STATUTE HELD INVALID.

Supreme Court Division in Matter of Abating Taxes of Insane and Indigent Persons.

COUNTY BOARDS NO AUTHORITY TO REMIT

Writ of Prohibition Granted—Two Decisions Delivered on the Eight Jury Law—County Warrant Case on Trial.

The Supreme court delivered an important opinion today in the case of the State of Utah ex rel. Morgan Harris Jr., State auditor, vs. Frank Armstrong et al. the county board of equalization, overruling the demurrer to the petition for a writ of prohibition and ordering that a writ issue prohibiting absolutely further proceedings in the attempt of the county board to remit or abate the taxes of insane, idiotic, helpless or indigent persons under section 2878 of the Revised Statutes, which is held to be null and void.

The proceeding was commenced some time ago by State Auditor Harris, who petitioned for a writ of prohibition to prohibit the county board of equalization from remitting a portion of the taxes referred to, to an amount not exceeding five per cent of the current year's taxes. The action taken in Auditor Harris's case was that the statute was unconstitutional and that the Legislature had no power under the Constitution to exempt property from taxation, except such as is specifically exempted by the letter of the Constitution and that the remitting or abating of taxes is virtually an exemption.

Defendants contended that if the abatement of a tax was in effect the same as an exemption, the board had no authority to abate.

The question for the court to pass upon was whether an abatement of taxable property, which is owned by an insane, idiotic, helpless or indigent person, is prohibited by the Constitution, or is it simply an exemption of property from taxation, which is not included within the list of exemptions contained in the Constitution.

After reviewing the law and the Constitution, the court finds that the statute is in direct violation of the Constitution and therefore void. The court further finds that a similar question was before the supreme court of California and responded to it (Cal. 30 Cal. 265), the court says:

"In arriving at the conclusion that the provision of the statute is constitutional we have not lost sight of the fact that the question, whether an exercise of the legislative power is void because of its repugnancy to the Constitution, is always one of much delicacy, and in a doubtful case should not be decided against the affirmative. When, however, the mind is convinced of the unconstitutionality of the law, the duty of the judiciary demands upon the court to declare it as imperatively, even where, as in the case, the statute appears to be in consonance with justice and humanity. That the law itself would be beneficent can be of no avail in this case, because its effect and operation would be to exempt property against the mandate of the fundamental law.

"We are of the opinion that the demurrer to the petition must be sustained and that a writ of prohibition issue issue, restraining absolutely further proceedings under the clause of the statute herein declared void."

Justice Hartch delivered the opinion, which is concurred in by Chief Justice Zane and Justice Miner.

STATE PRISONERS RELEASED.

Complete Sawyer and Young Get the Benefit of the Invalidity of Jury Law.

J. W. Sawyer and W. E. Young, two State convicts were released by Judge Norrell today on an application for a writ of habeas corpus. Sawyer was sentenced for fifteen days and Young for ten days. In order that the prosecuting officers of the counties from which they were sent to the State prison, may be given an opportunity to have the men re-arrested.

Sawyer was convicted by a jury of eight of the crime of breach of peace in Iron county, committed while he was at Gardison county in 1895, and sentenced to twelve years in the State prison. Under the authority of the decision of the United States Supreme Court in the case of Andrew Thompson vs. the State of Utah, Sawyer claimed that the judgment against him was void. The State by Attorney General Bishop, did not dispute the position, but asked that the court make an order detaining him fifteen days to give an opportunity for further process to issue.

Mr. Whitterstine contended that there is no law in force in the State authorizing a trial by a jury of twelve except in capital cases.

In the Young case applicant was held to the county jail, after trial on a charge of grand larceny in Cache county, committed while he was a prisoner in the State prison, serving his term of five years for the other crime. Judgment of the district court was that he be confined in the county jail for two and a half years. Decision in the Young case was to the effect that the district court had no authority to remit the balance of the term of imprisonment, and that the defendant should be discharged from the custody of the sheriff of Cache county.

GAS CASES COMPROMISED.

Verdict For the New American Gas Company for $1,200 in Each Case.

Contrary to expectation, the two cases of the New American Gas & Fuel company against the Salt Lake & Ogden Gas & Electric Light company came to a sudden ending late yesterday afternoon by the defendant offering to confess judgment for $1,200 in each case.

COUNTY WAR—ANT CASE.

Judge Hiles and a Jury Will Unravel the County Furniture Deal.

Judge Hiles sat in Judge Norrell's court today assuming Judge Cherry and after the empaneling of a jury proceeded with a trial of the case known in the case of Samuel H. Auerbach, surviving partner of the firm of F. Auerbach & Bro., against Salt Lake county. Dickson, Bliss & Bliss and Smith, Law & Gray appear for plaintiff and County Attorney Van Cott and his deputy, G. P. Putnam, and ex-County Attorney Whittemore represented the defendant.

Plaintiff brought this action to recover $1,800 with interest from the 8th of June, 1894, alleged to be due upon a county warrant issued in favor of A. H. Andrews & company, the Chicago furniture dealers.

The complaint shows that plaintiff and Frederick B. Auerbach up to the 1st of September, 1894, were co-partners doing business on the city under the firm name of F. Auerbach & Bro., and that at that time Frederick B. Auerbach died in New York.

On the 19th of June, 1894, it is alleged, the county court by resolution ordered a warrant for $1,800 to be drawn in favor of A. H. Andrews & company for the purchase of the furniture supplied the county for the jury building. On the 29th of June, 1894, by a concurrent resolution a warrant was ordered to F. Auerbach & Bro. On the 1st of November, 1894, the warrant was presented to the county treasurer who refused to pay it.

The defendants in its answer admit that there was a legal contract between the county and Andrews & Co., and allege that the contract between the county and Andrews & Co. was made without authority of law and was in pursuance of a fraudulent and corrupt agreement between Martin Hayden, agent for Andrews & Co. and the co-partners, by which the latter were to be paid a large sum of money in consideration of awarding the contract for the furniture to Andrews & Co. and that the money so paid was intended to be added to the price charged the county for the furniture.

The defendants allege that the furniture was worth the price named in the contract, viz., $1,800 and further allege that the furniture was not worth to cost it $2,000.

It was after there which this action took place, that the county, in both cases, was sued. These cases to try the case are: Thomas E. Davis, Jr., Charles Ellis, Edward Odell, E. C. Jeffery, H. W. Naisbitt, Thomas Carter, Joseph Donelly and Lorin Pratt.

Trial of Damage Suit.

Judge Cherry and a jury took up today the Bloor damage suit of Emery vs. Gross against Salt Lake City. Hogle, Zane and Critchlow appeared for plaintiff and City Attorney W. C. Hall and his assistant C. R. Stewart represented the defendant.

The action is brought by plaintiff to recover damages for an injury received by the breaking of one of the sewer pipes near which it is alleged Gross was at work upon plaintiff's premises, causing the water and sewage to flow into the cellar, and offering to abandon his farm, depositing the money in court to be the damage in the case of $10,000.

The defendant in his answer denies the allegations and further asserts that on September 19th, 1896, the date upon which the plaintiff claims the injury occurred, he was not employed by the city, but was a private contractor and that he removed a verdict for $1,000 that in January, 1897, Gross sold his premises to one H. D. Scott and has therefore not an title to the property he now claims has been damaged.

Suit on Note.

The Tonia Weekly Mining company is suing Mary E. Shanks to recover $99.49 on a certain promissory note.

District Court Notes.

Judge Cherry decided in the case of William Davidson against J. C. Elliot et al. today.

The case of Nels P. Anderson vs the Salt Lake Rapid Transit company was continued for the term by Judge Cherry today.

In the case of William Pershore vs J. Spaulding an order was made to dismiss the action without prejudice, upon payment of costs, unless cause is earlier reached for trial.

In the case of Hugh Wilson vs Andrew Roland, Judge Hiles has rendered a judgment in favor of the defendant.

Probate Matters.

Estate of William J. Kelly, deceased; account allowed and distribution of estate ordered.

Estate of Francis Milner, deceased; order made for distribution of estate.

Estate of Louisa Russell, deceased; T. D. Lewis appointed administrator with the will annexed.

Estate of Peter O. Anderson, deceased; final account allowed.

Estate of John S. Larsen, deceased; Margaret H. Larsen appointed administratrix, bond $100.

Theme in Ansonia.

T. P. Thomas Jr. and wife of Salt Lake are in the city. Mr. Thomas is one of the directors of the Cumorah monument, under whose auspices the third grand national Eistedfodd will be held October 3, 4 and 5 next, at the Ansonia Tabernacle. Mr. Thomas is making a tour of the Northwest in the interest of the coming song contests and promising fortune for the occasion. The annual Eistedfodd is attracting wide attention and lands and money from all parts of the country to take part in the contest. Many prizes are offered and they are quite a large sum.—Ansonia Standard.

Missionary Welcome.

On Friday evening next an entertainment preceding or the return of a missionary will be given in Assembly Hall, Joseph Smith's Mansion N. Lambert, J. A. M. Jacobsen and Andrew J. Petersen, returned missionaries, will be tendered a welcome home by their friends.

The Ward Relief Society will furnish refreshments. An arrangement committee has the affair in hand and an enjoyable time will be had.

Liquid Manure.

Put into a forty gallon tank or eleven tub barrels of fresh horse dung, add it and stir, then let it stand to clear and in about a week add one peck of fresh sheep dung, and let it stand a fortnight; then stir it up every third day, so as to make its contents equal. Let the mixture get clear, and then use one part to three gallons of rain or soft water. This is a good mixture for all kinds of soft-wooded plants.

It may be made stronger by adding chickens' or pigeons' dung, at the rate of half a peck to the above quantities. If in commencing bubbles generate on the surface, it is a symptom of fermentation, and the mixture should be stayed, by the addition of a small quantity of white vitriol. Of mixtures of the 20th of February, 1897, the distinctive ingredients for good leather, as provided by the expert set, that water, expired on the 20th of March of this year.

EVENTS IN THE WEST.

A Record of Occurrences in Neighboring States and Territories.

PREPARING MORE STEAMERS FOR MANILA.

Red Cross Society Women Devotees—To Guard the Powder Works—Fish Commissioners Assigned Horses.

The Utah contingent at San Francisco, had their horses assigned to them Tuesday morning. Lieutenant Kerr, a prominent Salt Lake citizen, Kerr was also assigned 12 from the brands used, the remainder being sent into the company's enclosure.

The cable frame is being erected at Mare Island, and the Colorado will act as convoy to the usual dispatch vessel Monterey. She will carry fifteen officers and 400 men. The Monterey is expected to get under way for Manila by Friday or Saturday.

The present crew will prove insufficient for the shipping in Sitka, according to advices brought back from Washington by the schooner W. P. Hunt. It is some two months before the navigation on the Yukon will set in, and it will be time enough for the schooner W. P. Hunt to be able to land at St. Michael before July 1st.

William H. Harland, a veteran of the late war, was found dead Sunday morning near the old Lake Merced pumping station, below Lake Merced. Mr. Harland, superintendent of the spring Valley water works. When found the body was in a bent position, and although from all appearances, life had been extinct about forty-eight hours, the cause of death is unknown.

A company of the State regiment of California volunteers, probably F, of Sacramento, will be ordered to report to San Francisco to guard the works of the California powder company, which are located at Pinole, Contra Costa county. The troops will remain there as long as the present war may be deemed necessary. Thousands of people from the Pinole are based Tuesday by General Morrow.

The Alameda flag now flies from the pleasure Sloopita and China, at San Francisco, which will soon convey passers to Manila. After long negotiations, the boat of Supervisor Theodore de Hawden Dutz, they have were hoisted down and they made the trip of the United States merchant marine. The work of preparing both vessels for sea is rapidly being made and good progress. The quarters for the men will be every way to adhere to those on the City of Sydney. The Coos is having an electric light plant put in and she will be the last of the fleet to be in readiness for sea. The Bonanza is being fitted with patent hatches which when set in use can be folded into comfortable settees.

The women of the Red Cross society of California are tireless in their work, yet it is announced that they may be obliged to call upon the public for the cost for aid in making bandages for the soldiers. Thousand Month were sent every author sailing for Manila must have three bandages. Thousands have been made and more are well for ready for the end of the week, yet more will be required. The State Red Cross society has furnished the California base with distribution medals, but the society does not feel able to provide them for all the troops going to Manila port. When the Red Cross societies of Kansas, Wyoming and Utah were so informed they responded at once, promising to furnish badges without delay.

OBITUARY.

MARGARET D. JUDSON.

Wales, Sanpete County, May 27, 1898.—Our little settlement was overshadowed with gloom this morning by the death of our beloved sister, Margaret D. Judson, who passed away at 3 o'clock a. m., May 27, 1898. If she had lived until Nov. 1st she would have been 70 years old, but old age and general debility gave death a chance to creep upon her system, and separate for a time the spirit from its earthly tabernacle.

She leaves behind her eight children, seventy-one grandchildren, sixty-eight great grandchildren, along with many friends to mourn her loss. She was born in Carmarthen, Wales, England, November 1, 1828. She joined the Church in the year 1848, and was one of the first to embrace the Gospel in that locality. She emigrated to Utah in 1856, pulling her handcart thirteen hundred miles from Iowa City to Salt Lake. Her early days in Utah were spent in Ogden, and afterwards in Salt Lake, to Wales, Sanpete county, in 1859, where she lived until her death.

As a Saint she always showed her willingness to obey the counsel of the authorities and to see that she was able to live the life of a faithful Latter-day Saint. She loved the Gospel she espoused, insomuch that she was willing to leave the home of her birth and sacrifice all for the Gospel sake. All who knew her say that she was a faithful sister, ever ready to do good and was a staunch defender of the principles of Mormonism, because they were her hopes and comfort, imparted upon her, from the time she heard the Gospel in her salvation.

Her testimonies of the truth were unquestioned, and caused many to reflect and investigate it. In speaking of the Gospel she was always mindful not to hurt the feelings of those who were religiously opposed to it. We all mourn her loss, but we know that she has gone to rest but a short time, when she will rise in the morning of the first resurrection and receive her reward with the faithful.—Sanpete Messenger.

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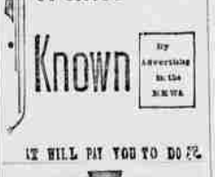

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