

lower with sales of 15 million bushels, cotton a quarter lower with sales of 677,000 bails, and oil  $3\frac{3}{4}$  cents lower. Corn and oats have advanced half a cent each, and hogs a shade. The exports of cotton continue above last year's as well as the receipts, but wheat and flour exports fall far behind, and the movement in provisions shows little increase. For the present foreign trade is slackening, though a change in prices might soon enlarge it. In January the exports of cotton, bread-stuffs, provisions, cattle and oil were \$61,549,583 in value against \$56,375,724 last year, which points to a heavy excess of exports over imports for that month, but the later advance in sterling exchange and the moderate outgo of gold indicate that the merchandise balance is outweighed at present by the return of securities or the withdrawal of other capital previously invested here. To this movement probably the laws passed or pending in some Western States contribute; thus, the Kansas house has passed a bill to tax all mortgages, notes and bonds, making them not collectable unless stamped by assessors. This and other measures cause much calling of loans and removal of capital."

The great coke strike still continues. Virginia and Alabama are offering iron at prices which paralyze the market. The coal market is depressed, owing to the large output this year.

The report continues as follows:

"During the past week the Treasury has taken in altogether about \$600,000 more than it has paid out, and there have been small orders of gold for export, but the rate for money on call has only advanced from 2 to  $2\frac{1}{2}$  per cent, sterling exchange remaining steady. The outgo of currency to the interior appears to have begun, however, notwithstanding the fact that at almost every other city the money market is easy, or growing easier, and scarcely one now reports the market close. The stock market has been depressed in part by the failure announced, and in part by the reduced earnings on some roads, but nothing appears to indicate that negotiations between trunk line presidents are not progressing satisfactorily."

The failures for the week mentioned are for the United States 249, and Canada 46. For the corresponding week last year the United States had 230 failures and Canada 41.

### JUDGE MINER DISSENTS.

Below is given the opinion of Associate Justice Miner of the Territorial Supreme Court in the case of E. J. Perrey vs. Salt Lake City:

I am unable to fully concur with the majority of the Court in this case.

The relator appears to have complied with all the requirements of the statutes and ordinances, and it cannot be claimed that the place at which he proposes to carry on the business is within the prohibition of the statute or ordinances.

The question arises, can the City Council, under the power to regulate (conferred by the charter) impose additional restrictions? If so, how is that power to be exercised? Must it be by ordinance, so that the requirements prescribed, whatever they may be, will operate uniformly upon all alike under the same circumstances, thus precluding partiality and favoritism, or may the Council, notwithstanding the compliance by the applicant with all the provisions of the statutes and ordinances of the city upon the subject, arbitrarily grant or refuse each particular license as the same is applied for, and that too, without giving any reason for its action. It seems to me

the regulation should properly be by an ordinance.

If the statute conferred upon the Council any such absolute power, then as relators' counsel contend, are they admirably calculated to enable the members of the City Council to reward their friends and punish their enemies, but they furnish no safeguards for honesty of official action. Some members may vote against the application because in their honest judgment it would be detrimental to the best interests of the city to grant it; another because he believes there are already saloons too many; another because the applicant is a personal enemy of his; another because he is not a member of his religious or political faith; another because he doesn't think it right to sell liquor or license a wrong; another because he wants to prohibit the sale; thus a bare majority may be secured against the issuance of a license to one man and grant it to another.

It is claimed that First—In this case seven councilmen voted for and seven against the petition, the Mayor giving the casting vote against it. Neither the Council, as a body, nor any individual member thereof voting against the application, gave or could be induced to give any reason for his vote or action, and why this license is refused this Court is still in ignorance, except by the return which gives no reason for individual or corporate action.

The sale of liquor has always been a lawful business in this city. It has never been prohibited by statute and the Council never had the power to prohibit it. By the charter of 1860 it had power to license, regulate and restrain it.

(See compiled laws 1876, pp. 690-703, Section 54.)

And so it remained until January 20, 1882, when the charter was amended. By the amendment, power was given to the City Council to license, tax and regulate, the power to restrain being omitted. This leaves no power to prohibit. (See laws 1882, p. 2.)

The defense rests entirely upon the supposed right of the Council in its discretion to grant or withhold license as it may see fit.

All men are equal before the law, and if one man, on complying with the statutory provisions, may be licensed to engage in the business of selling liquors, every other man in like condition, on complying with the conditions imposed by law, has an equal right to a similar license. Legislation in a free republican form of government should mete out equal rights to all lawabiding citizens, and it is alike against the spirit and form of our Government and institutions to grant any special privileges to one individual and deny it to another who stands on equal footing with himself; and this, in my judgment, cannot be accomplished under the guise of "discretion."

The "discretion" vested by the Legislature in the City Council is not an arbitrary power to be exercised as the caprice or prejudices of that body may dictate, but a legal discretion whereby the Council is to determine whether or not the applicant has substantially complied with the provisions of law.

The common council of a city must be governed by the same rules of law in their action upon the granting of these licenses as other bodies who are called upon by statute to pass upon the qualifications of others to engage in any business or calling requiring special conditions preliminary to its exercise, and they are bound in all cases to act fairly and to treat each application upon its own merits, impartially.

In the present case it seems there is one saloon in the neighborhood already licensed, and the common council think it sufficient for the needs of the neighborhood. If this reasoning was sound

the common council might, in their "discretion," grant to any favored individual an exclusive monopoly of the business in any neighborhood, or even in the entire city; could a more fruitful field of favoritism be possibly devised? It is certainly not in accordance with my views as to equality before the law.

That the discretion vested in the Common Council is not an arbitrary power, but a legal discretion to be exercised equally towards all in like condition, I might cite numberless authorities. I call attention, however, to *ex parte Candee*, 48 Ala., 386; *State vs. Lafayette Co.*, 41 Mo., 221-227; *Miser vs. Supervisor*, 26 Mich., 422; *Amperse vs. Kalamazoo*, 59 Mich., 78; *Potter vs. Homer*, 59 Mich., 8; *Canonee vs. Mound City*, 108 Ill., 552; 61 Ind., 98; 11 Am. & Eng. Ency. of Law, 641.

It is true that the charter of the city allows the Council power to license, regulate and tax this business, which is greater authority than merely to approve or reject the bonds, but the Council has not decided that the place or neighborhood was improper wherein to carry on the traffic, nor that the relator was disqualified in any manner, but they merely said in effect that in that neighborhood one man may engage in the business, but another may not. This is not a question of prohibiting the traffic in that locality, but of prohibiting a particular individual against whom no disqualification is alleged, and who has complied with the law, from engaging in the business and at the same time permitting another, under no worse legal circumstances to do so. This cannot in my view be deemed within the discretionary power of the Council.

I think the Council had no right to withhold the license, and that the mandamus should issue as prayed.

### TERRIBLE ACCIDENT.

A shocking accident occurred here on Saturday about noon. Joseph, a fourteen-year-old son of Jens C. Gasberg, a merchant of this place, fell from the cars and was run over.

A few days ago Mr. Gasberg sold a pipe to a railroad man who he claims stole another at the same time. His boy had seen the man, and the lad was permitted to accompany David Rees, city marshal, down to the depot to try and identify, if possible, the thief. Joseph hurried along ahead of his companion and climbed upon the platform of a caboose. The south bound passenger train was due and the switch engine moved the caboose in a hurry on to a side track. Joseph, fearing he would be taken away, undertook to get off. He saw that they were going too fast and tried to get back, but failed and fell, his feet falling across the track. One leg was cut off above the ankle, the other badly mangled and the toes of the foot severed.

The unfortunate boy was taken to his home and attended by Dr. Carrington, of this city, and Dr. Leslie W. Snow, of Logan.

Both legs were amputated about midway between the knees and ankles.

He endured the suffering caused by the accident with remarkable fortitude and only gave way when one of the doctors undertook to remove his shoes before he was put under the influence of chloroform.

Today he is resting and doing as well as could be expected under the circumstances.

BRIGHAM,  
BRIGHAM CITY, Feb. 23, 1891.