

THE GAS COMPANY'S METER.

ITS REMOVAL FROM SMITH'S STORE UPHOLD.

Judge Johnson Gives His Reason for So Deciding—The Law of the Case.

Last January W. M. Smith, a storekeeper, brought suit in the Superior Court against the Capital Gas Company for damages. Smith alleged in his complaint that on September 22, 1898, he made a written request of the gas company that his premises be furnished with gas, and that the company refused to supply it.

The plaintiff demanded damages in the sum of \$50 and for \$5 a day for each day from October 2, 1898, for costs of suit and for such further relief as to the court might seem lawful. The case was recently tried before Judge Johnson and submitted, and yesterday he gave judgment for the defendant, in the following:

DECISION: The plaintiff brings this action against the defendant, a gas corporation engaged in supplying the inhabitants of the city of Sacramento with artificial light, etc., under the provision of Section 623, C. C. That section reads as follows: "The city of Sacramento shall have the right to purchase and use gas for artificial lighting purposes."

"Upon the application in writing of the owner or occupant of any dwelling or premises distant not more than 100 feet from any main of the corporation, and payment by the applicant of all money due from him, the corporation must supply gas as required for such building or premises, and cannot refuse on the ground of any indebtedness of any former owner or occupant thereof, unless the applicant has undertaken to pay the same. If, for the space of ten days after such application, the corporation refuses or neglects to supply the gas required, it must pay to the applicant the sum of \$50, and for each day thereafter the sum of \$5, until the gas is supplied."

The plaintiff is a merchant engaged in the conduct of his business at 424 and 426 J street, in the city of Sacramento. His business is conducted in two distinct buildings, but connected by an open way between the two, in one of which he conducts a hat store and in the other a gentlemen's furnishing store. From 1887 down to within about two years before the commencement of this action he had been using the gas of defendant exclusively for lighting purposes. About two years before this suit was commenced he introduced electricity into his stores, and from that on ceased to use defendant's gas in any appreciable quantity. It was in evidence that the amount consumed by him for the year just prior to September 11, 1898, amounted to \$1 in the one store and 75 cents in the other. At that time the defendant, against the wishes of the plaintiff, removed the meters from both of the stores. A few days after the removal plaintiff gave the defendant written notice, as required in Section 623, just cited, to provide him with gas in each of his premises. The defendant refused to replace the meters, and instead of paying 50 cents a month of gas, or pay a meter rent of 50 cents per month, plaintiff declined to give such assurance, and defendant refused to furnish the gas. Plaintiff brings this action for the penalty of \$50 in each instance, and for damages at the rate of \$5 per day in each case, from the time of the refusal.

We are met at the very threshold of this case with the question whether Section 623 is constitutional. That section was a part of the original codes, as first adopted by our Legislature, and has ever since remained intact. At the time of its adoption individual persons could not obtain a franchise to supply gas to the inhabitants of towns and cities. The Constitution of 1879, Article II, Section 19, changed this rule, and provided that when the municipality does not own the works for supplying with artificial light, any individual, or any incorporated company, under certain restrictions, may engage in such business, and may do the things necessary thereto, such as laying down pipes in the public streets, etc.

It will be seen, then, that when Section 623 was enacted, only companies could engage in such work, but that the Constitution of 1879 changed that and permitted individuals, as well as corporations to engage in such matters; that, while the fundamental law has been changed, the Legislature has not amended its laws—that is, Section 623—so as to make it conform to the constitutional requirements. The objection is that Section 623 imposes a severe penalty upon a corporation engaged in supplying gas, while it imposes no such penalty upon the individual who is likewise supplying gas, thereby making an unjust discrimination between natural and artificial persons.

Our Constitution provides that no special privileges or immunities shall ever be granted, and that no citizen or class of citizens shall be granted privileges, which, upon the same terms, shall not be granted to all classes of citizens (Article II, Section 21). It is implied from this that it is intended that all persons in the same category are to bear the burdens equally, and not that one person is to bear a burden and another be exempted therefrom. "The rights of every individual must stand or fall by the same rule or law that governs every other member of the body politic, or laid, under similar circumstances; and every partial, or private law, which directly proposes to destroy or affect individual rights, or does the same thing by affording reme-

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W. H. HAYCOCK, Agent, 621 K Street, (Phone call, black box).

THE LAST OF OHIO FATTY.

IS NOW ON HIS WAY BACK TO JOLLET PRISON.

An All-Round Crook and Desperado, Who Will Always Bear Watching.

Captain S. P. Hull and M. W. McCloughry, officers of the Illinois Penitentiary at Joliet, left for the East at noon yesterday, having in charge Frank Wheeler, alias Frank Steadman, alias "Ohio Fatty," the most shifty burglar and all-round bad man on the Pacific Coast. The Joliet officers took no chances with Wheeler, who is noted for escaping from officers and for jail breaking. He was heavily ironed, and if he manages to escape from the vigilance of Captain Hull he will be a wonder.

In 1888 Wheeler was convicted of burglary committed in San Joaquin County, and sentenced to San Quentin for five years. He escaped after serving two or three months, and left the State, going to Chicago. While there he lived with his wife in the suburbs, and under the guise of delivering milk committed twenty-eight burglaries. He would drive up to a residence where the family was absent, carry his milk can to the rear and then burglarize the house under the very eyes of the police. He was finally captured and sent to Joliet, whence he managed to escape, leaving six and one-half years against him on the prison books.

According to Captain Hull, Wheeler, when taken to Joliet, was placed in the list of second-class men, or those who were unable to do a hard day's work, and for that reason was given work in the basement of the electric power-house. The guard on the floor above was instructed to make the rounds of the basement every fifteen minutes, but one day forgot to do so, and Wheeler "made hay." He secured a saw, and had little trouble in sawing out the lock of the door leading into the yard, which was a sort of storehouse for the ropes and ladders of the institution. He fastened a ladder against the wall, got to the top, drew the ladder up and placed it on the other side, and was free. From that moment until his incarceration in San Quentin the Illinois officials heard nothing of him.

The asylum principle is enforced at the Joliet Prison. No prisoner is allowed to speak to another, nor to raise his eye from his task when visitors or others are present. Only once a year are prisoners allowed to congregate in the prison yard, that event being for an hour and a half on the Fourth of July. It follows that convicts do not like to be confined in either of the Illinois penitentiaries.

Captain Hull has been guard and officer at the Joliet Prison for twenty-seven years, and before leaving with his men yesterday said if the latter escaped from him he would never go back to Joliet. "But," he concluded, "I'll go back all right."

Two days ago members of the "Record-Union" will remember, Wheeler attempted to escape from the prison at Folsom, but was detected. While in San Quentin he stabbed to death a convict known as "Kelly, the Rat," and was subsequently removed to Folsom. He has six and one-half years against him on the prison books, besides which twenty-seven individual burglary charges hang over him, which may be brought to trial.

CRUELTY TO A CHILD.

Lena McKenna Charged With Having Beaten Her.

Catherine Baccelli, the twelve-year-old daughter of Frank Baccelli, who keeps a saloon on the M street road, told a pitiful story to Dan Healy, Officer of the Society for the Prevention of Cruelty to Children. The child, who is an epileptic, told Healy in the presence of a "Record-Union" reporter that her mother, besides the twenty-seven individual burglary charges hang over her, had received a beating from her mother, and that the woman in a rage had beaten her brutally. She bared one of her arms of the filthy, dirty calico dress, and to the shoulder it was moist, black and yellow from the effect, the child said, of the beating she had received.

Healy placed the child for the present at the Children's Day Home, and will take steps to have her removed to a State institution, where she will receive proper medical treatment and physical and intellectual training. Lena McKenna, the woman who is alleged to have beaten the child, appeared at the police station shortly after Healy had taken the child. She was promptly locked up by Acting Officer Malesy, and a charge of battery was booked against her.

CHANCE TO REFORM.

Little Johnny Stone to be Sent to a Reformatory.

John Stone, the ten-year-old boy recently arrested for a number of petty thefts, was yesterday turned over by City Justice Anderson to Dan Healy, Officer of the Society for the Prevention of Cruelty to Children, with the request that he take steps to have the youthful offender confined in a reformatory school. George King, Willie Vassina and Kiste Ross, Stone's partners in crime, were lectured and allowed to go. Young Stone's father attempted to address the Court, but was not given the chance to do so. He said he thought it was pretty hard that his boy should be sent to a reformatory and the others be allowed to go. Justice Anderson informed him that his son was responsible for all the trouble, and that he would listen to no plea for leniency.

AMUSEMENTS.

Waverly's Big Modern Minstrels appear Monday and Tuesday nights at the Clunie Opera-house. They constitute a new organization which presents strong claims for the favor of the public. The company announces a band of twenty pieces, a strong orchestra, a group of five good singers, and a spectacular first part with specialties following. In the company are Johnny Mack, phenomenal banjoist, called "The Banjo King"; Young and

Confusion of Names.

It was George E. Allan, not George E. Allen, who was sued by Richard Madson for commissions on the sale of pianos. He is not connected with the Wiley B. Allen Company.

"Wieland's Extra Pale" Lager, 410 K street, doz. quarts delivered. Blauh, 417 K, Tel. 297.

The rush at the drug store still continues, and daily scores of people call for a bottle of Kemper's Balsam for the Throat and Lungs for the cure of Coughs, Colds, Asthma, Bronchitis and Consumption. Kemper's Balsam, the standard family remedy, is sold on a guarantee and never fails to give entire satisfaction. Price, 25c and 50c.

THE SHEARER CASES.

Used City Water Without Authority—Other Cases Continued.

City Justice Anderson yesterday ordered a plea of not guilty entered in the case of J. D. Shearer, charged with laying a cement sidewalk apron so as to obstruct the flow of water. Shearer demanded a jury trial and the case was continued until Tuesday next.

Shearer entered a plea of guilty to the charge of using the city water to wet down cement work, without a permit, judgment being withheld until Tuesday next. He produced a bond given by him since the beginning of the suit and which will, when filed, entitle him to use water for the purpose named.

The Dreyfus Case.

A remarkable change has taken place in public opinion regarding the guilt of Dreyfus, and there is good reason to hope that it will be reflected in the sentence rendered by the supreme tribunal. His feelings must be something akin to those of the sufferer released from the chains of a weak stomach, that powerful foe to dyspepsia, Hostetter's Stomach Bitters. A man might as well be in prison as to have a weak stomach. It will bring just as much misery. Hostetter's Stomach Bitters will cure constipation, indigestion, biliousness, liver and kidney troubles. An occasional dose will keep the bowels regular and the stomach vigorous. See that a private Revenue Stamp covers the neck of the bottle.

A Similarity of Names.

Some seem to confound the name of George E. Allan, who was defendant in a late case in Judge Henry's court, with the name of our firm. We wish to say that Mr. Allan was working for another piano house in this city, and our firm was in no way connected with the transactions ailed in court. We are sorry that the purchaser does not have to pay fancy prices and big commissions when they buy pianos of us. We retail at what other call wholesale prices. Wiley B. Allen Company, 415 K.

Summer Clearing Sale.

Commences to-day, consisting of millinery of all kinds, hosiery, ladies' and gents' underwear, matting, etc. At Sacramento Home Supply Company. This means bargains.

Basket Picnic Sunday, July 9th, up river.

Under picnic and barge leaves N street 9 o'clock. Tickets for purchase. Round trip 50c. Cool grove, pure water, nice music.

Hardman pianos never lose their tone.

They are the highest grade made. We have the best Chickering, Harrington, and other pianos. Wiley B. Allen Co., 415 K.

Dog tags good to July 1, 1900, also water rates and city licenses now due.

Payable at City Collector's office.

Summer clearing sale commences to-day at Sacramento Home Supply Company.

Special cut prices in all millinery. Cut prices in matting, underwear, boys' and men's hats, etc.

Ladies' open-face silver watches of American make at \$5. H. C. Hotfiller, jeweler, 824 K street.

Phone Landis, 1013 Third, wood, coal, ice.

Large variety of electric fans and all electrical fixtures. Tom Scott, 308 J, st.

Otto's Summer Garden—the coolest place in town to enjoy ice cream, soda, or sherbet, 908 J, opp. Plaza.

Fruit is now greater in quantity and lower in price. The Pacific, J, near Eighth.

Transfer Co., 306 K, either 'phone. See Capital Sac. Van & Storage Co.

Try the new drink, Iron-Brew, at Fishers', 822 K street.

C. C. C. fancy creamery, full weight, 32 ounces, 50c each.

Whisky Hill Wells office, 631 K.

For medicinal purposes drink "Glenbrook" sour mash whisky. Theo. Blauh, 407 K street. Tel. 297.

Try the El Dorado, 826 J street, for a glass of steam or lager.

Don't sweat over a long, hot fire when you can get good pine wood cheap from F. Cady, 215 L. Either 'phone.

MARRIED.

BENEDIX-REDDING—At the Seventh-century Methodist Church, paragonage, November 23d, by the Rev. W. E. Vaughan, Frank W. Benedix to Miss Grace Redding, both of Franklin, Sacramento County, Cal.

BORN.

MERWIN—On the lower Stockton road, five miles from Sacramento, July 6th, to the wife of Henry Merwin, a son.

MILBY—In Sacramento, July 7th, to the wife of E. E. Milby, a son.

DIED.

JOHNSON—At Lower Village, Nova Scotia, on July 6th, George A. Johnson, brother of Mrs. John L. Pearson of Sacramento, aged 39 years.

McCLOUD—In this city, July 7th, Alice McCLOUD, daughter of A. L. and S. J. McCLOUD, a native of California, aged 18 years.

Remains will be shipped to Woodland Sunday morning for interment in Capay Cemetery.

RUEY—In this city, July 6th, Walter, son of John and Mary Ruey, brother of George and Henry Ruey, a native of Sacramento, Cal., aged 10 years, 6 months and 14 days.

Funeral services are respectfully invited to attend the funeral to-day, at 2 p. m., from the residence of his parents, American Eagle Hotel, Thirteenth and J streets. Interment City Cemetery.

SMITH—On Cosumnes, at Lindsay's ranch, July 6th, Samuel Smith, husband of Afley Smith, father of W. A. and E. F. Smith, Mrs. Mary Ann Smith, Mrs. Abbie Curby, a native of Scotland, aged 75 years.

Friends and acquaintances are respectfully invited to attend the funeral to-day (Saturday), July 8th, from the late residence on Cosumnes, at 10 o'clock. Interment New Helvetia Cemetery.

For a Choice Bunch of Sweet Peas or Carnations ring up H. McWILLIAMS, The Florist, Elm Nursery, Twelfth and U Streets. Both 'Phones, No. 50.

APPLETON'S "MUSIC" BOUND IN LEATHER.

APPLETON'S "MUSIC OF THE MODERN WORLD" bound in half morocco leather-embossed covers for \$3.99 per set. Other styles at other prices.

SILVIUS & SCHOENBACHER, Bookbinders, 423 J Street. Cap. phone 560. Orders called for and delivered. 3p.

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The rush at the drug store still continues, and daily scores of people call for a bottle of Kemper's Balsam for the Throat and Lungs for the cure of Coughs, Colds, Asthma, Bronchitis and Consumption. Kemper's Balsam, the standard family remedy, is sold on a guarantee and never fails to give entire satisfaction. Price, 25c and 50c.

IT IS TIME FOR TROUT FISHING!

We call your attention to our complete assortment. We know the wants of the different streams.

OUR FISHING TACKLE is selected with care and we invite you to examine our goods and prices

KIMBALL & UPSON, Sporting Goods, 625 J.

Sacramento's Exclusive Dry Goods Store.

Saturday's Saving Specials...

Ladies' Eoru Jersey Ribbed Vests, made of good quality very pretty, low neck, no sleeves; good value at 20c each. TO-DAY'S 8c PRICE.

Ladies' White Jersey and Swiss Ribbed Cotton Vests, neck and sleeves finished with silk tape; strongly made, low neck and no sleeves; a good 25c value. TO-DAYS 12c PRICE.

Ladies' Eoru Jersey and Richelew Ribbed Cotton Vests, trimmed with silk lace; made of very fine Egyptian yarn; low neck, no sleeves; regular prices, 50c and 60c each. TO-DAY'S 23c PRICE.

Ladies' Percal Shirts Waists, printed in fast colors, up-to-date styles; regular 80c value. TO-DAY'S 43c PRICE.

Ladies' Plain White Plume Shirt Waists, made of good soft finished plume; perfect fitting in every respect; regular price, \$1.50 each. TO-DAY'S 95c PRICE.

Ladies' All-wool Plaid Dress Skirts, made in the very latest style; the combination of shades in these plaids is perfect. The fullness is in the back and falls in one plait; the regular price is \$7.50 each. TO-DAY'S \$4.88 PRICE.

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B. WILSON & CO., Cor. Seventh and J Sts.

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Thousands of rolls of the latest designs and colorings in WALL PAPERS, consisting of stripes, tints, ingrain, tapestry effects and all other novelties in the WALL PAPER line.

We make a specialty of artistic interior decorations.

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ALL KINDS OF GARDEN AND VEGETABLE seeds at wholesale and retail prices at CHAS. C. NAVLET & BRO., 520 K Street Sacramento. Both 'phones.

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Originators of the celebrated Star D brand BUREAU OF IMITATIONS MILLS, - I STREET, NEAR FRONT.

Business Houses, Contractors and Public Men

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Are you satisfied with the soap you are using? Is it gritty, does it lather, is it a good size, are you paying too much for it? Why don't you try this Sacramento made soap? Your husband earns his money in Sacramento. Be loyal. The soap will win its own way if you only give it a trial.

Capita Soap Factory, Sacramento, Cal.

SECOND-HAND WHEELS

2 Columbia beveled gear chainless, 22-inch frame, each \$45. 22-inch frame, each \$30. 22-inch frame, each \$25. 1 Waverly, G. & J. tires, 24-inch frame, \$15. 1 Progress, 22-inch frame, good, \$15. Hartford, 22-inch frame, \$5. 2 ladies' Crawford, each \$10.

W. H. ECKHARDT, 609-611 K St.

ROLLER AXLES ARE NOT BALL-BEARING AXLES.

W. H. ECKHARDT, 609-611 K St.

RAILROAD TIME TABLE.

SOUTHERN PACIFIC COMPANY (PACIFIC SYSTEM) APRIL 9, 1899.

Trains Leave and are Due to Arrive at Sacramento:

LEAVE TRAINS SUN DAILY. ARRIVE (FROM)

11:00 P Ashland and Portland... 8:55 A

10:20 A Los Angeles, El Paso & East... 6:30 P

11:45 A Ogden and East... 6:50 P

10:00 A Calloto and Napa... 6:40 A

10:00 A Calloto and Napa... 10:55 A

10:15 P Los Angeles and Sacramento... 11:30 P

4:55 P Colfax... 9:40 A

4:45 A Knights Landing and Groville... 9:30 P

7:15 P Knights Landing and Groville... 7:50 A

3:45 A Red Bluff via Knights Landing & Marysville... 10:00 P

6:30 A Red Bluff via Knights Landing & Marysville... 9:50 P

6:45 A Red Bluff via Roseville and Marysville... 7:30 P

1:25 P Red Bluff via Roseville and Marysville... 9:20 A

5:55 A Redding via Willows... 2:50 P

4:10 A San Fran via Benicia... 10:40 P

5:55 A San Fran via Benicia... 8:50 P

7:00 A San Fran via Benicia... 10:55 A

10:00 A San Fran via steamer... 16:00 A

10:15 P Los Angeles and Sacramento... 11:30 P

10:20 A San Jose... 2:55 P

10:30 A Santa Barbara... 2:55 P

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If you want something good for a little money we have a good, fresh roasted coffee at 15 cents a pound.

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REMEMBER