IN THE FIRST ROUND

Hardware Company's Receivership Application Denied.

SERIOUS CHARGES NOT SUSTAINED.

Decision Handed Down by Judge Hiles Today in the Sensational Partnership Squabble.

Judge Hiles brought the sensational partnership squabble of the Salt Lake Hardware company to an abrupt standstill today by handing down a decision in which he peremptorily denied the application of Ex-Manager Clasby for the appointment of a receiver for the purpose of winding up the business of the company. The decision is as follows:

Case of Benjamin F. Dixon, plaintiff, vs The Salt Lake Hardware company, James T. Chesley, Henry W. Spencer, Julian E. Chesley, defendants.

This is a motion for the appointment of a receiver to take charge of the property and effects of the Salt Lake Hardware company, a corporation. The plaintiff is a director and a minority stockholder of the defendant corporation, being the owner of one hundred and fifty-seven (157) shares. He alleges in his complaint that by reason of certain quarrels and disagreements between himself and another stockholder and director, defendant James T. Chesley, they are desirous of having the business and affairs of the corporation "wound up and closed out."

He also alleges that the other defendant directors, Julian E. Chesley and H. W. Spencer, are not owners and holders of any stock of the corporation and so are not qualified directors thereof. That they are friendly to James T. Chesley and will conduct the affairs of the company so as to prejudice and impair the value of plaintiff's stock and interests in the corporation, and to the sole advantage of James T. Chesley.

The plaintiff from the time of the organization of the corporation in 1889 to the 23rd day of December, A. D. 1895, managed and controlled the business thereof, at which time in consequence of disagreements between himself and Chesley he left the same in the hands of the latter, and since the latter date the plaintiff has taken no part in the management of the concerns of the company.

He alleges also that the debts of the corporation exceed $35,000; that the stock of merchandise on hand is not worth to exceed $20,000 and that the outstanding collectable accounts are about $10,000; that the corporation is in imminent danger of insolvency; that defendant James T. Chesley has taken charge of the affairs of the corporation, he has been borrowing large sums of money from friends who, in corporation with himself, are using such money to pay merchandise creditors, and that they had the intention to consolidate the debts owing by the corporation, into debts and to his friends who will act in conjunction with him for the purpose of destroying the interests of plaintiff who holds $15,000 worth of paid capital stock.

That if the business and affairs of the company are wound up by James T. Chesley he will at last own all the property and assets of the corporation, but if the business and affairs of the company were properly wound up, there would remain after paying debts one creditor, $30,000 to be divided between plaintiff and James T. Chesley, who are the principal stockholders.

In this connection the defendants deny that it does not state facts sufficient to constitute a cause of action; and asserted at the same time, and in their answer they deny every of the material allegations of the complaint, and they aver that whatever embarrassments or dangers of insolvency the corporation may have encountered are due to the misconduct of the plaintiff in withdrawing from the management of the concern, thus throwing the great burden thereof onto James T. Chesley.

The answer avers further that the only disagreement between James T. Chesley and plaintiff was a refusal of James T. Chesley to cause to be issued to plaintiff an equal number of shares with Chesley. It also avers the solvency of the corporation, its ability to pay its debts in full. The defendants aver that the debts do not exceed $50,000 and that the value of the property and assets are in the neighborhood of $100,000. I can not take the time to go over the testimony introduced by the respective parties at the hearing. The testimony offered by the plaintiff is not sufficient to make out a case of insolvency or imminent danger of insolvency.

The testimony tends to show that whatever embarrassments in the conduct of the business which have arisen from its organization, have been occasioned mostly, by the withdrawal of plaintiff from the care and management of the business.

It is not easy to determine from a reading of the complaint just what ultimate relief the plaintiff seeks by this action whether it is to wind up the corporation, or to have it adjudicated insolvent, or in imminent danger of insolvency, or to have an injunction against the directors enjoining them from the performance of certain acts as such. If for either of the first two named the answer is that there is no statute in this state expressly conferring on this court jurisdiction to entertain such an action and such causes of action do not come within any of the recognized heads of the equity jurisdiction.

If the ultimate relief sought is an injunction, it does not state what acts of threatened note of the directors call for the interposition of a court of equity for his protection. The motion cannot prevail on the pleadings and evidence now before the court, the grounds of this decision to follow seriatim.

First—The jurisdiction of this court does not extend to the power of winding up the affairs of a corporation and equitably distributing its property and effects, there being no expressed statutory authority therefor, and this even though a majority or all the stockholders of the corporation might wish the court to exercise such jurisdiction.

Second—This court has no jurisdiction to entertain a complaint to adjudge a corporation insolvent or in imminent danger of insolvency as a ground or cause of action, under any of the general equity powers and jurisdiction and none of the statutes of this state conferrs such jurisdiction.

Third—That the court has no jurisdiction under its general equity powers to entertain a complaint which aims solely at the appointment of a receiver, but that the appointment of a receiver is a part of its purely auxiliary jurisdiction, to be exercised only when there is an action pending in court in which is demanded a final decree, giving some ultimate relief under some recognized head of the general equity jurisdiction.

Fourth—That even if the court has jurisdiction over any substantive cause of action which this complaint may contain or state, the evidence adduced at the hearing would not justify the court in finding that the Salt Lake Hardware company is insolvent or in imminent danger of insolvency, nor would the court be justified in making any finding of fact in the case, which would warrant it in taking the property out of the possession of the corporation and placing it in the hands of a receiver of this court.

The application for receiver is denied.

In the case of the Salt Lake Building & Manufacturing company vs Johannes Halvorson, on motion to strike out amended answer, the demurrer to answer was overruled by Judge Hiles.

AMUSEMENT NOTES.

The advance sale of tickets for The Defaulter, the play to be presented at the Theater tomorrow and Friday evening, is now on.

Forget Me Not, at the Grand, is proving a drawing card. Last night the house was again well filled with an appreciative audience.

Paxton's Fives is played at the Lyceum to appreciative audiences.

INDIAN TERRITORY MISSION.

The Holidays and Statehood Day Remembered by the Elders.

ST. JOHN, KANSAS, January 14, 1896.

To the Editor:

Utah is a State! Hurrah! We hear so many good things from all parts of the universe that we feel at times in repose to silence, so so little news of an interesting nature comes to us, worthy of note. Our St. John News is curtailed in its publication of Mormon doctrine since a committee of our religious friends waited on our genial Burr, offering a boycott if he dare give us our just dues. Yet all is peace in our little hamlet.

Do you think we passed Christmas day without commemorating? Our tony little church on Zion's hill was made sweet and clean, and Elders, assisted by some of our little girls and lady friends, were busy for several days previously preparing corn and stringing it. Some fine decorating was done under the hands of Elders Raleigh and Neteker, while others were busy making our Christmas tree. We had our own majestic tree, so little though of it at home, with their evergreen branches in harmony with shape, shape and light so complete for Santa Claus to adorn with treasures; we had cottonwood, wrapped the Union flag about its body, and its branches we covered with green tissue paper, while satin represented the snow. Among our pop-corn adornments which hung in style from four chandeliers, we interpreted fourteen Japanese lanterns, with forty-eight tiny wax candles scattering the tree. The decorations looked brilliant, though very simple.

We opened our doors at 8, and our little church filled to overflowing before 6:30, the time for commencing the program. Your humble servant bade all welcome and made a few brief remarks. After prayer, a chorus of fifteen young ladies and gentlemen arose in the wave of Elder Beesley's baton and sang "The Bright New Year." Many features of the program were very praiseworthy. We then distributed 150 packages of candy, nuts and apples. To the sons of missing sons, we also passed refreshments around.

On New Year's eve we went serenading. At 11:58 the Elders stood upon the church step, and sang "Farewell." Then to the sisters to dear old "95" with all her joys and sorrows—as the watch ticked the knell of that dying year, our bell rang out in solemn tones and slowly, good by, good by. The watch then said "96" in tones of brighter cheer, which our bell rang faster, long and loud, with silvery notes—Welcome, welcome dear '96.

Our mission is in a prosperous condition. Noon are confined to bed through sickness, though several are not entirely well. Herewith I give you a few items: During 1895 the Elders have walked 54,240 miles and have otherwise traveled 18,560 miles, not including passage from home; been refused entertainment 631 times; tracts distributed 4,802; meetings held 1,800, attendance 65,088; 100 at meetings there 10 times; baptisms 29; children blessed 28; ordinances 76; signatures 3; books sold $43.80; books given away $55.25; families visited 9,014. We have twenty-four Elders in the Indian Territory mission, with more to join us shortly. Kansas and Arkansas are surprising. They are now good fields for the servants of God to work in, and many honest souls are to be rejoicing the plan of salvation.

We intended celebrating Utah Day, but having urgent calls for prayer meeting, we met and labored as engagement of one week, where our mouth since we were hardly allowed to hold one meeting. Today our friends there are many, and our labors very satisfactory. Our every thought extend to go homeward for Zion during Inaugural day. We are in sweet meditation for some time during this memorial hour, picturing the masses as they thronged our grand streets. We took a glimpse of our infantry, could not help drawing the contrast with our 24th of July a few years since; then the soldiers were busy in suppressing our people; today they look upon in friendship, was by the unfailing loyalty of Utah's patriotic sons, to join us in bidding welcome to the Union one of her brightest stars, Utah. Now we see that endless procession moving slowly, yet in a steady, onward the lofty home of our Deseret. Beneath its walls, too, we see our brother, our honored Governor, clasping hands with those who in times passed executed the law, sending hundreds of our brave men to dungeons for their religious belief and practice. Those have changed and we glory in seeing Mormon, Jew and Gentile pressing onward in love, peace and unity. We welcomed Elder Sorensen and Nielsen from Fountain Green, Utah, en route for Arkansas. They are feeling well and will proceed to Arkansas in a few days.

Yours respectfully,
W. D. BOWENS.

Prospects are Promising.

Henry Harker, a well known citizen of Taylorville, returned to the city last evening after visiting the mines of the Gold Dust mining company at Leesburg, Ida. He is very favorably impressed with the prospects, as assay obtained by him show gold amounting to as high as $1,000 per ton. A shaft is now being put in, and Messrs. Ilven and Macfregor are now in Chicago ordering milling machinery.

IN PLAGUE TIMES.

How London Handled the All Devouring Sickness in the Seventeenth Century.

During the plague of 1603 Francis Herring, "Doctor in Physicke and Fellow of the College of Physicians in London," published certain Rules and Directions for the prevention of the spreading of that contagious and all devouring Sickness." These he reprinted, "somewhat inlarged," in the next plague season of 1625, "to the view and use, and I hope good of my Countrymen and Countrywomen." Among his rules are: "Concourses of people to Stage plays, wakes or feasts and May pole dancings are to be prohibited by publique Authority, whereby, as God is dishonored, the bodies of men and women—by surfeiting, drunkenness and other rude and carnous—disposed to infection, and the contagion dangerously scattered both in Citie and Countrie.

"Let not the carkasses of horses, dogs, cats, etc., be rotting and poisoning the aire (as they have done) in Moor and Pimlarie fields, and elsewhere round about the Citie.

"The burying of infected bodies in churches, churchyards and, namely, in Paules Churchyard, where the chiefe Magistrates of the Citie and many other Citizens meete weekly to hear Sermons, must needs be not onely inconvenient, but verie dangerous for spreading the contagion, and poisoning the whole Citie."

Some folk ate breakfast then, others did not:

"For breakfast you may use a good draught of wormwood beere or ale, and a few morsels of bread and butter, with the leaves of sage, or else a taste with sweet salade oyle, two or three drops of rose vinegar and a little sugar. They that have cold stomackes may drinke a draught of wormwood wine or malmsey, instead of ale or beere. But take heed (as you love your life) of extreme hot waters, as aqua vitae, Rosa solis or other compound waters of like nature, which Empericks prepare and set out with value and boasting words * * * they were * * * devised to kill, not cure men."—Notes and Queries.

A Remarkable Tree.

There is a wayward white oak tree near Laporte, Ind., that may well puzzle naturalists with the vagaries of its growth. The tree is 8 feet in circumference at the base, and there are no branches of any size below 15 feet from the ground. There the great bole divides into a number of limbs. Two, leaving the trunk about 20 inches apart, grow west, their lines diverging for some 6 feet, and then each sending toward the other. Twelve feet from the body of the tree they unite again, making a perfect oval, and out of this grow two smaller branches. As if not satisfied with that expressed disregard for the laws of nature, this old tree has performed another feat. Six feet from its base grows another white oak, less than half its size, and no sooner does the smaller tree arrive at the charmed circle of those branching limbs than one of them grows right into it, and is absorbed. The second tree is very much larger 20 feet from the ground than at its base.

OBITUARY NOTE.

ELIJAH MAYHEW.

PLEASANT GROVE, Jan. 19, 1896.—Died at Pleasant Grove, Friday morning, Jan. 17th, 1896, Elijah Mayhew, born near Bangor, Maine, April 18th, 1807. Brother Mayhew spent his boyhood in his native state; removed with his father's family to Indiana; settled at what was afterwards called Shiloh Village and was schoolmate of the late Hon. Thomas A. Hendricks; acquired a good education and held several positions of trust, acting as clerk of the circuit court at Laporte Co., afterwards removed to Indianapolis, Indiana, and held the position of railway agent for a number of years, until 1855, when he emigrated to Utah, settling at Pleasant Grove. He was chosen Bishop's clerk and city recorder, which positions he held with credit for thirty-five years. He served as selectman for two terms in the county, and was postmaster for fifteen years, until the "Edmunds-Tucker law" Repealed him.

Elder Mayhew was a man of good ability, high in character and of nobility of purpose. He was scrupulously honest. He leaves a large family. His son Walter hastened his home to fill a mission and was summoned back from Salt Lake City, having bade his aged parent good bye the day before. His death was very sudden and unexpected; he retired in his usual health and expired at 1:30 a. m. without a struggle.

There are few men with attainments such as he possessed. Brother Mayhew was the only member of his father's family who entered the Church. The funeral will take place this afternoon from the home. His life has been one of honor and his record worthy of emulation.—(Com.

FRAGRANT
VANITY FAIR
CIGARETTES

FOR PIMPLES
USE
Cuticura SOAP

THE ONLY
PREVENTIVE
OF
PIMPLES

Because the only preventive of clogging, inflammation, and irritation of the pores, the CAUSE of pimples, blackheads, blotches, rough, red, oily skin, baby blemishes and falling hair

R. K. R. CUTICURA SOAP is not only the most effective skin purifying and beautifying soap in the world, but the purest and sweetest for toilet, bath, and nursery.

Sold throughout the world. Cuticura Soap, 25c. Cuticura Resolvent, $1. Cuticura, 50c. Potter Drug and Chem. Corp., Sole Proprietors, Boston, U. S. A.

$5.00 a Month the Only Cost

FOR TREATMENT AND ALL MEDICINES FOR ALL DISEASES, INCLUDING THE PERSONAL CARE OF THE MASTER SPECIALIST UNTIL CURED.

You That are Sick and Weary, Don't Neglect Your Duty to Yourselves a Day Longer—Good Lasting Health is Within Your Reach—A Helping Hand is Generously Extended to You by Dr. G. W. Shores, the "People's Doctor."—Accept it—Go to Him Right Now.

Read the following synopsis carefully, mark those that you feel to be your case and bring them in person or send them by mail to Dr. G. W. Shores and he will tell you whether you can be cured, how long it will take and just what it will cost to get a complete and permanent cure BEFORE YOU PAY OUT A CENT.

THE HEAD AND THROAT.

This form of catarrh is most common—is arising from neglected colds—quickly cured with little cost by Dr. Shores' famous treatment.

"Is the nose stopped up?"
"Does your nose discharge?"
"Is the throat sore and inclined?"
"Do you have pain in your head?"
"Do you have to clear the throat?"
"Is your throat dry in the morning?"
"Is your voice what you would call good?"
"You can be easily cured now—don't let it run into consumption."

THE BRONCHIAL TUBES.

Many cases of the lung and bronchial troubles are brought about by a cause now in the bronchial tubes and air cells which leads to consumption. Quickly cured with little cost by Doctor Shores' famous treatment.

"Have you a cough?"
"Do you take cold easily?"
"Have you a pain in the side?"
"Do you feel badly mornings?"
"Do you cough in the morning?"
"Do you have a little clammy cough?"
"Do you feel as if you are going consumptive?"
"Don't run explosive lung warnings—stop the trouble before it reaches the lungs."

THE EARS.

Catarrh extends from the throat along the eustachian tubes into the ears, causing painful and dangerous deafness. Quickly cured with little cost by Doctor Shores' famous treatment.

"Do your ears ever pain?"
"Do your ears discharge?"
"Is the wax dry in your ears?"
"Do you hear sounds some days than others?"
"Do your hearing notes when you have a cold?"
"Don't neglect this until your hearing is irretrievably destroyed. Doctor Shores can cure you now."

THE KIDNEYS.

Kidney disease results in two ways, by taking cold and by overworking the kidneys in expurgating from the blood the acidic poison which affect all organs. Quickly cured with little cost by Doctor Shores' famous treatment.

"Do your hands and feet swell?"
"Is the secretion scant at night?"
"Is there pain in small of back?"
"Has the perspiration a bad odor?"
"Is there puffiness under the eyes?"
"Do you have to get up often at night?"
"Is there a dropsical tendency? Will standing? Don't neglect these signs and risk Bright's Disease killing you. Cure it now."

THE LIVER.

The liver is affected by catarrhal poisons causing pain the shoulder with the chest to the lips. Quickly cured with little cost by Doctor Shores' famous treatment.

"Do you get dizzy?"
"Have you pain there?"
"Do you feel nervous?"
"Do you get tired easily?"
"Do you have bad breath?"
"Are your spirits low at times?"
"Do you have coughing or sneezing?"
These are the worst, which signs indicate a case of the liver. If you have any or all, come seek Doctor Shores now and be cured.

THE STOMACH.

Catarrh of the stomach is usually caused by swallowing gathered mucous which rots from the head and throat or sight, quickly cured with little cost by Doctor Shores' famous treatment.

"Is there nausea?"
"Do you vomit in the morning?"
"Are you constipated?"
"Are you troubled with gas?"
"Do you have an offensive breath?"
"Is there tenderness and pain in mouth?"
Now is the time to be permanently cured. Doctor Shores is curing hundreds every week.

THE NERVES.

"Are you nervous?"
"Have you no energy?"
"Is your memory poor?"
"Is there a feeling of dread?"
"Do you suffer from headache?"
"Do you often have a lump in your throat?"
"Do your hands often sweat with peculiar feel?"
These symptoms result when the disease poisons attack the nervous system. If you have any of them don't risk your health by neglect. Doctor Shores has cured hundreds—he can you.

DR. SHORES' FEE.

The cost of a full course of treatment for any and all chronic diseases at Doc's Medical Institute, under Doctor G. W. Shores' personal care and advice is the sum of

$5 A MONTH UNTIL CURED.

Whether it takes three months or three years and no matter what the disease may be. This fee includes everything necessary to a complete and permanent cure—all medicines, treatment and care.

TRIAL TREATMENT FREE

To those apply in person at Doc's Medical Institute.

SPECIAL NOTICE!

For the benefit and accommodation of those early Dr. Shores' office will be open Tuesday and Friday evenings from 7 to 8 o'clock.

Dr SHORES

Treats and cures Catarrh and all diseases of the eye, ear, nose, throat, lungs, stomach, liver, bowels, kidneys and bladder, all chronic, private and nervous diseases of both sexes, and diseases of women and children. $5.00 A MONTH FOR ALL DISEASES — Medicines Free. Doctor Shores' motto is "A Low Fee, Quick Cure, Mild and Painless Treatment." If you cannot come to the office send stamp for Doctor Shores' new symptom list and have your case diagnosed and get expert advice FREE.

ZION'S MEDICAL INSTITUTE
DR. G. W. SHORES,
Consulting Physician.
54 East Second South Street,
Salt Lake City.
OFFICE HOURS—Forenoon, 9 to 12; Afternoon, 2 to 5.
Sundays—11 a. m. to 1 p. m.
Tuesday and Friday Evenings 7 to 8.

FOR ALL KINDS OF
BOOK BINDING, PAPER RULING
BOOK AND JOB PRINTING
AND STEREOTYPING
GO TO THE
DESERET NEWS PUBLISHING COMPANY, Salt Lake City, Utah.

If you want a sure relief for pains in the back, side, chest, or limbs, use an
Allcock's Porous Plaster
BEAR IN MIND—Not one of the host of counterfeits and imitations is as good as the genuine.

R. K.
THOMAS,
26, 28, 30, 32 E. First South St.
Salt Lake City.

GRAND
JANUARY
STOCKTAKING
CLEARANCE
SALE!

Every Department Will
Offer Great Bargains!

Silks, Dress Goods
Capes
Jackets
Underwear
Hosiery
Gloves
Handkerchiefs
Notions
Shoes

MEN'S GOODS, DOMESTICS
BLANKETS, QUILTS,
And Everything Else in the
House.

R. K. THOMAS