sevier County, 60 cents; to take effect March 1st. This will be of interest to the business public.

Will Keep the Law.

This afternoon Ephraim Snyder, who resides near Park City, was arraigned in the Third District Court on a charge of unlawful cohabitation, to which he pleaded guilty. His counsel, Wilson I. Snyder, said that for two years past he had lived in conformity with the law.

The Court asked—Is it your intention, Mr. Snyder, to obey the law in the future?

Mr. Snyder—Yes, sir.

Court—You will not enter into polygamy, or practice unlawful cohabitation?

Mr. Snyder—I will not.

Court—You understand that you make this promise for the future in good faith?

Mr. Snyder—Yes, sir.

Court—Well, with that understanding I will impose a light fine—\$50 and costs. You will stand committed till the amount is paid.

Sent to Prison.

This morning Olaus Johnson, of Salt Lake County, was called for sentence in the Third District Court, on a conviction of unlawful cohabitation. The Court asked—Mr. Johnson, what do you propose to do in the future?

Mr. Johnson—I have no statement to make.

Court—You cannot make any promise as to your future conduct?

Mr. Johnson—No, sir; these are my wives; they have been true to me, and I do not think it would be right for me to discard either of them. I cannot do it.

Court—Well, you will get into the penitentiary again.

Mr. Johnson—Well, I cannot make any statement regarding obeying that law in the future.

He was sentenced to imprisonment for six months, and to pay a fine of \$50 and costs.

This afternoon B. H. Schettler, of Zion's Savings Bank, was called for sentence for living with more than one wife. He requested the court to defer sentence for a few days, that he might close up some business at the bank.

Court—Are you able to make any promise as to your future?

Mr. Schettler—I am not.

Court—Of course, when you are unable to give assurances of reformation, you cannot expect leniency. Is your health bad?

Mr. Schettler—Sometimes it is, and sometimes it is not.

Court—You are a man of means?

Mr. Schettler—It takes what I earn to support my family.

Court—You can easily promise to obey the law, and not defy your country?

Mr. Schettler—I cannot make any statement to that effect.

Mr. Peters suggested that the defendant would like a little more time, to which he had no objection.

Court—He has had three weeks. Mr. Schettler, you appear here as any other criminal. You do not intend to obey or respect the laws of your country, and (sharply) you ought to leave it. A man should either obey the laws of a country where he lives, or leave. You will be sentenced to six months in the penitentiary, and to pay a fine of \$300 and costs.

THE MURDER CASE.

The Prosecution Making Things Look Very Black for Mulloy.

Yesterday afternoon the jury in the trial of Neal Mulloy, for the murder of George J. Hughes, Park City, on the 1st of August last, was completed as follows:

Robert Gorinski, Samuel E. Allen, Albert Shaw, John Rydahl, F. D. Gilt, H. C. Barnhart, Wm. Crum, George Donli, Frank Shelton, A. R. Carter, F. J. Fabian, Edward S. Snelgrove.

Mrs. Kate Hughes, wife of the murdered man, and Dr. Edward P. Le Compte, who conducted the postmortem examination with Dr. Childs

Mantor, were the only witnesses examined yesterday afternoon.

This morning Dr. Mantor was the first witness. After him came James Moffatt, an eye-witness to the whole proceeding. His testimony is substantially a statement of the whole case, and was as follows:

On the 1st of August last I was living near Park City; it was Monday, election day; I was in Capt Brennan's saloon; Neal Mulloy and George J. Hughes were in Park City on the evening of that day, at the saloon; a little after 6 p.m. I saw Mulloy there; saw Hughes a few minutes afterward; they came into the saloon separately; Mulloy had been in the saloon, and went out before Hughes came in; he returned a few minutes later, when Hughes and I were standing at the bar; Mulloy came up and said he had voted, but had scratched the ticket; he was addressing Hughes and I; Hughes said he voted the ticket whole; Mulloy said he would not be compelled to do anything he did not want to; Hughes said he would not either; Mulloy said he had been once; Hughes said, "Yes, I was, several years ago. I was met on the street

BY MASKED MEN,

and at the point of the pistol was forced to run an engine down to Coalville." Mulloy said, "You knew everyone on the train." Hughes replied, "No I did not." Mulloy called him a liar. Hughes said he was not a liar. Mulloy said he was a liar and a coward, or he would fight. Hughes said he would not fight, as Mulloy was too small a man; a man named Shears came up and said he knew Hughes was not a coward; Mulloy again challenged Hughes, and they went out to the middle of the floor; Mulloy then wanted to go out, and they went; Shears and I tried to keep Hughes back; he said there would

BE NO FIGHT,

as he would talk the matter over with Mulloy and settle it; they then went out the side door and upstairs, the crowd following. (A diagram of the building was introduced and explained to the jury.) Mulloy went up stairs and to a door that leads to the higher ground at the back of the saloon; there were about 13 steps to the platform, and then the door led out; Mulloy went on the platform first and I passed Hughes and followed him; Shears went outside; Hughes stood just inside of the door, and I stood between him and Mulloy; Mulloy said "Hughes, you heel yourself, I am heeled," and moved outside into the open air; Hughes jumped back to the middle of the platform; Shears and I tried to keep Mulloy out, but he turned and came back to the door, which was open; he raised his right hand, in which he had a pistol; he stepped inside and put his left hand on the door jam, pointing his right toward Hughes; the latter started to go down stairs; I heard

A PISTOL SHOT,

and Mulloy said "Take that, you son of a—;" Mulloy held the pistol in his right hand; Hughes was going downstairs, looking backward; Hughes staggered against the wall; his left breast was exposed to Mulloy's shot; he made no thrash, either by language or movement; when Hughes staggered, Mulloy looked at him for a moment and then went back; Shears asked, "What have you done, Mulloy?" Mulloy warned him to stop, but he did not, and Mulloy warned him a second time, raising his pistol and saying, "If you come another step I will shoot in this for you too;" Shears then stopped; the next I saw of Hughes, he was lying down in the saloon, and they said he was dying; the whole transaction took place before sunset.

On cross examination Moffatt said he and Hughes were members of the same lodge of A. O. U. W.; had not seen Mulloy before he came to court; I had an argument with him at that time about election matters; about a week ago I looked at a copy of my testimony before Commissioner Norrell; did not read it, because I knew what I had testified to; when Mulloy and I were arguing, the barkeeper told Mulloy that the language he was using would not be permitted; he was talking about D. C. McLaughlin; I had drank two or three glasses of beer;

I WAS NOT DRUNK;

I thought at the time there were two pistol shots, but I think it was the echo, and that there was but one; I was considerably excited; I went on to the street, and shouted to lynch Mulloy; D. C. McLaughlin stopped me; I knew what Mulloy meant when he spoke of Hughes having been compelled to do something which he did not want to do; they did not say anything further about the lynching of Murphy. I came up from Price, Emery County, to vote.

Mr. Shears was the next witness called in the course of the trial.

A Chinaman arrested in San Francisco carried a revolver which was heavily plated with silver and set with rubies.