

THE CITY'S SIDE IN BOND FIGHT.

Important Points and Arguments
In Brief Filed in the Supreme Court.

WHAT CONSTITUTION GIVES.

Permits and Provides for Just What
The City is Doing in Way of Get-
ting New Water Rights.

In addition to what has already been published from the brief of City Attorney Day and Attorney F. B. Richards, in the bond case now before the supreme court, which is expected to give a decision in the matter, the following important points and arguments are given:

In answering the contention of the relator that the water rights which the city will acquire under the options held by it would not be such an ownership and control as is contemplated by the constitution, the brief says:

The only reason assigned for this contention is that no absolute title to the water acquired by exchange will be held by the city. This is true, and it is also true of every other water right. No absolute title to the water itself is ever acquired. The right is always strictly usufructuary. The title to water consists in the right to use it, and, no matter how perfect a water right or title may be, that right and title may be forfeited by failure to apply the water to some useful or beneficial purpose.

In the case of state vs. city council, 24 Utah, 256.

Under the exchange contracts, the city will have the perpetual right to use the water acquired, subject to the condition that it furnishes to the other party the irrigation water provided for in the contract. The compliance with this condition is solely within the control of the city, and there is no more reason for saying that such a water right does not constitute ownership, than there would be for saying that the city's right to use the Utah Lake water is not ownership, because, at some time in the future, it may not be able to apply that water to such a useful or beneficial purpose as the law requires, to maintain the right.

Section 6 of article XI of the constitution says:

"Provided that nothing herein contained shall be construed to prevent any such municipal corporation from exchanging its rights of ownership of water supply for other water rights or sources of water supply of equal value and to be devoted in like manner to the public supply of its inhabitants." This provision was incorporated in the constitution for the express purpose of meeting just such cases as the one now before the court. It is a matter of public history of which this court will take cognizance that, prior to statehood, municipalities in the territory of Utah, and in the state of Utah, have exchanged irrigation water for other water, and that such exchanges have been made upon just such contingencies as are contained in the proposed contracts for the exchange of the waters of Big Cottonwood Creek for the waters of Parley's Creek in 1855. For the waters of Parley's Creek, a notable example of this kind of exchange.

WHAT WAS IN MIND.

Having these things in mind, desiring to encourage municipal ownership of waterworks and prevent cities from alienating any source of water supply or water power which they might possess, the members of the constitutional convention adopted these provisions, which were afterwards ratified by the people of the territory and of the state. We cannot believe that this court will ever become so unkindly of the public weal as to nullify these great constitutional provisions by giving them such a restricted construction as would render them ineffective and practically nugatory.

In order to determine the real meaning of the words "owned and controlled," as used in this section of the constitution, it is necessary to consider the purpose which was intended to be accomplished. The evident intention was to provide a method by which an additional indebtedness, not exceeding 4 percent, might be created for the purpose of supplying a city or town with water, artificial lights and sewers, when the works of supplying such water, lights and sewers should belong to the municipality. It was designed to favor the municipal ownership of these important public utilities, and to provide means for their establishment and maintenance.

THE CONTENTION.

As we understand, the contention is, that, although Salt Lake City proposes to use the money which it derives from the issue and sale of bonds for increasing its water supply and extending and enlarging its present waterworks, the bonds cannot be legally issued, because the city does not now own the water rights which it proposes to acquire, and does not now own the enlarged and extended works which it proposes to construct. If the city does not own these water rights it would have no occasion to borrow money with which to purchase them, and, if its waterworks were extended and enlarged, it would have no occasion to incur an indebtedness for the purpose of getting money to pay for making such extension and enlargement. The very object of this constitutional provision was to enable the city to borrow an additional amount of money for the purpose of acquiring, either by purchase or construction, additional water rights and waterworks, which it could not possibly own until it had procured the same by the use of the very money which the constitution provides that it may borrow for that purpose.

It is alleged in the affidavit that the city is the owner of a waterworks system and obtains its water from Parley's Creek, Emigration Creek and City Creek, and is also owner of the Salt Lake and Jordan Canal, flowing from Utah Lake to said city, the water, however, carried by said canal, not being fit or used for domestic purposes in said city; that the present waterworks system of said city, which is owned and controlled by it, embraces several large and substantial reservoirs, a masonry conduit about five miles long, about 160 miles of pipe, 1,500 valves, 1,150 hydrants, and its present estimated value is over \$4,000,000, the

water from Parley's Creek being conducted from that canyon to the city through its water mains, the object and purpose of said bond issue being to construct a conduit from Parley's Creek to Big Cottonwood Canyon for the purpose of conducting the water of Big Cottonwood Creek through said conduit to Parley's Canyon, and delivering the same at the intake of the present conduit at Parley's Canyon, through which it will be conducted into the water mains of the existing water system of Salt Lake City.

PURPOSE OF BOND ISSUE.

It is apparent that the purpose of issuing these bonds is to obtain money to extend, enlarge and make more effective the waterworks system, which is valued at over \$4,000,000, and is now owned and controlled by the city. This is to be accomplished by the construction of a conduit from Parley's Canyon to Big Cottonwood Canyon and by the improvement of the city's present distribution system. In other words, the money is to be expended for the betterment of the waterworks, which are already owned and controlled, in the fullest sense, by the city. Of course, it cannot be held that the city owns the conduit which is not yet constructed, nor that it owns the waterworks which are yet to be acquired, but, when completed and acquired, they will become a part of the present works for supplying water to the city, which are now owned and controlled by it.

It is a fundamental rule that, in construing a constitutional or statutory provision, the court will give it such an interpretation as will make it possible to effect its purpose. If the restrictive construction asked for is given to this constitutional provision, it will become so ineffective that it will be substantially a nullity. It is derived from it. Under such a construction, no city, being without a waterworks system, could possibly borrow money with which to increase its water supply or extend and enlarge its waterworks. Such a construction would defeat the purpose of the constitution. In the case of state vs. city council, 24 Utah, 256.

CONSTITUTIONAL OBJECT.

The real purpose and object of this constitutional provision was to encourage the municipal ownership of water supply, artificial lights and sewers, by affording the necessary means through which such ownership could be obtained. The power of the city to borrow money for these purposes was limited to cases where the municipality itself would own and control the works, and such an indebtedness could not be incurred for supplying any city or town with water, artificial lights or sewers, when the works for supplying the same would be owned or controlled by any other person than the municipality. It was for the purpose of insuring the municipal ownership of these works in the municipality, instead of a private person, that this provision was made, without regard to the question of whether the water right title to the property at the time of the bonds was issued.

NOT DEPENDENT.

A careful examination of the address will show that the carrying out of the plan proposed is not dependent upon the acquisition of all the waters of Big Cottonwood Creek, Emigration Creek and City Creek, or of other streams. The committee simply expressed the opinion that those waters could be acquired, as fast as the necessities of the city required, and it was careful to state the reasons for entertaining this belief. The voters were capable of judging for themselves, and, although it might not be possible to carry it out in every detail and to the fullest extent, as long as there is a substantial compliance with the plan, there can be no question of the validity of the proceedings. Conditions are the same now as when the plan was submitted, and the same reasons now exist which then caused the voters to believe that it could and would be carried out.

FOR YEARS THE GROWTH AND DEVELOPMENT.

For years the growth and development of the city have been retarded by reason of the scarcity of its water supply. Property has been in danger, and there have been extensive losses, and there have been no ample protection against fire. The health of the people has suffered, because the city has not had sufficient water for supplying the streets and other municipal purposes. As we have shown, the only means by which the city can increase its water supply is through the exchange of its irrigation water for other water. This can only be accomplished and the water utilized through the issuance of bonds, and the same reasons now exist which then caused the voters to believe that it could and would be carried out.

SUMMER COLDS.

Laxative means quinine, the world-wide cold cure, removes the cause. Call for the full name and look for signature of E. W. Quinn.

WATCH THIS BOY.

An exchange asks: "What has become of the boy in patches?" Why, bless your soul, he is out on the farm hopping clover 16 hours a day. He will come to town after a while to run the bank and the stores and be the successful lawyer and preacher and physician. Don't worry about the boy in patches. It's the sick looking store-crowded, miserably groomed lad who wants to inquire about. He's the fellow that's going to drop through a crack in the sidewalk out of sight one of these days. —Centralia (Mo.), Courier.

SCHETTLER CASE DRAGGING SLOWLY.

Small Block of Unlisted Stock
Found in the Twentieth
Ward Store.

ABOUT PROPERTY TRANSFERS.

Relatives on the Witness Stand Today
In Explanation of Certain Realty
Transactions.

The Schettler case was up again this morning in the court of Referee in Bankruptcy Charles Baldwin. For two hours witnesses were examined and cross-examined in the hope of unearthing some of the hidden securities which the creditors suspect have been secreted away, and one such security was apparently located. The Morgan home on K and Fifth streets, which has heretofore figured prominently in the affairs of the bank, was under examination, and a statement was made by Mr. Morgan, who is a father-in-law of Mr. Schettler, that he was not enjoying a life lease to it from the Schettlers, but was its owner, and had never relinquished title. The property owned by Ernest Schettler and K. Lester Schettler was also under scrutiny, both of the Schettler boys testifying that the property was not a gift from their father, but had been bought and paid for by them.

FIRST WITNESS TODAY.

The first witness was Ernest Schettler, who was questioned in regard to property in the South Salt Lake addition. William Gibson had previously testified that at one time he held a second mortgage on this property, and upon moving to foreclosure, Schettler had asked him not to do so, and had paid his claim, saying that he wished the property to turn over to his son as a present. Ernest Schettler testified, however, that he bought the property from his father for about \$500, which he paid in cash.

NEVER EXECUTED DEED.

Mr. Morgan, the next witness, was represented by Atty. H. C. Edwards. He said that he had never executed a deed to his son, Mr. Schettler, that he never gave a mortgage to Schettler for it, that he never owed Schettler \$1,000 as had been asserted by creditors, and explained the status of his property in the bank. He had listed it with Schettler to sell, Schettler to collect the rents from it and with these pay the taxes, but he had never received the credit of Mr. Morgan. Morgan wanted to buy from Schettler a piece of land in Mill Creek district, and should the bank not be able to pay for it, he would pay \$1,000 from the sale price for the Mill Creek property. This land Morgan afterwards learned did not have a clear title, so he withdrew his offer to buy from Schettler.

WARD STORE STOCK.

D. L. Murdoch, a stockholder and manager of the Twentieth Ward Coop, testified as to an asset of Mr. Schettler, which had been listed, and from which Schettler had derived revenue since going into bankruptcy. The asset consisted of seven shares of stock of the Twentieth Ward Cooperative store, which paid a semi-annual dividend of \$3.50, the last dividend having been paid to Mr. Schettler December 9, 1904, and another being now about to be declared. The stock was bought by Mr. Schettler in 1898. The witness read from the store's stock book on page 34, which showed that Schettler had been paid every dividend declared.

LESTER'S LOTS.

K. Lester Schettler was placed on the stand to testify as to how he obtained two lots now registered in his name, and formerly connected with the bank, according to the books. He testified that he bought the property from Joshua Whitney, for \$500. He paid \$500 in cash, which was a savings account deposited in his father's bank, and gave him note for the balance, the transaction occurring in December, 1902. He pledged the land as security for the bank's loan, and the savings paid by him by August, 1903. The deed was deposited with his father until he was paid in full. He testified that he had never worked in his father's bank, but that his deposit there was the result of savings made as an employee of the Rio Grande Western railway. At the request of Atty. S. W. Stewart, who handled the case, the creditors, an adjournment was taken at noon till Monday, June 26. It is probable that no more witnesses will be examined.

WILL CROSS BATS.

Street Railroad Employees Think They
Can Play Baseball.

The matrimonially eligible and the matrimonially ineligible employees of the street railroad employees at the boys' club have decided to open base ball hostilities, and will cross bats in ungory contest tomorrow at 5:30 p. m. at Calender's park. A forfeit will be given to the victors of the spiked shoe and left handed mitt, and something too terrific to mention is expected in the way of athletic achievement. The managers of the National and American leagues have been notified of the game, and the telegraph companies have been asked to put in special wires and operators at the park so that the contest may be wired by lines to all the larger cities of the country.

ONLY \$1.00.

Ogden and Return.

Via Oregon Short Line, Sunday, June 15th. Round trip only \$1.00. Leave Salt Lake either 7:10 a. m., 10:30 a. m., or 1:40 p. m. (Returning, leave Ogden 5:40 or 8:30 p. m.)

SHE MEANT WELL.

Bishop Coleman of Delaware, the Episcopal missionary who every summer takes a two or three week's tour over the country, tramping incognito, is a man of tremendous appetite, and is proud of it. He is a story is related of a Gent county housewife who got the best of him. She was the learned prelate's hostess on one of his tramping tours, and, having prepared for her a dinner of great labor, she said to him: "Bless you, bishop, eat your fill, for I love to see you eat; eat till you burst; I want you would!" —Cleveland Leader.

JUVENILE COURT BOY DISAPPEARS.

Youngster Who Went to the Re-
form School on His "Honor"
Is Missing.

SEVENTY CENTS TO SPEND.

Judge Brown Thinks He Will Reap-
pear When That Is Gone and Ask
For Admittance to School.

Just at present there seems to be a question in the minds of some as to whether or not the confidence of Judge Brown of the juvenile court has been misplaced in his action towards Nathan Wilkes, a 15-year-old boy who was committed to the reform school yesterday. Judge Brown committed the boy and placed him on his honor that he would go to Ogden and turn himself over to the officials of the reform school.

He gave the boy enough money to pay his fare to Ogden and some change for street car fare, and gave him his commitment papers and told him to report to the superintendent of the school and present his papers. At 9:45 yesterday morning the lad left the city and county building and started on his journey.

NOTICE TO ADVERTISERS.

Owing to pressure on our columns, News advertisers are requested to hand in their advertisements for the Saturday News as early as possible to secure insertion in all editions. Classified advertisements cannot be assured publication in all the editions, and in proper classification, unless received in this office before noon on Saturdays.

WILL FIGHT FOR GIRL.

(Special to the "News.")
Los Angeles, Cal., June 16.—Two of the participants in tonight's amateur boxing contests are entered at their own request, being rivals for the hand of a fair daughter of the city. The police will be present and regard the event with suspicious eyes, real scraps being prohibited by the ordinances.

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IONKET JOTS.

Thomas C. Wallace, perhaps the best known fertilizer and soil expert in southern California, is in town as a goodly sized factor in the Los Angeles fertilizer industry. While here Mr. Wallace will visit the various fertilizer plants that are being worked by the Utah Fertilizer company, and will be shown around by President P. W. Madsen. Mr. Wallace deals in jokes as well as fertilizer, and wired Riverside last evening that Messrs. Evans and Vandergrift of the delegation were really intending to sing here in public. The announcement seems to have created a sensation at Riverside, and after the connection had somewhat subsided, Mr. Wallace received this morning a telegram order from the mayor of the city and county and state officials at Riverside ordering him to leave Messrs. Evans and Vandergrift sent home under the escort of a heavy guard.

INJUNCTION ASKED.

An injunction suit was filed in the district court today by Jeremiah Beattie against H. J. Bywater and J. L. Groo, doing business as Bywater & Groo, to restrain defendants from attempting to collect a judgment for costs rendered against plaintiff in their favor on May 29, 1905. The complaint alleges that defendants were parties to the action on garnishment and that the judgment rendered in their favor was null and void because the plaintiff in the case in the lower court was Samuel C. Bailey against whom plaintiff secured judgment. The garnishee answered the case to the district court where judgment of dismissal was rendered in their favor together with costs amounting to the action on garnishment and that said judgment is wholly void because the court had no jurisdiction in the case at all for the reason that Samuel C. Bailey, the real defendant in the lower court, was not made a party to the appeal and for the further reason that the undertaking on appeal was not signed by two sureties as required by law. It is therefore asked that defendants be enjoined from collecting said judgment for costs and that the same be set aside.

CONDEMNATION SUIT.

The Oregon Short Line Railroad company filed in the district court today against Stanley B. Miller to condemn for railroad purposes several lots in Frontal Place subdivided on Ninth Street between Fourth and Fifth West streets.

FOUR YEARS FOR BURGLARY.

Frank Kelly Hayden appeared before Judge Ritchie in the district court this afternoon and withdrew his former plea of not guilty to the charge of burglary and entered one of guilty. He waived his trial and was sentenced by the court to four years in the state prison. Hayden burglarized a store at 154 south West Temple street, on the night of May 4, and stole some oriental rugs.

HELD FOR ROBBERY.

John Buckley was bound over to the district court today by Justice Holm of Murray on the charge of robbery and his bail was fixed at \$500, in default of

which he is now in jail awaiting trial in the district court. Benjamin Camp, who was charged with Buckley, was released. It is alleged that Buckley on June 8 robbed a man by the name of Sullivan at the Highland Boy boarding house, near the smelter.

BOY COMMITTED.

Judge Brown Sends Harry Benson to
The Reform School.

Harry Benson, the 17-year-old boy who has been in the county jail ever since March 27, was taken before Judge Brown of the juvenile court today and committed to the reform school at Ogden. Benson and V. D. Morehead held up and robbed F. O. Haymond of \$6 on the night of March 26. Morehead was taken back east to answer to a more serious charge and Benson has been in the county jail ever since awaiting some action to be taken in his case.

It was finally decided to commit him to the reform school, so such action was taken today. His attorney, Arthur E. Christensen, was present in court taking data in the case, and will undertake to secure the boy's release under a writ of habeas corpus, which will test the constitutionality of the juvenile court law and which it is expected will be filed today or tomorrow.

SUITS AGAINST INTERURBAN.

(Special to the "News.")

Los Angeles, Cal., June 16.—Little was done in the police court today in connection with the city's suit ordered by Mayor McAlister against the Los Angeles Interurban Railway company for alleged violation of the laws in carrying freight through the streets of the city. General Manager A. D. Schindler of the road, superintendent S. B. McLongan, and H. A. Tourville appeared as defendants, but asked time to plead. They were given until Monday and released upon their own recognizance.

The company, if defeated, as expected, will carry the case to the state supreme court. There is no state law giving municipalities of California power to grant freight-carrying privileges and lack of law will be depended upon by the city in the suit. It is expected that the state legislature will be asked to remedy this, "Defect" at the next session.

EXPERT CHIMNEY CLIMBERS.

(Special to the "News.")

Los Angeles, Cal., June 16.—W. Redney and N. Dewey broke all chimney climbing records at the police station early this morning. The men were prisoners in the jail and ascended the sooty aperture, a distance of 70 feet. While awaiting to make their escape through a scuffle officers appeared and gathered them in.

Members of the Grand Army and relief corps will celebrate bunker hill day tomorrow near San Gabriel mission. F. E. Robinson of the Townsend Robinson investment company, who was thrown from an automobile a distance of 15 feet, alighting upon his head, is suffering a large bump on the cranium only.

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BUSINESS NOTES.

At their meeting on Thursday the board of directors of the Utah National Bank decided to increase the regular dividends of the institution from 6 to 8 per cent. The stock of the bank is closely held, and is in strong demand; bids considerably above the regular market quotations have failed to induce the owners to part with any of their holdings.

Today's local bank clearings amount to \$12,817.64, as against \$161,664.13 for the same day last year.

A copy of the articles of incorporation of the Western Mills of Logan was filed in the secretary of state's office today. Its capital stock is \$20,000, divided into shares of the par value of 10 each. George Cole is president; Isaac J. Anderson, vice president; C. E. Hyde, secretary and treasurer. The company will operate a flour mill at Logan.

The old St. Mark's school house property, 53 feet front, and 175 feet deep, has been sold by Mrs. Julia McPhaden of this city to Frank J. Schumacher of Los Angeles, for \$15,000. James Murray, vice president of the National Bank of the Republic, has sold to the Los Angeles inventor, for \$25,000, the northeast corner of State and Fourth South streets.

AFTERNOON ON EXCHANGE.

The afternoon sales on the mining exchange were:
Grand Central, 50 at 3.10.
New York Bonanza, 100 at 64; 200 at 64 1/2.
Yankee, 500 at 38.

OGDEN EXCURSION.

Sunday, June 18th, via Oregon Short Line. Take either one of three trains leaving at 7:10 a. m., 10:30 a. m., or 1:40 p. m. Returning, leave Ogden at 3:40 p. m., or 6:30 p. m.

WEATHER REPORT.

Record at the local office of the weather bureau for the 24 hours ending at 6 a. m. today:
Barometer reading at 6 a. m., 30.20 inches; temperature at 6 a. m., 57 degrees; maximum 65; minimum 52; mean 64, which is 3 degrees below normal.

FORECAST FOR SALT LAKE CITY.

Local forecast for Salt Lake City and vicinity:
Fair tonight and Saturday; warmer.
Fair; (Forecast taken at Denver, Colo.)
Fair tonight and Saturday; warmer.

WEATHER CONDITIONS.

Precipitation occurred over portions of the Rocky mountain slope and eastward to the Atlantic. It was raining this morning at Lander, North Platte, Huron, Little Rock, and Cheyenne. Heavy rains as follows: North Platte, 1.24 inch; Rapid City, 1.17; Asheville, 1.02; and Calgary, 1.74. At Calgary nearly five inches of precipitation occurred in 36 hours. Thunderstorms were quite general.

TODAY'S TEMPERATURE.

6 a. m. 54
7 a. m. 57
8 a. m. 62
9 a. m. 63
10 a. m. 63
11 a. m. 64
12 m. 65
1 p. m. 68

YESTERDAY'S RECORD.

Highest 78
Lowest 53

ALSO A TEN-ROUND PRELIMINARY.

Tickets Now on Sale at Stickey's Cigar Store.

PRICES—\$1.00, \$1.50, \$2.00.

Ring Seats \$2.50.

TOMORROW NIGHT.

OPENING OF SALT LAKE BEACH THEATRE.

Utah's Favorite Actress,

Victory Bateman

In Her Successful Comedy,

"SWEETHEARTS"

Every Evening at 8:30.

PRICES—15 cts., 25 cts and 35 cts. All Seats Reserved.

MATINEES at 4:30. Prices 10 cts. and 25 cts.

Seats Now on Sale at Smith Drug Co., Main and Second South, and at Beach.

MARK'S IDEA.

Mark Twain was visiting H. H. Rogers, who left the humorist in his library.

"There," he said, as he pointed to a bust of white marble, "what do you think of that?"

"It isn't true," said a young woman collaring her hair.

"Mr. Clemens looked at it a moment and then said:

"It isn't true," said a young woman collaring her hair.

"Why not?" Mr. Rogers asked.

"She ought to have her mouth full of hairpins."

LATE LOCALS.

The furniture for the new Y. M. C. A. building ordered from Chicago has been received and the strike, and will be here in a few days.

The Forest Dale meetinghouse will be

SMEDLEY WAKELING FIRE INSURANCE.

Every Man Should Have an Accident Policy.
Every Man Should Have a Health Policy.
We Write the Best.

SMEDLEY-WAKELING INSURANCE AGENCY,
204 Atlas Block, Salt Lake City, Utah.

SMEDLEY WAKELING ACCIDENT INSURANCE.