OPINION OF THE CITY ATTORNEY ON FRANCHISE

(Continued from page 7.)

legislature. Municipal corporations are doubtless invested with subordinate legislative powers to be exercised in the passage of ordinances for local purposes connected with the public good but they are merely derivative and are subject at all times to the legislative control."

People Ry. vs. Memphis R. R., 10 Wall. (77 U. S.) 38, page 52.

In Davis vs. Mayor, supra, the New York court had under consideration the action of the council of the city of New York in granting the use of Broadway for a street railway. Action was brought by a payer to restrain and enjoin the construction of the road. The opinion is by Denio, C. J., and among other things he says: "The power of the corporation (New York City) over this subject (the streets) is necessarily very large. It may lay out, open, alter, repair and amend and regulate streets, lanes, alleys and high-ways, and may direct the draining, pitching and paving of them, and moreover the common council are commissioners of high-ways and they may discontinue and close up streets in the manner specified in the act. The corporation of New York in the instance under consideration, assume to establish a railroad running wholly on the city street, without any other legislative authority than the general power to regulate, amend and alter the streets roads and alleys of the city. The foregoing considerations have led me to the conclusion that the resolution of the common council granting to the defendant Sharp et al. the right to lay down a railroad in Broadway, was without the scope of the powers of the corporation and was wholly unauthorized and illegal but I think it was illegal for another reason. The right granted to these associates would be the very definition of a franchise. The privilege of making a road or bridge, or of establishing a ferry and of taking tolls from the citizens for the use of the same, are among the most common examples of a franchise. The board has no powr to grant to any person a franchise for transporting passengers on the public streets, for profit, for a single day, and the attempt to do so was wholly void."

Comstock, J., in concurring says: "Taking, therefore, the whole ordinance together and giving effect to it, according to its terms and intentions, it is no less than an abrogation by the common council of their powers and duties over and concerning the public street and the surrender of a considerable portion of those powers and duties into the hands of private individuals or of a private corporation. This the corporation of New York can not do."

Mr. Dillon (Sec. 716) in speaking of this case says: "The judgment of the court in the case just mentioned rests upon the sound principle that the powers of a corporation in respect to the control of its streets are held in trust for the public benefit, and can not, unless clearly authorized by valid legislative enactment, be surrendered or delegated by contract to private parties, either corporate or natural."

The same action on the part of the municipality came against before the supreme court of New York in Milhau vs. Sharp, supra, and Seldon J., voicing the opinion of the court says: "These privileges (the right to lay tracks on Broadway), whether they create a monopoly or not, constitute a franchise. The granting of franchises was a part of the prerogatives of the British Crown which on the seerance of the Colonies from Great Briton became vested in the people and no franchise can be created in this state without authority to create it derived from the people through the legislature. The corporation of New York can grant ferries (franchises) because that power has been expressly granted to it, but neither the corporation nor the common council has been authorized to create a franchise of the character of that granted in the resolution under consideration. It follows that the resolution, relating to a subject not within the powers of the body passing it, is merely void. On other grounds, without reference to its character as creating the franchise, the resolution is equally objectionable. It amounted also to an immediate grant of the street, and, it would seem, of a freehold interest in the soil of the streets to the defendants. The rails, when laid, would become a part of the real estate and the exclusive right to maintain them perpetually is vested in the defendant, their successors and assigns. If the resolution should be sustained, no power would remain in the corporation to remove the railway after its construction, if it should prove to be a nuisance, or to reduce the rate of fare, if it should be found unreasonably high, or to compel the introduction of any improved method of conveyance, if at any future time such method should be invented, without the consent of the dfendants or their successors; and the powers of the corporation over the street in many other respects would be abridged. Those powers were given to the corporation as a trust to be held and exercised for the benefit of the public from time to time as occasion may require and they could neither be delegated to others nor effectually abridged by any act of the corporate authorities. Such trust is, in that respect, governed by the general principle that the duties of the trustee cannot be delegated without express power for that purpose conferred by the author of the trust. The resolution is therefore, void, for the reason that it purports to create a franchise which the common council has no power to create; to vest in the defendant an exclusive interest in the streets which the common council has no power to convey and to divest the corporation of the exclusive control over a street which has been given to it as a trust for the use of the public and which it is not authorized to relinquish.

The law applicable to the city of New York and its rights to grant a franchise of this character continued as established in the two preceding cases until the amendment in 1874, of the constitution of this state under which amendment, power was granted to the municipality to create and convey franchises and rights of this character whereupon a franchise was granted for Broadway, and the question again came before the court in People vs. O'Brien, 111 N. Y. 1; the franchise then in question was without any express limitations and it was held by reason thereof to be perpetual in its terms and because of the added authority of the municipality, to be valid. The opinion is by Ruger, C. J., and among other things he says: "The titles to streets in New York is vested in the city in trust for the people of the state, but under the constitution and statutes it has authority to convey such title as was necessary for the purpose to corporations desiring to acquire the same for use as a street railroad. The city had authority to limit the estate granted, either as to the extent of its use or of the time of its enjoyment and also had power to grant an interest in its streets for a public use in perpetuity which should be irrevocable."

(Continued Tomorrow.)

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POLICE AFTER A BOY

Wanted on East Side for Thefts at the Northwestern Hotel—Youngster Succeeds in Making His Escape—Whereabouts Unknown.

Last evening the officers from the east side were watching the outgoing trains on both sides of the river for a young boy about 14 years old, small for his age, dark complected and wearing gold rimmed glasse. A warrant had been sworn out for his arrest by Andrew Peterson, proprietor of the Northwestern hotel on the east side.

It seems that things have been missing with surprising frequency and that all things pointed to the boy as the guilty party. This time it is a watch which belongs to Mr. Peterson. Although a close scrutiny was kept on all outgoing trains, the boy was not apprehended last evening.

MALEY GIVEN A TERM

Notorious Niagara Pigger Pleads Guilty After Strenuous Effort to Get Away—Stiff Sentence Given Him as an Object Lesson to Others.

John Maley, who has had somewhat of a strenuous life during the last three weeks, pleaded guilty yesterday in district court to a charge of conducting a nuisance in the character of a blind pig at Niagara, and was sentenced to 130 days in the county jail. About three weeks ago the officers went to Niagara to bring Maley to justice, but soemhow he got wind of the proposed plan of the officers and purchased a walking ticket out of town. A week later he was arrested in East Grand Forks and brought over to the Dakota side, and has since been in durance vile. He will continue to board with Sheriff Turner at the expense of the public.

CONTEST FOR TOMORROW

Tug of War Contest Between the Schools Will Be Pulled Off at the Y. M. C. A.—Five Teams Have Entered—Also a Basket ball Game On.

There will be a tug-of-war contest among the schools of the city at the Y. M. C. A. gymnasium tomorrow afternoon at 3 o'clock. Five schools have entered—Winship, Wilder, Central, Belmont and East Side. A silk banner will be presented to the winning team.

A basket ball game will also be pulled off between the boys' department and the intermediate department of the Y. M. C. A.

DINNIE SAYS IT IS FALSE

Report That He Will Withdraw From Mayoralty Race—Is in the Same Until Polls Close and Assures His Brother So By Wire Today.

> Pasadena, Cal., Feb. 9.—All reports to the contrary, I am a candidate for mayor on the republican ticket of Grand Forks, and am in the race until the polls have closed on election day. —John Dinnie.

The above telegram received today by James Dinnie from his brother, John Dinnie, sets at rest the numerous reports which have been circulated of late by parties evidently having an object therefor to the effect that Mr. Dinnie would not return to this city for some time and that he was to withdraw from the race for the mayoralty.

These reports have been of such a persistent character that The Evening Times is pleased at the opportunity to set at rest any doubts which may have been caused by them as to the intentions of Mr. Dinnie.

Mr. Dinnie will undoubtedly be home in time to get his share of the votes of the citizens of Grand Forks.

A bachelor's idea of a clever woman is one who can induce him to propose.

A woman always looks her age—but not necessarily the age she says she is.

Whisky may be a deadly drink, but water is responsible for more cases of typhoid fever.

Sometimes a woman's alleged fright at the sight of a mouse is simply an advertising scheme.

With the exception of humorists, nearly all men are funny.

Even bald-headed barbers insist on telling hair-raising stories.

A widow should be satisfied with a consolation prize in the matrimonial lottery.

Opportunity makes the man after the man has made the opportunity.

COMMISSIONERS ON TRIAL BEFORE JUDGE GOSS

The Mandamus Case Against Auditor Fabrick at Minot is Still Pending.

Last evening the submission of evidence in the case of the Northwestern Bridge company vs. County Auditor J. W. Fabrick of Ward county was concluded at Minot at 10 o'clock. It will be remembered that Mr. Fabrick refused to pay a warrant for the construction of a bridge ordered by the county commissioners on the ground that it was illegal as the expenditures had exceeded the levy. He was mandamused to show cause why he should not pay the warrant.

The testimony submitted by the defense tended to show that the commissioners had exceeded their authority in issuing the warrant while the defense sought to explain the legality of the act. The arguments by the attorneys relative to the performance of the mandamus will be made this evening at 8 o'clock.

The attorneys for the plaintiff are Geo. McGee and Joseph Denoyer. For the defense, A. M. Gray, J. B. Wineman and L. W. Swnason.

Trial of Commissioners.

This morning at 10 o'clock the court house was packed with an eager throng to witness the opening of the case of the state of North Dakota vs. the Ward county commissioners, Black, Carrol land Richardson. The commissioners are on trial for malfeasance in office and their removal is sought. The interest in the trial today has been intense. Judge Goss is on the bench and all parties interested are skirmishing for positions of advantage.

The state is represented by A. E. Gray, J. B. Wineman and States Attorney Geo. McGee. The defense by L. W. Gamwous and J. E. Greene.

INTEREST IN GRAIN CASE.

Great Northern and Northern Pacific Must Appear.

Much interest is manifested by grain men and especially members of the Wisconsin grain commission as to the outcome of the proceedings instituted by the Globe Elevator company which comes up in the federal court at Madison on March 1. On the latter date the members of the commission are cited to appear before the court and show cause why a temporary restraining order should not be issued against them from interfering with the handling of the company's grain in Superior pending the final outcome of the suit in the courts relative to the constitutionality of the Wisconsin grain law.

As yet the defendants in the case, the members of the commission, Chief Weighmaster Kimball, Chief Inspector Christenson and the Great Northern and Northern Pacific railroads have not been summoned to appear in court, but such summonses are expected within a day or two. The service will not alter existing conditions, which may be changed only by action on injunction proceedings.

The case is of peculiar interest in North Dakota as the grain from the state is effected.

EPIDEMIC OF RUNAWAYS.

Horses Object to Standing in the Cold.

The teamsters who left their horses on the street today with or without weights were surprised when they returned from within some building to find them gone. There were a dozen or more runaways but only one succeeded in getting up any excitement. The big team owned by the Diamond mill started near the Great Northern station on DeMers avenue and ran east. When they passed the Ontario they stirred up one of Howard's single delivery rigs and the bunch headed for the east side and cheer and warmth. The Howard horse had good success but the mill team ran afoul of one of Fuller's dray rigs and both teams went down in a promiscuous pile. Strange to say neither team was hurt. The neckyoke and the pole on the Fuller rig were broken but otherwise no damage was done other than a slight scratch on the neck of one of the horses.

BASKET BALL GAMES

Will Be Played at the University Tomorrow Afternoon—Game With the Mayville Girls Called at 4:15—Boy's Game Follows Immediately.

Tomorrow afternoon the Mayville basket ball teams will play at the university. Both the boys' and girls' teams will arrive in the city in the morning and will be taken to the university, where they will be entertained.

The teams are all in good form and the games will be fast ones. The girls' contest will be called at 4:15 sharp, and after it is completed it will be followed by the boys' game.

The line-up of the girls from the university is as follows:

Louise Baker, center; Helen Sullivan, right forward and captain; Anna Euland, left forward; Dora Hermann, right forward; Maud Wyant, left forward.

Boys' line-up: George Johnson, center and captain; Dunkel or Nelson, right guard; Otto Thoreson, left guard; Arthur Netcher, right forward; Charles Boise, left forward.

The new uniforms have arrived and will be worn tomorrow. They are green.

A friend in need is a friend to steer shy of.

THREE AND FOUR TO RUN VIA ANETA AND LAKE

Work on Yards at Devils Lake to Begin Today—Larimore Out Of It.

The hope of securing trains three and four of the Great Northern for Grand Forks and Crookston has gone glimmering. As soon as the Aneta extension is completed, they will run via Breckenridge, crossing the Northern Pacific at Casselton, Aneta and Devils Lake. Larimore will be out of the fast freight and passenger business for good other than what comes through Grand Forks.

This morning Superintendent Nicholson of the Dakota division left for Devils Lake, where he will spend some time superintending the extension of the yards at that point. Two miles more of trackage will be built not only to acommodate the material for the big bridge across Devils Lake which is arriving, but to accommodate the traffic which will be much heavier at that point.

The cut-off will lessen the distance from St. Paul to the coast materially and all fast freights and trains three and four will go that way. It will mean an hour or two saved in mail service and as much or more in through freight service.

MANY LEAKS ARE FOUND

Supt. Allard and His Assistants Find Many Cases of Where the Current Goes Into the Ground and is Wasted—Trees Are the Cause.

The main trouble and drawback to the electric light plant of East Grand Forks has been located by Supt. Allard and his assistants on First, Second, Third and Fourth streets. The causes of the trouble are trees which have their branches growing into the bare wires. The current strikes the trees and the current naturally takes the easiest course, which is to the ground, is thus wasted and the city loses the value of the power.

The trouble is being eradicated by cutting off the branches which are the cause and the city will be many dollars ahead as a result. In some cases the branches are completely burned through by the current, and from this it can be seen what an enormous amount of power his been wasted in the past year or two. The removing of this obstacle will help materially the plan of furnishing all the power wanted by the residents and citizens. The new voltmeter and antmeter which will be be installed in the near future will help materially in locating such leaks and wastes. The voltmeter will show the voltage of the current which is being wasted by going into the ground and the antmeter will show the amount of the current. The meters will pay for themselves in a very short time if they can locate the large leak which is thought to be in close proximity to the plant.

EAST SIDE NEWS

Got a Moose.

Joe Bendeke who is well known in this city is shaking hands with friends here the last few days. He formerly made his residence here but was at his old trade of hunting this fall. He covered the territory between Bemidji and Duluth in the wilds and reports this fall as one of the best in many years for his profession. Among the trophies of the chase which he secured was a huge moose which was the "antlered monarch of the waste."

Was Up. Jan. 30.

The case of this city vs. H. Luck was up before the supreme court on Jan. 30. The court generally takes two or three weeks to decide a case and the final settlement in this one will be forthcoming within a short time. The case has attracted widespread interest and the outcome is anxiously awaited by all interested.

Friendship Club Met.

The Friendship club met at the home of Mrs. G. Buckley on North Third street yesterday afternoon. Progressive pedro was played and Mrs. Dieken carried off the head prize. Mrs. Holberg won the trophy of the booby prize. A delicious luncheon was served and the guests enjoyed themselves immensely.

Are Coming Fast.

The social events will come in quick succession from now until the 28th, Ash Wednesday, when Lent starts. Almost every night something in the social line wil be doing and then forty days' rest will be celebrated.

Frank Rippel of Bemidji is a visitor with his cousin Will Mundigal of this city.

A New York woman kissed a horse at the horse show, and a lot of donkeys wondered why she was so choice in her selection.

Some men are forever mistaking notoriety for fame.

No one who starts out to hunt trouble has use for a gun.

A hypocrite is a man who prays with his fingers crossed.

Even busy men are never too busy to stop and look at a dog fight.

A coward is a man who knows he is wrong and refuses to admit it.

Some men work an empty honor for all there is in it.

MINOT AND WARD..... COUNTY DEPARTMENT

MORE PIGGERS ARRIVE

Deputy Sheriff Skinner Arrives With Two More—Fines Imposed and Are Promptly Paid By Them—A Tough Bunch Nabbed.

The last of the gang of eleven piggers, gamblers and people of ill-repute brought into Minot last Wednesday night by Deputy Sheriff John F. Skinner, as a result of the wholesale raid he made in Portal on the preceding night, were brought before Judge Nehemiah Davis of the county court yesterday afternoon. They were Jack Rombaugh and Bert Percy, both of whom pleaded guilty to running a gambling joint. The respective sentences pronounced upon them were $25 fine and $50 costs, and $100 fine and $125 costs. Both of these prisoners, whose pockets were lined with "velvet," promptly paid their fines and costs and were immediately released and took the first Soo train for Portal, where they reside.

Rombaugh, for whom there has been a warrant out for nearly a year and who had a path worn for his exclusive use over the border line, claimed that he would never be brought into Minot unless it was in a rough box, but Mr. Skinner brought him into this city handcuffed. A warrant had also been out for Percy for a long time and both of these men are reputed to belong to the gang that has threatened to take Skinner's life, two of whom tried to incinerate Sheriff Lee and his deputy, A. M. Olson, in Portal last Monday night.

William Coin, one of the men referred to above as having attempted to burn Sheriff Lee to death and who was shot by Olson in the attempt, is still confined under guard in the county hospital, where he is rapidly recovering. Coin has a long record for desperate acts. His last offence before the present one was for an attempted murder of a Canadian official at North Portal last autumn and he had only been recently released by the Canadian authorities. At the time of this trouble Coin backed over the line from Canada to the states with a Canadian mounted policeman held under his gun, but he was later taken into custody by the Canadians.

A BRIGHT FUTURE.

Visiting Banker Believes Minot Bound to Be Great City.

Among the prominent bankers from the eastern part of the state in the city recently was Geo. H. Phelps, the cashier of the Commercial bank of Fargo. Mr. Phelps is vice-president of the Farmers' State bank of Upham, of which Mr. Silas Wright Bond of Minot is president and W. S. Young of Upham, cashier. In a ninterview with Mr. Phelps, who is thoroughly conversant with things and affairs in this part of North Dakota, he spoke as follows:

"It was only last summer that I was in your city. From the growth of Minot in these few months I can prophesy wonderful things for you in the next few years. This and environing countries constitute the coming country of Uncle Sam's domain. You have unlimited possibilities. Geographically one locality in every given portion of the country is bound to be the center of trade, learning and population. Minot is the center for this section. The railroad facilities and the general lay of the country make Minot the logical destributing point for a very large area.

"Speaking of the banking business in the Eighth judicial district, the bankers of this district are a bright, keen, active, energetic and progressive lot of fellows and will certainly see that the banking fraternity set a pace for other lines of business to follow."

SHORT ALL AROUND.

Demented Dwarf Short of Cash and Brains Taken Into Custody.

A man giving his name as John Mills and claiming Cincinnati, Ohio, as his home and a printer as his occupation, boarded the Oriental Limited in Seattle Tuesday. He had a ticket for St. Paul. Shortly after the train pulled out of Seattle he gave evidence of being either a drug fiend or mentally deranged. At first his actions did not attract much attention, but when the train got into the eastern part of Montana it became necessary for one of the trainmen to be assigned to watch the man so peculiar and obnoxious to the passengers did he become. Mills, who is a dwarf, was short of money and had had nothing to eat since the time he left Seattle and he was not warmly clothed. In view of all of these facts the conductor of the train deemed it best to telegraph ahead to Minot for police assistance. When the train pulled into this city Wednesday night it was met by Officers Chas. Lake and C. J. Ziegenbren, who conveyed Mills as a prisoner to the county jail. This afternoon the lunacy board of Ward county, consisting of Judge Davis, Dr. Taylor and State's Attorley McGee, examined Mills as to his sanity.

Mrs. William Murray Improved.

Mrs. William Murray, the wife of Judge Murray of Minot, whose life has been despaired of for several days, 's somewhat better. Mrs. Murray is one of the most widely known women of Minot and Ward county, having been identified with the Presbyterian church and a large number of women's organizations for several years.

Bank at Lansford.

Mr. William Zimmerman is spending today in Lansford. Mr. Zimmerman is looking over the site of the old bank burned in that town a few weeks ago, with a view of drawing plans for the erection of a new bank building as well as several other structures to be erected in that town in the near future.

Dr. Windell Improves.

Word was received yesterday from County Coroner Dr. J. D. Windell, who is recuperating at Trinidad, Colo., to the effect that he is on the sure road to recovery from the malady which made advisable his going to that health resort.

West for Her Health.

Mrs. W. H. Parker of the Leland hotel, who has been very sick for several weeks has materially improved. As soon as able to stand the trip, Mrs. Parker expects to joint her husband in Los Angeles, Cal.

Mr. George H. Phelps, cashier of the Commercial Bank of Fargo, vice president of the Farmers' State Bank of Upham, who has been in Minot for three days attending the bankers' convention, returned to his home in Fargo on the Soo last evening.

Mr. N. B. Ludowese of the Ludowese-Smith Realty company of Williston is transacting business in Glenburn today. Mr. Ludowese is the owner of a number of choice pieces of land in the vicinity of Glenburn.

Mr. J. A. Roell, the Minot hardware merchant, has returned after having been away on a business trip covering two weeks, spent in Chicago and the Twin Cities.

Among those who left Minot Wednesday night on the Great Northern for the Twin Cities and Fargo were L. L. Emerson, Frank McGraw and Mrs. L. Larson.

Mr. John Stenerson of the firm of Devine, Stenerson & Co., returned this morning from his expedition into the wilds of McKenzie county.

Miss Hannah Lagerwall of Tracy, Minn., is visiting her cousin, Miss Ellen Reinhold at the latter's residence in Minot.

A RACE ARRANGED.

Ted Schumacher Will Meet O. W. Anderson of St. Paul in the City Monday Evening.

Ted Schumacher, champion professional skater of North Dakota, returned from St. Paul last evening, and while there arranged a meeting with O. W. Anderson, a fast skater of the saintly city, the race to be skated at the Dacotah ice rink in this city on Next Monday evening, Feb. 12. Anderson is a fast skater and a good race is expected. Season tickets will not be accepted at the rink on that evening and the admission price will be as usual, 25 cents.

Where there's a will there's a feast for lawyers.

H. F. Maloney

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