

IMPORTANT CASE DECIDED IN OGDEN

Judge Howell Renders a Decision
In the School Consolida-
tion Suit.

ACT NOT UNCONSTITUTIONAL.

Commissioners of Weber County Were
Perfectly Within Their Rights
In Taking Action.

(Special to the "News.")

Ogden, Jan. 7.—A decision on the demurrer of defendants in the case of Frank Moore et al versus F. W. Stratford et al was rendered this morning by Judge J. A. Howell in favor of defendants. Included in the defense were the members of the Weber county school board and the county treasurer, and the decision is of importance as touching the consolidation of schools. The suit was brought for the purpose of annulling action taken by the commissioners of Weber county, in July, 1906, whereby the schools of that county, outside of Ogden City, were consolidated into one district, under the direction of a board of education.

The demurrer was based upon the statutory ground that the complaint did not state facts sufficient to constitute a cause of action, and the contention of the plaintiffs was "that the proposition whereby the Weber county school district came into being are invalid, counsel for the plaintiff being that the act of the legislature in question is unconstitutional for two reasons: First, that it contains other subjects than are expressed in its title (Art. 6, Sec. 22) and secondly, that these sections violate or amend previous acts of the legislature or sections thereof, without re-enacting the same and publishing them at length (Art. 6, Sec. 22)."

Judge Howell, in his decision, is not long in arriving at the conclusion that the act of the legislature providing for the consolidation of schools in certain instances is not unconstitutional, and the question most considered by him is as to whether the board of county commissioners acted under the authority of the act mentioned and of previous acts governing the abolition, consolidation or creation of school districts.

THE CONTENTIONS.

The argument of counsel for the plaintiffs was gone into exhaustively by the court. The contentions, in effect, were as follows:

"That while this section gives the board of county commissioners power to create, subdivide or consolidate school districts, it nowhere authorizes the board to abolish them, and that therefore its action in abolishing all the school districts was null and void. It is next insisted by counsel for the plaintiffs that, assuming the board had the right to abolish all the school districts in the county, it did not have the power to create a school district out of the territory in which the abolished

school districts were situated and lying outside of Ogden City, without a petition so to do by as many residents of such territory as had the care and custody of not less than twenty school children of school age, or upon the recommendation of the county superintendent."

BOARD HAD THE RIGHT.

Upon these points Judge Howell says: "The logic of these arguments is undoubtedly unanswerable if the various motions passed by the board of county commissioners on the 2nd of July, 1906, are to be considered separately. It seems to the court, however, that they should not be so treated, but that they should all be construed together, for it is obvious that they were all passed with a single purpose, namely, to organize all of the county lying outside of Ogden City into one school district. So considering them, what difference does it make whether the board simply said, 'All the districts outside of Ogden City are hereby consolidated into one district,' or whether it said, 'All the school districts outside of Ogden City are hereby abolished, and out of the territory in which they formerly existed is created one district?' The act of consolidating school districts necessarily involves the abolition of those formerly existing, and even if no mention of their abolition had been made, they would nevertheless have been abolished by the consolidation. The mere fact, then, that they were expressly abolished cannot invalidate this action of the board of county commissioners, when the obvious purpose of it was consolidation. If, instead of passing the motion to abolish first, and the motion to create afterwards, the board had passed the motion to create first and to abolish afterwards, it would not seriously be contended that the action was invalid because of the procedure, and what difference does the order of the motions make? The board of county commissioners had the undoubted right in consequence with the case of the Sixteenth school district of Davis county vs. the board of commissioners of Davis county, 16 Utah 223, in one breath to consolidate all the school districts of the county into one district."

DUTY OF TREASURER.

After going into each phase of the case in detail, Judge Howell says: "The court having arrived at the conclusion, then, that the statute providing for county school districts of the first class is constitutional, that the Weber county school district is valid and legal, and that it has the requisite school population to bring it within the statute, it follows that the board of county commissioners was justified in proceeding under it, that the county board of education, created by the board of county commissioners, is a legally constituted public body, that its actions within the scope of its authority are binding upon the plaintiffs and the public, that said board was justified in proceeding to perform its duties, in entering upon contracts to erect school buildings, etc., and that it is the duty of the county treasurer to turn over to the said board the school funds in his hands."

"The demurrer of the defendants to the complaint of the plaintiffs should therefore be sustained, and if the plaintiffs elect to stand upon their complaint the action should be dismissed."

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JAMES MADISON FISHER.

Pioneer, Scout and Frontiersman Who Was Laid to Rest in East Mill Creek Yesterday.

Once more the list of early Utah pioneers has been lessened by the visitation of death, the member to answer the summons this time being James Madison Fisher, Sr., of East Mill Creek, Salt Lake county, who departed this life Jan. 1, 1906. A resident of Utah since September, 1850, Mr. Fisher had passed through most of the trials, hardships and thrilling experiences incident to the colonization of the western wilds, and the part played by him as a scout and Indian fighter, would, if detailed, make a long and interesting story of heroism and duty well performed. Most of his comrades of those strenuous days preceded him into the great beyond, and soon the time will be when not one of the noble band will remain in mortality, so rapidly are the ranks being depleted by the visitation of the grim reaper.

Mr. Fisher was a native of Freetown, Beaver county, Pa., where he was born July 22, 1823. His parents were Joseph and Eveline McLane Fisher. He became a member of the Church in his youth, and came to Utah three years after the arrival of the first pioneers. He took a prominent part in the building up of the commonwealth and was a man much respected by a wide circle of friends.

The funeral services over his remains were held yesterday in the East Mill Creek meetinghouse. The large new building was filled until many were obliged to stand during the meeting. Among the assembled multitude were seen the faces of a great many of the old and faithful veterans of the Church from various parts of the state, testifying to the wide circle of friends and sincere esteem the sterling character of the deceased had created.

The floral decorations were beautiful and profuse, and the numbers of mourners was unusually large. The deceased was 73 years of age and left a

large family of children, grandchildren and great grandchildren, quite a number of whom have settled in East Mill Creek around the old homestead.

The opening hymn, "When first the glorious light of truth," etc., was sung with tender feeling by the ward choir and Counselor Samuel Oliver offered prayer, after which the choir sang "O grave where is thy victory," etc.

The following speakers in the order named then addressed the meeting: Elder Horace W. Cummings, Bishop John Neff, Patriarch John Smith, Elder N. V. Jones and President Seymour B. Young. The addresses were replete with words of encouragement to the mourners and instruction to the people and were reinforced by the upright life of the departed brother. Several well chosen musical numbers were interspersed between the remarks.

The closing song was "Wanted on the other side," after which the benediction was offered by Elder John M. Cannon. A large cortege followed the remains to the grave.

CARD PLAYING A SIN.

Chicago, Jan. 7.—A dispatch to the Record Herald from Des Moines, Iowa, says:

Before a congregation of nearly a thousand persons, and while the preacher was in the midst of his sermon, Mrs. A. B. Sims, a society woman and holder of the National Woman's Whist championship, arose yesterday in the University church of Christ and denounced card playing as a sin.

Two years ago Mrs. Sims won the first prize for women in the whist tournament held at Cleveland. Last year at St. Louis she won the national woman's championship. It is said that recent evangelical meetings held in the city are responsible for the change in Mrs. Sims' ideas.

EMMA GOLDMAN UNDER ARREST

Notorious Anarchist Stopped by
Police When Making Incen-
diary Speech.

LATER WAS ADMITTED TO BAIL

Berkman, Who Tried to Murder Frick,
Gives His Definition of
Anarchy.

New York, Jan. 6.—Alexander Berkman, who last summer was released from the state's prison after serving 14 years for an attack on Henry C. Frick following the Homestead, Pa., riots of 1892; Emma Goldman and two others were arrested today by detectives, who broke up an anarchist meeting on the East Side. Emma Goldman made the speech which moved the police to action, while Berkman exhorted the audience to disobey the command to disperse. The other prisoners are John R. Corryell, who presided at the meeting, and Israel L. Schwartz, a youth of 16 years, who refused to leave the hall when it was cleared.

Emma Goldman is charged with a violation of that section of the penal code which makes it a felony to give utterance from a public platform to incendiary speeches. Berkman and Corryell are held as accessories.

Emma Goldman had not proceeded far in her address when she was interrupted by the police, according to whom she said, among other things, in English:

"It is ridiculous to think that society cannot get along without government. We will say to the government: 'Give us what belongs to us in peace, and if you do not give it to us in peace we will take it by force.' As long as I live, and am able to explain myself, I will be opposed to government, and as I live, and as my brain dictates will use force against a government."

As the detectives moved toward the stage there was a stampede for the exits, which Berkman tried to stop.

Asked at police headquarters to define "anarchy" as he understood the term, Berkman said: "I believe as an anarchist in government without force."

The foundation of the present and all government is force. I believe society is perfectly capable of governing itself."

Emma Goldman and Berkman were later admitted to bail.

ANTI-NUISANCE LEAGUE.

Begins Fight on Staten Island by Arresting Engineers.

New York, Jan. 7.—The first decided move in a fight which the anti-annoyance league of Staten Island began recently against the Baltimore & Ohio Railroad company's freight terminal at St. George, was made yesterday when four of the railroad engineers were arrested, charged with "habbucking." The league was formed sometime ago to prevent unnecessary noises on Staten Island on Sunday, it

being complained that freight trains were switching a great deal and locomotive whistles were blown on that day of a week, the latter in violation of a state law. The engineers were subsequently released on bail. The arrests brought the business in the yards yesterday almost to a standstill. The St. George terminal is one of the most important of the Baltimore & Ohio has, cars from the west are brought there and sent south to Brooklyn, where freight is distributed among vessels and a great deal of freight from New England is landed there.

LID ON IN EVANSVILLE, IND.
Chicago, Jan. 7.—A dispatch to the Record Herald from Evansville, Ind., says:

Evansville experienced the quietest Sunday in its history as the result of the placing on of the "lid" yesterday. The police did not receive a complaint of disturbances during the day. Every saloon was closed and the drug stores did the best business in years. Many saloon men and their families attended church services.

MONTANA ASSEMBLY MEETS
AND SELECTS SPEAKERS.

Helena, Jan. 7.—The tenth legislative assembly convened here today, and in accordance with the nominations in last night's Republican caucus, E. W. King of Gallatin county was elected speaker. The election of King is taken as a sign of victory for the senatorial aspirants. Congressman Joseph M. Dixon over former Senator Leo M. M. whose candidate, A. J. Bennett, was defeated by a vote of two to one. A senatorial caucus has been called for tomorrow night.

A "SPRINGING ROCK."

Reef on Which the Sheridan Was
Stranded Said to Be One.

Honolulu, Dec. 28, via San Francisco, Jan. 7.—It is declared by native and Japanese fishermen, who ply their occupation in the neighborhood of Barber's Point, that the reef or reef on which the transport Sheridan was stranded is what they call a "springing rock." They claim that at times it is much higher than at other times, rising and falling as they explain it by the action of subterranean forces which sometimes forces it up and sometimes allow it to settle down.

GOLD MEDAL FOR DIAZ.

Pres. D. R. Francis Goes to City of
Mexico to Present It.

St. Louis, Jan. 7.—President D. R. Francis of the Louisiana Purchase Exposition company, accompanied by John Scullin, L. D. Dozier, A. L. Shapleigh and Judge Ferris, world's fair counsel, left today over the Rock Island in Mr. Scullin's private car for El Paso and thence to the city of Mexico, where on next Sunday President Francis will present to President Diaz the gold medal and diploma awarded to him by the exposition company in recognition of his services in behalf of the world's fair.

The party will be met by Alvaro R. Nuncio, who was commissioner-general from Mexico to the world's fair. All the Mexican exhibitors at the exposition will attend the elaborate ceremonies of the presentation. The party expects to be gone about two weeks.

A TRAGEDY AT MEETETSE.

Banker W. S. Hayes Shot and Killed
By Atty. W. L. Smithson.

Cheyenne, Wyo., Jan. 7.—News has reached here that W. Dean Hayes, a well known banker of Meeteetse, Wyo., was shot and killed at that place by W. L. Smithson, an attorney. The cause of the shooting is unknown. Both men have been prominent in politics.

RAISULI'S FORT HAS BEEN TAKEN

Fight Was Short, Sharp and Al-
most a Bloodless
Affair.

HE AND FOLLOWERS ESCAPED.

When Town Gates Were Opened no
One Was Found Within Except
Some Prisoners.

Tangier, Jan. 6.—Zinat, Raisuli's stronghold, was virtually destroyed by fire and fell into the hands of the troops of the sultan at noon today, after a short and almost bloodless fight. Raisuli and his 700 followers succeeded in escaping to the mountains, despite the elaborate plans of War Minister Gabrias.

No firing took place last night, but at 10 o'clock this morning the artillery opened on the town. The Moorish gunners showed utter incapacity in handling their guns, and the infantry fired haphazard. Two shells dropped inside the fortress without reply, and thereupon a body of the sultan's troops charged, shouting, and reached the walls amid desultory shots from the surrounding bush.

The town gates were open, but there were no occupants of the place except 15 prisoners, included among whom were four Portuguese. A detachment of the government troops continued firing in the direction of the mountains, where Raisuli and his followers were observed fleeing. Meanwhile the other government troops pillaged the stronghold.

No fatalities in the fighting today were reported. It is thought probable that the Raisulites carried off their dead.

Minister of War Gabrias, who has not left Tangier during the operations, is expected next to move against the pretender to the throne, Mulid Mohammed, a brother of the sultan, from whose followers there have been many defections recently.

The Spanish officers of the international police created by the Algeciras convention have arrived here and will take up their duties at the end of the month.

SUMMONS.

IN THE DISTRICT COURT OF THE Third Judicial District of the State of Utah, County of Salt Lake, Mary C. Bastian, Plaintiff, vs. Nathan Hawk, Defendant. The State of Utah, to the Said Defendant: You are hereby summoned to appear within twenty days after the service of this summons upon you, if served within the county, in which this action is brought, otherwise, within thirty days after service, and defend the above entitled action, and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint of which a copy is herewith served upon you.

W. R. HUTCHINSON,
Plaintiff's Attorney.
MARY C. BASTIAN,
Plaintiff.
P. O. Address 512 Atlas Block, Salt Lake City, Utah.

Keith-O'Brien's Sale of Silks and Dress Goods.

Inventory having been taken, we turn to the annual task of stock-clearing. Many odd pieces, many broken lines, many desirable remnants. The coming week will be devoted, therefore, to our Annual Sale—the greatest within a year. It will be a magnificent sale, because the stock is new, beautiful, and comprehensive in assortment—because the prices are lower than the lowest point touched in other big sales. EVERY YEAR THIS ANNUAL SALE GROWS IN VOLUME AND IMPORTANCE. EXTRAORDINARY VALUES. HALF PRICES NOT UNUSUAL.

BARGAINS AT SILK COUNTER.	\$1.50; special for this sale....	65c yd.	presenting some of our best materials and colors sold this season. Make your selections from this lot while they last at one-half the original price.	polka dots; 85c and \$1.00 values; special65c	Patterns (for evening wear); only two left. Reduced to, each\$17.50	Voiles, Acollines, Crepe De Paris, Novelty Wool Taffetas, etc., reduced to1-2 price.
19-in. Dresden and Persian designs light and dark grounds, checks, stripes and figures. An extremely large variety to select from; values \$1.00, \$1.25 and	VELVETS AND VELVETEENS	Lot to close out; values 65c to \$1.00 yard; special39c	23-IN. ALL SILK CREPE DE CHENE	For Suits and Jackets; values \$1.50 to \$3.50 yard; reduced to: \$1.00 \$50.00 Handsome Brocade Coat	DRESS GOODS BARGAINS	SILK REMNANTS AT ONE-HALF PRICE.
	REMNANTS.	300 Dress Goods Remnants, re-	All the desirable plain colors and		All Wool Batiste, Fancy Wool Suitings, Serges, Panamas, etc.; values up to 75c yd.; special39c	FRENCH DRESS PATTERNS ONE-HALF PRICE.

The Dressmaking Department joins the Silk and Dress Goods Section in making reduction in prices for limited period. Making, \$20.00 and upward. The Ladies Tailoring Department likewise co-operates in lowering prices on making cloth suits—\$20.00 and upward during this sale.



The Biggest of Big Embroidery Sales!

The preparation for this great merchandising event has exceeded all our previous efforts. The ever-increasing popularity of these annual occasions has been an incentive to us to provide greater assortments, better values, higher qualities—the very kind of beautiful embroideries over which women rave

Invoicing has just closed—and the best lines in our magnificent stock are included together with large shipments, comprising newest patterns, newest designs, newest ideas. This is the sale upon which we expect to make reputation for a year—a sale that will be everywhere discussed—a sale remarkable for its low prices, its strong values. There's enough for all—still we urge forenoon shopping for choicest selection—for individual attention.

A lot of Embroidery and insertion to match, for shirt waists, 9 to 12 inches wide, worth up to 85c—Special 29c.

Embroidery flouncing, 27 inches wide, 6 3/4 yard length—\$3.00, \$3.50, \$4.50 each.	18-inch flouncing—Swiss and batiste—4 1/2 yard length—\$2.50, \$3.00, \$3.98 each.	All-over embroidery for shirt waists; worth up to \$2.50, for \$1.49
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Corset Cover Embroidery, with beadings to match—\$1.25 and 69c piece.

All-over embroidery for shirt waists; worth up to \$1.50, for 69c yd.	Platt Val. laces and insertions; worth upward to 25c a yard—special 10c yard.	Imitation Torchon lace and insertion; worth upward to 15c a yard—5c yd.
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Corset Cover Embroidery, 1 1/2 yard lengths—29c, 49c 79c and \$1.13 piece.

Cambric and Nainsook embroidery and insertions from 3 to 12 inches wide; 4 1/2 yard lengths—85c, 98c, \$1.15, \$1.25, \$1.38, \$1.58, \$1.79, \$1.98 length.	Val. Laces and Insertions, worth up to \$1.50 per bolt, 60c bolt.	Cambric embroidery and insertions, from 2 to 9 inches wide, and in length of 4 1/2, 6, 6 3/4 yards— from 25c to \$1.25 for a length. Val. laces and insertion to match—special 25c per bolt.
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