land being used for gardening purposes, and that the citizens of the said city, further than securing a nominal rental therefor, have obtained no benefit or advantage therefrom. That the manner that said city has dealt with said property from the time of the purchase to the present hour is irreconcilable with the pretense that there has ever been any dedication of the block to any public use, or that said Council or the defendant corporation has ever at any time recognized that any such dedication has ever been made.

"9—Defendants also deny that since it has been the owner of the particular land in question, the city has been compelled by the sanction of all residents of the city and Council and of the mayor to purchase other property and dedicate the same for the uses and purposes of public parks, and they deny that in the purchase and improvement of said property, the city has expended and is expending today large sums of money, and should they dispose of this particular land it would necessitate the purchase of other tracts of land at largely increased prices. They allege that the land in question is not lying so as to make it desirable for park purposes, and that the said city has never appropriated the same as a park nor invited the citizens to enjoy it as such. They also deny that the sale of the property is in violation of the rights of the people of Salt Lake, or that the sale would result in great financial loss to the city, but on the contrary allege that it would result in great benefit to the city, financially and otherwise.

"10—Defendants deny that the plaintiff is entitled to the relief prayed for in his complaint, or to any relief whatever; they deny that the defendants, or any of them, should be restrained by the order of this court, and deny that the plaintiff is entitled to recover his costs in this action, or that he is entitled on the final hearing to have a restraining order made perpetual.

"Wherefore said defendants pray judgment that they be hence dismissed with their costs in their behalf sustained.

"O. W. POWERS,
"W. H. DICKSON,
"Attorneys for Defendants."

The answer is followed by exhibits giving a history of the title of the land, as follows:

"First, patent from the United States to the city; deed from the mayor to Brigham Young; deed from Brigham Young to B. B. Morris Young; deed from B. Morris Young to the city; lease of the property by the city to John Reading."

Attorney Hoffman having read the complaint,

Attorney Dickson replied that it appeared upon the face of the complaint that the city was about to make a contract for the sale of the property two years hence under certain conditions, and that the action would be in violation of the law of Congress. The complaint was demurrable, but a demurrer would not be urged, as they wished to get into the merits of the case and have it disposed of. Mr. Dickson then proceeded to read the complaint.

Following this, Mr. Hoffman offered extracts from the minutes of the City Council from March 11, 1879, showing te action taken at various times by that body in reference to the square He next read an affidavit of Acting Mayor Parsons, setting forth that the present Council had taken no action for the purpose of ascertaining what was the highest amount that might be obtained for the square, or that any offer besides that of Mr. Bacon had been considered. This was followed by an affidavit of John Reading, showing the number of trees set out by him on and around the square in accordance with his lease. Mr. Hoffman then produced a map of the square, and Mr. Dickson said he would ask the court to take a walk down by the square and see how beautifully it was decorated. A map of the square had been offered, and his side wished to offer the square itself as an exhibit.

Mr. Williams stated that he proposed to offer affidavits from James Sharp and J. T. Little, in which they would give it as their opinion that the square was worth $200,000, and that they would give $5000 on an option for the purchase of the property at that figure in two years.

Mr. Dickson said that this was merely speculating on the enterprise of Mr. Bacon. If he carried out his plan of building a road to Deep Creek, of course these men would make money in such a deal as that named and they could afford to risk $5000 on the chance. They did not make an offer to purchase the square for $150,000.

Mr. Hoffman then offered the following affidavit, which was received under objection:

"George A. Meears, being first duly sworn, on his oath says: I am a citizen of the United States and a resident of Salt Lake City. I have resided in Salt Lake City for over twenty years last past. My present occupation is that of mine owner and real estate agent. I am well acquainted with block 48, plat A, Salt Lake City survey, and known as Pioneer Square. I am and have been for a long time past familiar with the location and value of said land. I am now able and prepared to enter into a contract with Salt Lake City for the purchase of said land. Within two years of the date hereof I agree to pay therefor the sum of $200,000, and as evidence of my good faith in said transaction, I agree to give my bond for the same with a certified check of the sum of five per cent of the entire amount of my bid. The said money due on said check to be forfeited to Salt Lake City in case I do not fulfil the terms of my bid. GEORGE A. MEEARS."

Judge Powers—I move that this be referred to the City Council. (Laughter.)

Mr. Dickson called Mr. Harvey Hardy to testify as to the value of the square.

The introduction of oral testimony was objected to, and the court stated that it would be better to introduce all evidence in the form of affidavits.

Mr. Dickson replied that the defense would hereafter offer a number of affidavits from the most reputable real estate agents in this city as to the value of the property.

It was decided to proceed with the arguments at once.

Mr. Hoffman commenced by calling attention to the act of Congress referred to in the complaint, and continuing said that Mr. Bacon simply asked the city to loan him the square for two years, in order that he might pass around his hat and see if he could get money enough to build the road. He was simply borrowing the credit of the city to assist him in carrying out a scheme. Any loafer on the street could make such an offer. There was not a penny at stake. There was no rind on this Bacon. To carry out this scheme would simply be to tie up this valuable square for two years and create a cloud on the title, all to give this man Bacon a chance to raise money enough to carry out some scheme. If he failed, he wouldn't be out a dollar. It was not a sale; there was no element of a sale in it. He insisted that if there was to be a sale of the property, public notice of such intention should be given and the highest and best offer accepted. Instead of this the City Council made a secret, star chamber transaction, which was void in equity. He did not know just what allurement there was behind this Baconian proposal, but certainly there must have been something which moved the council to accept.

Mr. Dickson, for the defense, said that even if the city should give this property to Mr. Bacon, it would not be within the inhibition of the act of Congress referred to, because the city would not be loaning its credit. Of course, such an act would be stopped by the general laws, but the act of Congress would not be violated. He claimed, however, that $150,000 was a fair value for the property today. The plaiutiff, in his complaint, alleged that the square was worth half a million. His counsel, at the outset, had knocked off a quarter of a million, and they had not undertaken to prove that. True, some men had offered to gamble $5,000 on the risk of the road being built, and in that event pay $200,000 for the square two years hence. It was claimed that the city had no authority to enter into such a contract as was proposed. If that was true, the contract would be void on its face, and the court would extend no relief because none was needed. In such a case an invalid contract could create no cloud on the title. The plaintiff clearly stated himself out of court, and, besides, the suit was prematurely begun.

The most that the exhibits showed in regard to the dedication of the square as a public square was that at one time, in 1883, there was an intention on the part of the then City Council to make such dedication at some time in the future. All that had been done came far short of a dedication. It had never been used as a public park, but as a potato patch by lessees. There had been no expenditure of public moneys upon it. It had never been open to the public, and it had been closed to the public through all the years since the city acquired title to it. The city had the power to lease it to John Reading to raise potatoes and onions on, but it had not, said the plaintiff, to sell it to Mr. Bacon for a fair valuation. The City Council had a perfect right to consider the object for which the purchaser intended to devote the land. The argument advanced by counsel on the other side was simply ridiculous.

Judge Powers closed the arguments for the defense. He said there were evidences presented here that corporations supposed so be soulless had a philanthropic side, and wanted to preserve the park for the poor working men. At the very beginning of the history of this land it became the property of a private citizen, who deeded it to his son. The latter wanted to sell it and offered it to the city for