

RAILROADS NOT IN THIS MOVE

TEST OF CANAL ACT PLANNED BY DISINTERESTED MEN.

Andrew H. Green at Work to Down the Swindle Just Before He Was Killed—Courts Certain to Have the Case—Who'd Buy Bonds With Cloud on Them?

Ever since it was made known that sensible and honest taxpayers and business men of this State had resorted to legal measures to stop the unparalleled swindle of the Erie canal, the barge owners and their newspaper allies have been shrieking that it was a move favored by the railroads. They knew very well that it is not; that the railroads have not contributed a cent toward the expense of the procedure and that the railroads have ceased to pay any attention to the scandalous scheme.

The truth is the matter is that the plan to prove the barge law unconstitutional is not of recent conception. Andrew H. Green, the "father of Greater New York," believed that the law was unconstitutional and his ideas were endorsed by several eminent lawyers who were consulted. He spent the night before he was murdered in drawing up a brief attacking the constitutionality of the act. But for his death the matter might have come to the courts long ago.

On this subject the Hon. James Wood of Mount Kisco, chairman of the thousand ton barge canal and president of the Anti-Barge Canal League, yesterday made the following statement:

"The discussion in the press of the proposition to determine the constitutionality of the canal bill is taking such an extreme course, and many of the editorial statements are so erroneous and unjust, that it seems proper to make a simple statement of the facts of the proceeding.

"The general work in opposition to the thousand ton barge canal scheme has been in the charge of a committee appointed at a State convention held in the city of Rochester in the summer of 1903. At no time has there been upon that committee a single member representing directly or indirectly any railroad or any other interest.

"The chief surprise has been the apparent indifference of the railroads to the whole canal proposition. The members of the committee are earnest in their conviction that the canal scheme is worse than useless, and some of us for the past twenty years have freely expressed our disapproval of the canal policy of the State.

"Following the popular vote in 1903 the committee carefully examined the canal proposition on many points, among them being the validity of the returns of the vote in Greater New York, the relative authority of the State and Nation over waterways, etc. Some of these may be brought forward in due course. The question of constitutionality is not a new one. Andrew H. Green, often spoken of as the 'father of the Greater New York,' considered the act unconstitutional, and three months before his death submitted to the writer the opinions of eminent counsel under his view, and the day before he was murdered he announced his intention of bringing the matter himself to test the question. The committee did not feel justified in taking such a course upon the statements of a single individual, and determined to obtain the opinion of counsel of the highest standing. The result has been given to the press prematurely, but this in no way affects the issue, although it seems discourteous to the Attorney-General of the State, to whom the petition will be addressed.

"To meet the legal expenses necessarily involved in this action no railroad has contributed one dollar, directly or indirectly, nor, so far as the writer is informed, has any officer of any railroad promised to contribute anything for this purpose.

"The action to determine the constitutionality of this stupendous undertaking should be approved by every citizen of the State, for it is obviously of the first importance to clear the situation of all legal and financial uncertainty."

W. G. Johnson, managing editor of the American Agriculturist, who is a member of the Anti-Barge Canal League, was asked yesterday about the league's work. He said that the league was organized at a meeting held at the Transportation Club last November, when a definite line of action was decided upon. At the second meeting, held in the same place last Friday, it was announced that the Hon. Elihu Root had been retained as counsel and it was decided to petition the Attorney-General for a writ of habeas corpus to test the constitutionality of the barge law. The officers and members of the executive committee signed the petition and it will shortly be presented to Mr. Mayer.

"When asked what was behind the Anti-Barge Canal League, Mr. Johnson said: "In the first place there is a strong feeling in all the up-State counties against this canal. Our organization represents the 427,898 votes that were cast against this act. We have a perfect organization in all parts of the State with a membership of more than twelve thousand persons. The only interest we have in this matter is that we represent our constituents and have been their spokesman editorially and at the conferences of the league as a member of the executive committee.

"I have just returned from Geneva, where I have been attending the meeting of the New York State Fruit Growers' Association in session at that place during the past few days. The subject of the canal was mentioned in this organization, and the canal, and I talked with representative individuals from all parts of the State at this meeting. Secretary Platt is in the winter quarters at the State looking after the interests of the league."

In reply to the question as to when this matter would be definitely presented to the Attorney-General, Mr. Johnson said that nothing had been definitely arranged, but that the petition which has been signed by the officers of the association and promoter individuals representing their part of the State, including the executive committee of the State Grange, would be presented very shortly for the consideration of Attorney-General Mayer.

There is no doubt that the suit to test the constitutionality of the barge law will be brought to the attention of the courts by the Attorney-General. The law has been questioned by reputable men who have no interest except to save the State from a tremendous blunder, and they are backed by lawyers of the highest standing. If the question of constitutionality was left in doubt the State would indeed be financially embarrassed, and the canal would buy canal bonds with a shadow on them.

It is understood that the petitions will be presented to the Attorney-General in a few days.

Utica, Jan. 12.—John I. Platt of Poughkeepsie, who is prominent among the opponents of the proposed Erie canal, in an interview here explains how the plan to test the validity of the canal act first came about, and on basis of his objection to the expenditure of \$10,000,000 for a waterway across the State.

"The idea of testing the constitutionality of the act began with Andrew H. Green, the 'father of Greater New York,'" said Mr. Platt. "He had an idea a constitutional question was involved, and proposed to bring that up before the State convention of 1903. I spent half a day with him on the Tuesday of the week he was killed. When his new movement of Senator Ancker and others was brought up, some of us consulted together, and this fact that Mr. Green had raised the question was brought forward, and they said if there was any reason to question that we ought to take it up."

peculiar features about the bill. The question involving the Erie Canal is not the only contention in a technical view that has never been decided, but there are other features which have been raised, such as about taking lands, the adequacy of the bond issue, and the tax imposed.

"We propose to go right at the matter and get the thing before the courts before the question settled. It will begin with the Supreme Court, go to the Appellate Division, and to the Court of Appeals."

Mr. Platt says the only real organization backing the opposition as such to the barge canal is the State Grange, but he says other interests will be brought into the fight. He did not know when the petition for permission to bring an action would reach the Attorney-General's office, but said there would be no delay for delay's sake.

Attorney-General Mayer today received a letter from country B. Hebert, chairman of the Canal Association of Greater New York in which he says that he is, by the newspapers, that interested adverse to the canal improvement are likely to take steps to test the constitutionality of the barge canal law.

The Attorney-General asks the Attorney-General if he will kindly keep the canal people advised of anything that may be done in the name of human order that the commercial interests of New York will be fully informed. The Attorney-General wrote an immediate reply to Mr. Hebert, saying that it was his intention to keep the public fully informed as to the canal matter.

DEFT OF THE LAW.

Ex-Chief Judge Andrews Gives Cue to the Canal Suit.

SYRACUSE, Jan. 12.—Charles Andrews, former Chief Judge of the Court of Appeals, gave the first indication today of the grounds upon which the constitutionality of the barge canal act will be attacked. He said that no opinion had yet been written, but, asked upon what grounds the attack would be made, said:

"The main grounds are that it violates the constitutional provisions in respect to the creation of a public debt."

Asked as to other grounds, he would not go into details, but said: "There are other grounds upon which the validity of the act will be assailed."

He would not specify the sections of the Constitution concerned.

BROZE RAILINGS STOLEN.

Bowery Lumber Caught Despoiling Fine House Near Fifth Avenue.

Rudolph Schroeder, a former Belgian soldier, who lives in a Bowery lodging house, was arrested yesterday morning in front of John Kirkpatrick's residence, at 67 West Forty-seventh street, while removing a part of the bronze railing of the stoop. Numerous complaints have been made during the past month by owners of residences along that part of Fifth avenue and the cross streets that thieves had been carrying off the brass and bronze ornamental railings in front of the houses.

Capt. Laney assigned Detectives Sheehan and Conroy to catch the vandals, but the railings continued to disappear. The detectives walked about the neighborhood Wednesday night and were about to go home at 7 o'clock yesterday morning when they saw a man at work on the railing of the Kirkpatrick residence, and approaching found Schroeder with a screwdriver edged in his hands and a part of the railing lying on the sidewalk at his feet.

After a talk with the prisoner at the station, the detectives arrested Simon Fabian, a junk dealer, who has a shop at Second avenue and 100th street. Sheehan told Magistrate Barlow in the Yorkville police court that in some instances railings that cost \$500 had been sold as junk for \$2 or \$3.

Schroeder was charged with grand larceny and the junk dealer with receiving stolen goods. They were held for examination today.

STOLEN STATE BANK BOOK.

Name on Cover Attributed—Youth Held for Burglary.

Harry Cohen, 28 years old, of 175 Norfolk street, was arrested on Wednesday evening by Detective Wertheimer of the Madison street station on a charge of picking pockets on East Broadway. A bankbook showing a deposit of \$2,000 in the State Bank in Grand street and a check on this same bank partly filled out were found on him. It was very plain to the police that someone's name had been recently scratched off the cover of the book and Cohen's name written on. The prisoner said a stranger had borrowed \$5 of him on Wednesday evening and given him the bank book as security.

A burglary had been reported at the station house in the morning by Louis Faber of 30 East Third street. The articles reported stolen were a bankbook and an overcoat worth \$25. Faber was summoned to the station house and identified the book as his.

In Essex Market court yesterday Cohen was held in \$1,000 bail.

NOT HELD FOR PANAMA JOBS.

License Complaints Made Against Merchants and Bankers' School.

Sherman Eddy, Thomas J. McNeese and Henry W. Gardner, who conduct the Merchants and Bankers' School at Madison avenue and Fifty-ninth street, went to the Yorkville police court yesterday in response to the summonses obtained by Inspector Murray of the License Department. They were accompanied by two lawyers. Commissioner Keating of the License Department was in court to prosecute the charge that the school was conducted in an employment bureau without a license.

Counsel for the men declared that his clients had been advised that no license was necessary. Magistrate Barlow said he would entertain a complaint. The defendants waived examination and were paid for pending trial in Special Sessions.

The Magistrate declined to entertain any complaint in regard to the advertisement concerning jobs on the Panama Canal.

ARKELL CO. EMBARRASSED.

Petition in Bankruptcy Filed Against Publishing Concern.

The Main Highway To California

Is via "THE OVERLAND." If you contemplate a trip to this pleasure seeker's paradise, the route offers you the highest degree of comfort and luxury with no additional cost and a great saving of time and expense. Many miles the shortest and many hours the quickest.

Union Pacific and Southern Pacific

Fast Trains. Smooth Roadbed. Fine Equipment. INQUIRE OF R. TEN BROECK, General Eastern Agent, 287 Broadway, New York City.

James McCreery & Co. Fur Dept. Sable Fox Boas, with natural Brush and Paws 15.00 Muffs 12.50 Alaska Sable Boas, with cord and tails 10.50, 12.50 Muffs 10.50 Natural Squirrel Scarfs 7.50, 10.50 Muffs 7.50, 10.50 Persian Lamb Coats, with Storm Collars, Full sleeves. 95.00 Fur lined and Fur Trimmed Coats. 50.00 to 195.00



These Overcoats will help you to defy the weather and the blues. It's a bargain time in overcoats and there are two lots left at \$15 and \$20. The former were \$18, \$20 and \$22, and the latter were \$25, \$30 and \$35. Every garment bears our name and guarantee. Broadway Store only, Cooper Square and Brooklyn Stores open to-morrow till 10 P. M.

Twenty-third Street.

Browning King & Co. Broadway, below 32d St. Manhattan Cooper Square, at 5th St. Brooklyn Fulton and Duane Sts.

COMMISSION TO TRY DUKE. WIFE GETS IN AHEAD OF THE RELATIVES BY GYNOR'S ORDER.

Commission to Sit in Brooklyn Jan. 19.—Today Duke Will Be Before Court on Habeas Corpus—Lawyers Talk of Tobacco Trust as Interest Party.

Levy & Unger, as counsel for the wife of Brodie L. Duke, secured from Supreme Court Justice Gaylor in Brooklyn, yesterday, an order appointing a commission to inquire into the sanity of her husband and to hear testimony before a Sheriff's jury beginning on Jan. 19.

In securing this order from Justice Gaylor pending the return of a preliminary order in a similar proceeding before Justice Greenbaum, Mrs. Duke's lawyers appear to have "short circuited" Nicoll, Anable & Lindsay, counsel for Duke's son and brothers. Justice Greenbaum's order requires Mrs. Duke and all others interested to show cause before him on Jan. 20 why such a commission should not be appointed.

In the meantime, before any of these proceedings are reached, Justice Gaylor is to have Mr. Duke before him this morning in Brooklyn on the writ of habeas corpus secured by Clarence S. Andrews, representing the Duke family, and the private secretary. It isn't at all likely, now that Justice Gaylor has signed an order for the commission to sit on Jan. 19, that he will decide this morning that Duke is sane and discharge him.

Duke will be produced in court this morning by Dr. J. J. Conroy, the head of the Sanford Hall sanitarium, to which Duke is committed by Justice Truist's order last Saturday. Lawyer Andrews says that he will have witnesses in court to prove that Duke has always been perfectly sane. He says that over a hundred public men have come forward to vouch for Duke's sanity, while habitually insane to which Duke is nevertheless sane. Nicoll, Anable & Lindsay say that they will confine their efforts to keep Duke where he is to an oral argument, citing the fact that he had been committed by a Supreme Court Justice on the certification of Drs. MacDonald and Hamilton.

Back of the legal proceedings instituted to free Duke lies, according to the lawyers, a story of a long war waged by Duke against his relatives and against the American Tobacco Company. According to the story told yesterday by some of the lawyers, Duke's relatives, who are the Duke interests to the American Tobacco Company, and has since retained control of a number of minor concerns down South, refusing to turn them into the trust. Of late, according to the information supplied by his secretary, he has been looking into certain properties in Texas, believing that the Duke brothers, who are the lawyers, said, it looked as if the court might be asked to order the Duke Company to be sold to the Duke family.

The interesting information was given yesterday that Bramham's hurried trip here and his subsequent legal proceedings were the result of a telegram which reached him on Sunday, coming apparently from Duke, who was then at Sanford Hall. This telegram read substantially as follows: "Come here at once and protect my interests."

How Duke sent this telegram, if indeed he sent it himself, the lawyers don't know. At any rate, Mr. Bramham lost no time in getting here and getting out the writ of habeas corpus under which Duke will be produced today. Said one of the lawyers yesterday: "Mr. Duke's family long ago threw him over absolutely, and the only reason he has in the world is his private secretary, who was in duty bound to take this step. Of course we have not been able to see Mr. Duke, but we feel sure that to-morrow, when he is in court, he will approve of this action and confirm all we have said. The insanity law is much misused today. Mr. Hyde, Richard A. McCurdy, Alexander E. Orr, Elihu Root and John L. Riker.

Continental Insurance Company. The annual report of the Continental Insurance Company shows gross assets of \$14,543,153, and a net surplus available for policyholders \$7,760,000 including the capital of \$1,000,000. In the valuation of its real estate, stocks and bonds, only the most conservative estimates have been taken, such as the valuation of Pennsylvania stock at 115, whereas the actual market value has not been under \$100. Mr. preferred stock at 210, actual market value 230; Lake Shore stock at 250, market value 290, etc. Among the directors of the Continental are President Henry Evans, James H. Hyde, Richard A. McCurdy, Alexander E. Orr, Elihu Root and John L. Riker.

The WANAMAKER CONGRESS OF PIANOS IS ELECTED ON ITS MERITS

There has been a fair and square election to this WANAMAKER Piano Congress. The claims of the respective candidates have been carefully canvassed, their records analyzed, their merits weighed. Their acceptance as representative pianos is sufficient proof that they have passed a rigorous investigation with colors flying.

It is a non-partisan congress, too; for it includes not only the finest pianos in the world—the Chickering—but also the lowest-priced pianos we have found that meet our rigid ideas of reliability and quality. It answers the demands of every piano-seeking person, in all respects of tone-quality, style and price. Let us call the roll:

The CHICKERING— In every one of its various models, the summit of musical perfection and successful piano making. Notable examples: The Chickering Quarter Grand The Chickering Infant Grand

The VOSE— In artistic new models, and with the great beauty of tone that has always characterized this wonderfully sweet-voiced instrument.

The EMERSON The MERILL The CROWN The KURTZMANN

A sterling quartette of medium-priced pianos, differing in tone and characteristics, and therefore suited to varied tastes; but alike in their thorough excellence of construction and artistic quality.

The FREDERICK DOLL The J. C. CAMPBELL

Two pianos that represent years of effort to obtain instruments that can be sold for less than \$200 and yet give full satisfaction to the purchaser. Both the Frederick Doll (\$185) and J. C. Campbell (\$190) Pianos accomplish this.

The ANGELUS— The marvelous instrument that has brought a better knowledge and appreciation of the best music into a great number of households. First in the field of mechanical piano-players—first now, among the huge crop of such instruments that have followed the Angelus's idea.

The AUTOPIANO— The solution of the difficulty for those who, not owning a piano, want one that can also be played by mechanical means. The Autopiano combines both; and is by far the lowest-priced instrument of its kind on the market. (\$485.)

And, to make possession very easy, of the instrument you select from this matchless array, we have arranged

The Special Wanamaker Terms by virtue of which, upon approved references and the payment of a small initial sum, you enter at once upon possession of the instrument you select. Such payment, with the subsequent monthly payments, varies with the price of the instrument, beginning with

\$10 Down and \$6 a Month or twenty cents a day, for the Frederick Doll and Campbell Pianos!

The plan is worth investigating, if your home is still without a piano or Angelus. And we will gladly give you full details at any time.

SHIRT WAISTS And Waists of Velveteen

They are new. They are beautiful. Their prices are more humble than their quality warrants. And note this: they are sensible. Just the waists a well-equipped wardrobe needs for not-quite-formal occasions. You will enjoy seeing

SILK WAISTS At \$3.75—Of chiffon taffeta, white, light blue, navy blue or black. At \$5.—Of crepe de Chine, in white or light blue. Or of white Oriental lace, trimmed with Venise lace and silk-lined.

VELVETEEN WAISTS At \$3.50—Brown, navy blue or black. Tailor-made. Second Floor, Third.

Hosiery And Underwear

Hosiery for men and women. Underwear for men only, appear today in qualities that are interesting for worth. Even before you compare them with the low prices that accompany. Comfortable, dependable, not timid of the laundry, good to see.

WOMEN'S STOCKINGS At 25c a pair—Fast black heavy-weight Cotton Stockings, with high-spliced heels and double soles. Black Cotton Stockings, with unbleached soles, in medium or heavy weight. At 37 1/2c a pair, three pairs for \$1.—Of imported fast black cotton, medium or heavy weight. Of black line thread, narrow ribbed.

MEN'S HALF-HOSE At 25c a pair—Of imported fast black cotton; all-black, or black with unbleached soles.

MEN'S UNDERWEAR At \$1.50 each—Natural-color Merino Shirts or Drawers; medium-weight shirts, neatly trimmed and finished; drawers durably made. Ninth street.

The WANAMAKER Store

Store Closes at 5:30 o'clock

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JOHN WANAMAKER Formerly A. T. Stewart & Co. Broadway, Fourth Ave., 9th and 10th Sts.