

SAYS THE SUPREME COURT.

UNION BUILDING AND LOAN DECISION.

The Court's Reasons for Removing the Receiver—Points of Local Interest.

The decision of the Supreme Court removing the receiver appointed by the Superior Court of this county for the Union Building Association to wind up its affairs was written by Commissioner Haynes, and concurred in by Commissioners Gray and Chapman. The recommendations and conclusions of the Commissioners were adopted by Justices McFarlane, Temple and Henshaw of Department Two of the Supreme Court.

The cases, two in number, were entitled The People vs. the Union Building and Loan Association. The decision in full is as follows:

These are separate appeals taken upon the same record from the same judgment upon the judgment-roll. The appellants, however, are represented by different counsel, who have also presented separate briefs. The first is taken by the corporation and the second by a director (L. Tozer). They present the same question for decision and may therefore be disposed of altogether.

As the title of the case indicates, the defendant corporation is a building and loan association. In December, 1897, the Commissioners of the Building and Loan Associations of the State of California made a report on the business and affairs of said corporation and reported to the Attorney General that it was "conducting its business in an unsafe manner such as to render its further proceedings hazardous to the public and to those having funds in its custody" and that the same should be enjoined and the receiver appointed.

The defendant answered and upon the hearing findings were made by the court that the defendant corporation was a building and loan association, and that the receiver appointed by the court was a receiver in equity, and that the receiver was appointed in accordance with the provisions of Section 9 of the Act creating said Board of Commissioners. (Statutes of 1893, page 231.)

The only question presented is whether the findings authorize the court to appoint a receiver to take charge of the corporation and to sell, settle and liquidate the business of the corporation.

The only allegations of the complaint tending to justify the relief granted are the following:

"That since the organization of the said corporation the said corporation has loaned out large sums of money upon real estate security and in default of payment of said loans has been compelled to take said property in payment of the moneys so loaned and interest thereon; that the costs of said real estate so obtained and now owned by said corporation exceeds the sum of \$112,215.42; that there are now outstanding liens on real estate to the amount of \$90,118.24; that since making said loans upon said real estate and acquiring the title to the real estate as aforesaid, the value of the real estate has greatly depreciated, and is now depreciating, which has reduced and will continue to reduce the assets of said corporation to such an extent as to render the further proceeding and conduct of the business hazardous to the public and to those having funds in its custody.

"That plaintiff is informed and believes and upon such information and belief alleges that, unless the said defendants are enjoined and prohibited by this Court from the transaction of any further business, the said defendants will continue to prosecute and transact such business to the irreparable injury of the people of the State of California."

The prayer is for an injunction and "if the Court shall deem it expedient" that a receiver be appointed.

The only finding touching the existing condition of the corporation is the following:

"That actions have been commenced against the defendant corporation on promissory notes aggregating \$3,500, and property of the said corporation is now and for more than twenty-nine days has been under attachment and thereon in said actions and there are no funds available with which to discharge said attachments and indebtedness.

"That the necessary disbursements exceed the income of the defendant corporation; and that the defendant corporation continue its business its necessary disbursements will continue to exceed its income.

"That the said corporation has been compelled to take in satisfaction of loans a large amount of real estate which since taken has greatly depreciated in value, and there is no assurance or probability of any increase in its value.

"That there is a large amount of indebtedness of said corporation now due and there are not sufficient assets on hand that can be realized upon which by said corporation will be able to pay said indebtedness in any reasonable time; that to continue the business of said corporation under such circumstances would require that a considerable portion of the monthly dues of the members and stockholders be used for the purpose of discharging the deficit in current expenses and interest

after applying the income of the corporation to the same. "That said corporation can no longer continue business without a continued impairment of the assets of said corporation, and dues to be paid in by members. That the assets of said corporation if converted into money at this time, are insufficient to pay the existing indebtedness of said corporation, and reimburse the stockholders of said corporation for moneys paid by them as dues. That the further proceeding with its business by said corporation would be unsafe and hazardous to the public and to those having funds in its custody and to its stockholders."

The Court, it is true, further found "that it is necessary and a proper case for the appointment of a receiver to settle and liquidate the business of the said defendant corporation"; but this is essentially a conclusion of law, which must find its justification in the allegations of the complaint and the findings of fact if it is sustained.

Section 9 of said Act authorizes the Attorney General upon receiving the report hereinbefore stated from said Commissioners, to apply to the Judge of the Court to issue an injunction restraining the directors from further proceeding with its business until a hearing can be had, and further provides "such Judge may on such application, issue such injunction, and after a full hearing, may dissolve or modify it, or make it perpetual, and may make such orders and decrees, according to the course of proceedings in equity, to restrain or prohibit the further prosecution of the business of the corporation, as may be deemed in the premises, and may appoint one or more receivers to take possession of its property and effects, subject to such directions as may from time to time be prescribed by the Court."

It will be observed that this Statute does not imperatively require the appointment of a receiver, but permits it in the discretion of the Court, or in other words, in proper cases.

In Havemeyer vs. Superior Court, 84 Cal., 327, 365, Chief Justice Beatty speaking for the Court, said: "Under our codes the rule is not to appoint a receiver, but to leave the whole matter of liquidation and distribution to the exclusive control of the directors of the corporation in office at the date of the dissolution. The appointment of a receiver is the exception, not the rule, and is not to be made unless some party interested, either a creditor or a stockholder, can show that for the protection of his rights the appointment of a receiver and the administration of the assets under the control and superintendence of the Court of Equity is necessary."

Conceding that under the provisions of the Building and Loan Commissioners Act above quoted a receiver may be appointed, it does not follow that the appointment was authorized under the facts of this case. The State is neither a creditor nor a stockholder, and has no pecuniary interest in the association. It is neither alleged nor found that there was any fraud or mismanagement on the part of the directors or officers of the corporation, or any want of competency on their part to liquidate and settle up its business and affairs economically and in the interest of its creditors and stockholders, either as a creditor or a stockholder, by a creditor or stockholder, the facts alleged and found would not have justified the appointment of a receiver; and unless such facts are alleged and found as would justify the appointment at the instance of a creditor or stockholder, it cannot be made at the instance of the State under said Statute.

The notice of the appeal is to the effect that it is taken from the whole of the judgment but appellants say that no point is made against the judgment enjoining the association from the further prosecution of its business. For reasons given in the foregoing opinion the judgment appealed from is hereby modified by eliminating therefrom the order appointing a receiver, and all the provisions thereof relating to such receivership, and as so modified the judgment is affirmed.

OUR SOLDIER BOYS.

They Are to Have a Hearty Welcome Home This Evening.

There will be a reception at the Armory to-night in honor of volunteer soldiers who have just returned from the Philippines. Though the Ironclad Club has taken the initiative in the matter, its officers wish it understood that the reception is a public one, in which everybody is asked to join.

The local militia and some fraternal bodies will take part. J. J. Byrne, J. H. Watkins, Hugh Strachan and Messrs. Strichauer, Kirby and Thompson will arrive this evening, but the reception will also be to those who have already returned.

At 7:40 o'clock the procession will start from the armory for the depot to receive the home-comers. W. H. Treichler will act as Marshal, and the line of march will be: From the Armory to K street, to Seventh, to J, to Second, and thence to the depot. Returning the route will be from the depot to K street, up K to Sixth, and thence to the Armory at Sixth and L.

The meeting will be called to order by Marshal Treichler, who will introduce Judge A. C. Hinkson as Chairman. If Governor Gage should be in the city he is expected to welcome the volunteers, but if not Hon. Eliwood Bruner will perform that pleasant duty. There will also be other addresses, plenty of music, etc.

During the parade pyrotechnics will pierce the darkness and rockets will be sent up from the Armory and the depot.

Mayor Land will receive the volunteers at the depot, on behalf of the city, assisted by representatives of the organizations participating in the parade.

Members of the late Company F, Sixth California Volunteers, Troop B, and Grand Army men will take part in the procession.

Weather Reports.

The Weather Bureau reports show the highest and lowest temperatures yesterday to have been 65 and 41 degrees, with gentle to fresh southerly, easterly and northerly winds and clear weather prevailing.

The barometrical readings at 5 a. m. and p. m. yesterday were 30.164 and 30.161 inches.

The highest and lowest temperatures one year ago yesterday were 76 and 46 degrees, and one year ago to-day 79 and 48 degrees.

The average temperature was 53 degrees and the normal 61 degrees, showing yesterday to have been 8 degrees cooler than usual for the 24th day of October.

River, 16 feet 5 inches and falling.

Methodist Semi-Centennial.

The fiftieth anniversary of the Sixth-street M. E. Church will be celebrated during the remainder of the week. The exercises will begin at the church to-day. The features have already been announced.

TO-DAY AT 9:30 A. M. SALE OF

Royal Worcester Corsets, All-wool Knit Underskirts, Sheer White Initial Handkerchiefs.

LOT I—The corset we offer here is the new golf model; it comes in pretty, expressive shades of pink or light blue, and in sizes 18 to 26, inclusive. The golf corset is neither high or low in the bust, but that particular form which adds naturalness. It's rather short from the waist line down over the hips, which avoids oppression, and has four hooks. The 1 1/2-inch lace trimming at the top, drawn with satin ribbon, is of the same color as the corset and adds much to its effectiveness. If you want a well made, slightly looking corset, modeled on lines which give grace and comfort to the figure, you can ill afford to miss this opportunity.

TO-DAY'S PRICE, 50c

LOT II. \$1.50 Knit Underskirts for 98c.

All pure wool knit skirt, made in 14-inch Roman stripes in such pleasing combinations as pink and white or baby blue and white. This skirt falls just below the knee, is wide enough not to interfere with freedom of movement, and of a weight which will make it highly appreciated during the cold months.

TO-DAY'S PRICE, 98c

LOT III. Initial Handkerchiefs.

These pure linen handkerchiefs have quarter-inch hemstitched orders and in one corner a very neat open-work, hand-embroidered initial. They are just as they left the hands of the needle workers in old Ireland. Not having been laundered, are of course somewhat soiled, but a one-time washing will make them white as snow and transform them into a 25c value instead of our price, 14c. Not much of an effort to do this, but the gain to you is 11 cents. Only 300 to offer. All letters to start with.

TO-DAY'S PRICE, 14c

MAN-TAILORED SUITS, At \$12.50, \$15, \$18.50, \$25 and \$30.

We cannot understand why some people prefer to pay fancy prices for suits made to order when we can furnish perfect-fitting, man-tailored suits, ready to wear, at reasonable prices. Our variety is large enough to fit most women with little or no alteration, but when changes are necessary it costs you nothing, we make it free of charge. Our suits are made from the best fabrics in the market, colors and styles selected by buyers who know your wants.

Weinstock, Lubin & Co., 400 and 412 K Street, Sacramento

The Prize Descriptions Are Beginning to Come In.

Already a number of boys and girls have placed their prize descriptions in the big iron letter box by the main door. Let no one forget to write his or her name and address in the blank space at the head of the paper.

We overheard one quite large boy say the other day, "O, what's the use of trying; I cannot write." We fear such a boy as that will not make a very successful man. He does not seem to have confidence in his own self and is unwilling to even try to see what he can do. It is the boy who tries and fails and who keeps on trying and failing until success comes, that develops qualities that will stand him in good need as a man.

Besides the prizes are not few in this contest—there are to be 200 of them. We are sure that any boy or girl who wins will be very proud and happy.

A New Feature!

Special Prize of a Twelve Volume Set of Encyclopedias.

As is well known we have offered some 200 prizes, consisting chiefly of books, to the boys and girls of Sacramento, twenty years of age or under, that write the best descriptions of the Japanese tea garden. This offer is open to those who do not attend school as well as to those who do.

In order to awaken among those who attend school class interest as well as individual interest, we have decided to make one large prize offer, as follows:

After the 200 prizes have been awarded, the prize manuscripts written by the young people attending schools will be re-sorted by classes. The class that is found to have the greatest number of prize winning pupils will be presented with a handsome twelve-volume set of Universal Encyclopedias. This offer is open to the classes in any private, public or denominational school, providing the class contains at least twenty members.

Manuscripts must be handed in by Wednesday evening, November 1st, and are to consist of not over 500 words. We furnish free suitable paper with neat printed heading upon which to write the descriptions.

Prof. Mathews, the Expert Phrenologist.

Professor Mathews, the phrenologist, will be down stairs this week, 9 to 2 a. m., 2 to 5:30 p. m. He examines the "bumps" in heads free of charge. He tells the good qualities and the badness that these bumps indicate. Don't mind if he tells some plain truths. He throws in plenty of good advice in his talks, and we are quite sure that he will make many friends. Parents are especially invited to bring in their children.

Professor Mathews can give about sixty examinations a day.

AMUSEMENTS.

The Ensign

"The Ensign" was played by the Elleford company last night. It was well given so far as the membership of the troupe is concerned, but it was scarcely set as it should be. The court-martial scene was a real treat, and very different deck setting. It would seem that it should not cost a cent more to fashion and paint a mast of proper diameter, for a single instance nor to make the shrouds bear some resemblance to the real thing; they might at least be taut. Fact is such a deck scene would make a sailor sick at heart. And this is made the more freely because Manager Elleford can do better and has had such success as to warrant him in mounting such a fine and spirited drama far better than he does. It is attested that the little thing in stage work that insures success more certainly than the great ones. Assuredly Mrs. Captain Wilkes would never invite naval guests to a ball at her home when there was such wretched hanging of drapery and disposition of the flags of Spain, England and the United States. Something of taste would be manifest on her part in arranging the decorations, gracefully. Of course in a play demanding such a long list of characters, it is well understood that there must be much doubling by a company of but about fourteen people. But there was lack of attention and neatness in the costuming of the officers of the navy for the most part that should be corrected. We cannot but think that a Lieutenant in the British navy, who should appear in the parlors of an American Captain in a tattered coat and a pair of trousers, as in the case of the Lieutenant Allen of last night, would suffer reprimand. The Captain Wilkes of the play could be pardoned, on a stretch, as personated last night, though the effort impressed no one favorably; but it was quite too much for Mr. Wyman to assume the role of Admiral Farragut after having disposed of the part of Lieutenant Blythe. Wyman is a capable, versatile and pleasing actor, but was conscious of inability to double as Farragut and hence wisely kept his place in the audience. In a vain effort to conceal his identity, it would seem that the matter might have been better managed. When there was so heavy a call for many people, what prevented Mr. Elleford himself filling the congenial low comedy part in a single scene of the President's orderly, instead of compelling Hernandez to attempt a double, playing Sergeant O'Shay and Midshipman Watson? The effort, though a good one, marred the pleasure of the audience. What saved the piece from these and other slouchy things, was the fine work of Miss Norton as Dot, she taking a very favorable role admirably; of Frank Cooley as the Ensign, who drew the character with strong, bold strokes, and made it every inch a manly and high strung American; of James Corrigan as the bluff, frank and gallant old Coxswain—a better has never been seen here; the very pleasing work of Miss Elliott as Alice, and the inimitable acting of "Baby Lillian" as Mary—it was more than precocity. It was remarkable intelligence. The double of Mr. Scott as Lieutenant Allen and Secretary Welles was excellent; if only his Lieutenant had been as carefully given as his Secretary, he would have won showers of praise. Mr. Scott is too capable and experienced an artist to slouch through the part of Allen as he did last night with a careless and indifferent swing, as if it was of no mo-

ment how the character was drawn. The audience was much pleased with the play, on the whole, for it appealed to patriotic and sympathetic hearts strongly, and it therefore won deserved rounds of applause and cheers. Had the play been as well staged as the management could have mounted it, it would have created a perfect whirlwind of enthusiasm. The Elleford Company is building too valuable a reputation, and is too capable, to make any indifferent work from this time on. The company is worthy of stage surroundings befitting the excellence of its leaders as actors of ability. At least be a part of a community as this, respectable of enthusiasm. The Elleford Company is building too valuable a reputation, and is too capable, to make any indifferent work from this time on. The company is worthy of stage surroundings befitting the excellence of its leaders as actors of ability. At least be a part of a community as this, respectable of enthusiasm. 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