

NO REHEARING OF THE SMOKE CASES

Judge Marshall Today Denied Petition of Mining Companies.

ARGUMENTS WERE HEARD.

Failed in an Effort to Again Bring the Matter Before the Court—Injunction Granted.

In the United States district court Judge Marshall today denied the petition of the Bingham Consolidated Mining and Smelting company and Bingham Copper and Gold Mining company for a rehearing of the smelter smoke case, in which Judge Marshall recently granted an injunction. The two companies mentioned sought to have the matter brought again before the court, and a petition with that end in view was filed yesterday afternoon with Clerk Letcher of the federal court. Judge Marshall granted a hearing on the petition, and today listened to arguments from petitioners' attorneys, Messrs. Street and Bramel, at the close of which the request was denied. Following is the petition presented by the applicants for a rehearing:

In the circuit court of the United States in the district of Utah, James Godfrey et al, complainants, vs. American Smelting & Refining company et al, defendants.

Petition of Bingham Consolidated Mining & Smelting company and Bingham Copper and Gold Mining company for rehearing.

To the honorable judges of said court: The Bingham Consolidated Mining & Smelting company and the Bingham Copper and Gold Mining company, defendants in the above entitled suit, respectfully represent to said court that in the decision of the court filed in said case it is clearly shown that the damage done by the smelting and roasting of ores carrying a small percentage of sulphur and in substance and effect that the court is not satisfied in this case if smelting sulphur ores carrying not more than 10 per cent sulphur damage would result to the complainants or any of them.

The decrees of the court herein prevents and prohibits the roasting or smelting of ores carrying to exceed 10 per cent sulphur. Said Bingham Consolidated Mining and Smelting company and said Bingham Copper and Gold Mining company further represent to the court that it appears from the practically undisputed evidence in the said cause that such injury to vegetation as occurs from sulphur dioxide in the smelter cases is dependent not upon the percentage of sulphur in the gas emitted but upon the percentage of sulphur dioxide in the gases emitted from the smoke stacks of the smelters.

Said defendants further represent to the court that they join in the petition of the United States Smelting company in respect to requesting a modification of the decree in this case to permit the smelting of ores so mixed and placed in the furnaces and roasters for roasting and smelting that they will not contain more than 10 per cent sulphur.

Wherefore these defendants pray the court to grant a rehearing of the causes upon the matter herein set forth to the end that this court may modify the decree so as to designate the percentage of sulphur dioxide

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which may be emitted in the gases from the stacks of the smelters of these defendants and also so as to permit these defendants to smelt and roast ores containing not to exceed 19 per cent of sulphur, whether these ores are in the natural condition in which they came from the mines or are mixed with other ores, so that the ores which so mixed to be roasted and smelted shall not contain to exceed 10 per cent of sulphur.

The petition is signed by Street and Bramel, solicitors for the mining and smelting companies named. That the action is not caused to bring about delay is sworn to by the attorneys named.

TO RESTRAIN DURAND.

Another Petition for Writ of Prohibition Against Notorious Justice.

A petition for a writ of prohibition was filed in the district court yesterday by J. J. Robinson against Justice of the Peace Durand of Murray. Robinson alleges that suit was filed against him in Durand's court and that he filed the usual affidavit setting forth that the court had no jurisdiction over the person of defendant or over the subject matter of the action and asked that the case be dismissed. The motion was denied and Durand proceeded to render judgment against him and is threatening to collect the same by execution. Therefore a writ of prohibition was asked to prevent Durand from taking any further action in the case. Judge Lewis issued a temporary writ returnable on Dec. 8.

DIVORCE MILL GRINDS.

And as a Result Five Couples Are Given Their Freedom.

Five divorces were granted by Judge Morse yesterday afternoon during his regular weekly divorce grind. Two of them were in cases where the defendants were served by publication and the recent decision of the supreme court of this state in that matter as laid down in the Aldrich case. Olga Barker was granted a divorce from Samuel Barker on the ground of desertion. The service of the summons was by publication in this case and it was shown that the parties had established a domicile of matrimony in this state hence the court had jurisdiction over both parties. Mrs. Barker was awarded the custody of her 11-year-old son.

The other case where the service was by publication was that of Norma A. Kent against George H. Kent. Plaintiff was awarded a decree of divorce on the grounds of desertion and failure to support. Florence Rackley was granted a divorce from John L. Rackley on the grounds of failure to support and drunkenness. Plaintiff was awarded the custody of their four children and the court set aside the real property of defendant for the use of the children.

Sarah E. Wilson was divorced from Hans Wilson on the ground of habitual drunkenness. Plaintiff was awarded the custody of their four children.

Patrick O'Neill was granted a divorce from Ida O'Neill on the ground of desertion.

SUIT FOR \$5,000.

This Amount Demanded by Magnus Hilquist for False Accusation.

Because he was falsely accused of stealing coal, Magnus Hilquist of Murray yesterday filed suit in the district

court against Charles Etchel to recover damages in the sum of \$5,000 for the alleged slanderous statement made by the defendant. The complaint alleges that the defendant on Oct. 13, made the following accusation against plaintiff: "I traced the track of your wheeler company as yet before's late and I saw the coal in it and I know you stole it from our yard." Plaintiff alleges that the statement is false and slanderous and that he has been injured by reason of the same in the sum mentioned above.

JUDGMENT FOR \$3,000.

Verdict Against San Pedro, Los Angeles and Salt Lake.

A verdict in favor of plaintiff for \$3,000 was returned yesterday afternoon and the jury in the case of Henry A. O'Donnell against the San Pedro, Los Angeles and Salt Lake Railroad company. O'Donnell was an engineer in the employ of defendant and in July, 1905, his engine ran into a washout near Crystal, Nev., and was wrecked. He received injuries which necessitated the amputation of his left leg. He claimed that the company was negligent in not warning him of the fact that the bridge had been washed away. The action was brought to recover damages in the sum of \$3,000, but the jury cut that amount down to \$3,000. The case was tried in Judge Ritchie's court.

COURT NOTES.

Suit for divorce has been filed in the district court by Curia Hummel against Robert Hummel on the grounds of desertion and failure to support. They were married in this city on Nov. 5, 1902, and have one child, of which plaintiff asks the custody. She also asks for \$25 per month alimony and \$150 as attorney's fees and costs of suit.

The case of H. P. Christensen against James A. Luke and C. E. Stansbury was dismissed at plaintiff's cost by Judge Ritchie yesterday upon a stipulation signed by the parties to the action. The suit was brought to recover \$100 on a bond in an attachment suit filed against Christensen in McCulloch's court at Murray upon which Luke and Stansbury were sureties. McCulloch rendered judgment in favor of Christensen and held that the attachment was wrongfully issued, whereupon Christensen filed suit on the attachment.

The jury in the case of John F. Meik and wife against Heber and Alfred Hennion, which was tried in Judge Lewis' court, has returned a verdict in favor of plaintiffs for the sum of \$150 as damages and \$100 as attorney's fees. The action was brought to recover damages for injuries caused to plaintiffs' orchard and buildings on a tract of land leased by them to defendants. The evidence showed that the defendants failed to comply with the terms of the lease in keeping the buildings in good condition and in preventing stock from ruining the orchard and as a result the property of plaintiffs was damaged in the sum stated above.

FIRE IN GARAGE.

Large Number of Costly Autos Had Narrow Escape.

The fire department was called about 11 o'clock last night to extinguish a blaze in the Sharnam Automobile garage. The blaze started in the basement of the building, which was a mass of flames and smoke was rising up the stairs in voluminous clouds. The many autos belonging to the aristocracy of Salt Lake were run out and thus were saved from further damage. It is thought that they would have fallen through the floor of the building and been destroyed. The fire was extinguished by the fire department about 12:30 fully covered by insurance.

Another similar fire started soon before 8 o'clock last night in the Cennel Hardware store on west First South. Some of the goods were lost and the fire was extinguished by the fire department about 10 o'clock. The damage was about \$100, which was covered by insurance.

YALE DEFEATS HARVARD. New Haven, Nov. 24.—Final—Yale, 6; Harvard, 0.

PROSECUTION ON PERJURY CHARGE

Certain Witnesses Are Accused In Case of Prye vs. Kalbaugh.

INVESTIGATION IS ORDERED.

Judge Ritchie Called County Attorney Christensen's Attention to the Matter This Morning.

In all probability there will be some prosecutions of witnesses in the case of John Prye against Perry Kalbaugh et al, which was tried in Judge Ritchie's court last February. It is likely that at least one witness will be charged with perjury as the matter was called to the attention of County Attorney Christensen today by Judge Ritchie who made the statement in open court in the presence of the attorneys for both plaintiff and defendant that, according to the affidavits on file in the case some one had committed perjury and he thought the county attorney should investigate the case.

The court sent for the county attorney and laid the matter before him at the conclusion of the arguments of the attorneys on a motion for a new trial. The question of prosecution is now in the hands of the county attorney and it is believed that he will probably issue a complaint against J. H. Vannatta. It seems that Vannatta and two other men made an affidavit, which was used by the defendants in support of their motion for a new trial, to the effect that a witness for plaintiff by the name of A. A. Hovey had admitted to them that he had perjured himself in the case.

Vannatta afterwards made another affidavit, which was used by plaintiffs' attorney, in which he denied that Hovey had said anything about perjury himself while on the witness stand. There is also another affidavit in the files of the case by another witness who said that Vannatta told him he was sorry he had made his first affidavit about Hovey and that he wished he could get out of it some way as he was afraid it would cause Hovey trouble. All the affidavits in the case are now in the hands of the county attorney who will make a thorough investigation of the matter. The action was brought by Prye to recover \$72.32 alleged to be due for labor performed in Kalbaugh's quarry and judgment was rendered in plaintiff's favor.

IN FEDERAL COURT.

Grand Jury Rests From Labors Until Next Monday.

At the forenoon session of the federal court, the petit jury was excused until Tuesday morning, Nov. 27. The grand jury, at the close of the forenoon session, took a recess until Monday, Dec. 3. It is believed that the extended adjournment was on account of the meetings of the interstate commerce commission, which will sit in Salt Lake Nov. 27 and 28.

A number of witnesses were before the grand jury yesterday. Some of them had been previously examined and others were there for the first time. Among the latter were S. A. Whitney, assistant cashier of McCulloch & Co's bank; Culbert L. Clark, a Salt Lake attorney; and William O. Williams, auditor of the Utah Fuel company, the Pleasant Valley Coal company and connected with the Wasatch Drug company.

FAREWELL RECEPTION.

Given Last Evening in Honor of Mr. and Mrs. John De Grey Dixon.

Mr. and Mrs. John De Grey Dixon, who will shortly take up their residence in Provo, were last night tendered a farewell reception by the people of the Thirtieth ward. The hall was tastefully decorated with bunting, flags and potted plants, and there was a large attendance, attesting the esteem in which Mr. and Mrs. Dixon are held.

Bishop Heber S. Cutler was master of ceremonies, and after a congregational hymn and prayer by Elder A. W. Jones, the following program was carried out: School Thy Feelings; double quartet, recitation, Miss Leola Tomlinson; paper, Miss Rose Bowers; vocal selections, Mrs. Alice Paulsen Kirk, recitation, Mrs. C. Cutler, Charles Cottrell, Jr., and Bishop Cutler; quartet, "The Flag Without a Star," Misses Rose Heath, Julia Jones, and Messrs. John D. Bowers and Charles Cottrell; original poem, J. W. Simpson; trio, ward bishopric.

The speeches were highly eulogistic of the honored guests and bore with them sentiments of love and affection, and of regret at their leaving Salt Lake. Mr. Cutler paid tribute to Mr. Dixon as a public official, praising him for his integrity and firmness, and stating that it would be a difficult matter, indeed, to fill his place on the state land board.

The trio by the ward bishopric was the hit of the evening. Bishop Cutler's rich mezzo-soprano voice was heard to most excellent advantage and brought forth words of appreciation from the governor, who frankly admitted he was not aware that the Cutler family had succeeded in producing such a harmonious voice.

A pleasing feature of the evening was the presentation to Mr. Dixon, in behalf of the people of the ward, of an elegant silver-mounted vase, suitably inscribed, which the recipients thankfully acknowledged in a few well chosen words.

After the program the Dixon family were escorted with cards bearing sentiments of friendship and good will from all present. Delicious refreshments were served and the rest of the evening was devoted to handshaking and social converse. The benediction was pronounced by Elder Arthur Kirk.

AMUSEMENTS.

Theater—Maxine Elliott ought to be a prize in knowing that she is one of the very few artists traveling who can bring out an audience in Salt Lake which in its crush and elegance, suggests the first night of a grand opera season. Last evening's gathering was a beautiful one to gaze upon, and it must have been an inspiration to play before it. In his new vehicle for Miss

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county, except Kayville. He is now an applicant for a franchise in the latter town, and gives as his backers, John S. Brown, H. Fred Mercer, and J. B. Arnold of Pittsburg. Mr. Epps is confident of making a success of his venture, and is endeavoring to lease desired lands in the vicinity of where he is to sink his well.

Twin Baby Dead—Friends of Mr. and Mrs. G. Alfred Alder of the Twentieth ward, will learn with sorrow of the death this afternoon of Billie, one of their twin babies. The little one was nearly seven months old, and with his brother, Benson, had been very ill for the past week or 10 days, the last part of which made it clear that his sickness, which was caused by stomach trouble, was of a very serious character. Yesterday afternoon there was a turn for the worse, and it was believed that death would come before morning. Every-

LATE LOCALS.

Baptist vs. Baptist—The East Side Baptist and First Baptist churches have arranged for a game of football between the two, on the morning of Thanksgiving day. The battle field is yet to be selected.

Secures Franchise—Frank L. Epps, the oil prospector from Pittsburg, has secured franchises to lay natural gas mains along the county roads, and through the municipalities of Davis

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SEATTLE, WA, Nov. 23, 1906.

J. Saunders Gordon, Business Manager Leoncavallo and La Scala Orchestra, Salt Lake Theatre, Salt Lake City, Utah.

More trouble last night regarding piano. Leoncavallo insists on Steinway. Can you get one for Salt Lake. Capacity last night. Wire answer quick so can show wire Leoncavallo.

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Form No. 260.

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E. A. Wall, Manager Leoncavallo and La Scala Orchestra, Seattle, Wash. D.C.

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Prospects big here.

J. Saunders Gordon.

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