

GREAT HAN EVER

We cannot all go to the World's Fair, but we can go to

1892

THE UTAH TERRITORIAL FAIR

1892

Which is at Our Doors.

EXPOSITION BUILDING, SALT LAKE CITY, October 4th, 5th, 6th, 7th and 8th, 1892.

THE DESERT AGRICULTURAL AND MANUFACTURING SOCIETY, HEBER M. WELLS, Secretary. CURTIS P. MASON, President.

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BOTH ARE WRONG.

Neither of the College Boards Can Draw the Cash.

It Must Be Expended by Persons Appointed by the Governor—The Supreme Court's Decision.

The supreme court yesterday handed down an opinion in the case of W. S. McCornick et al., trustees Agricultural college, vs. Arthur Pratt, auditor of public accounts; and George W. Fletcher et al., intervenors and appellants—appeal from the Fourth district court.

The plaintiffs, as trustees of the Agricultural college of Utah, made application for an alternative writ of mandamus against the defendant, as auditor of public accounts for the territorial treasury, for the sum of \$16,250, in favor of the treasurer of the board of trustees, or show cause why he should not do so.

The members of the board of construction, named in the act, intervened and asked that the mandate for the writ be awarded to them. Both plaintiffs and defendant demurred to the petition of intervention and the defendant demurred to the petition. The former were sustained and the latter was overruled. The peremptory writ was awarded to plaintiffs, and the intervenors appealed.

The application of plaintiffs set out that they were trustees of the agricultural college, and had duly organized as such board and by the laws of the Territory were required to have charges of all appropriations made for that institution and the erection of all buildings, etc.

On the 10th of March, 1892, the legislative assembly appropriated \$16,000 for the Agricultural college, which sum was expended by a board to consist of G. W. Traubner, I. D. Harris, and William Goodwin, who were to receive \$500 for their services and give a bond of \$50,000, and elect a chairman upon whose order warrants should be drawn by the auditor.

On the 9th day of May, 1892 the plaintiffs demanded of the auditor that he issue to the treasurer of the board of trustees a warrant for \$16,250.

The intervenors claimed to constitute the board of construction and to be entitled to the appropriation set apart for that purpose; that they had duly organized and qualified as required by law and on the 8th day of May demanded of the auditor that he draw the warrant for the sum of \$16,250 in favor of said board, which he refused to do.

Sec. 5, p. 654 Compiled Laws provides that the governor, secretary, and assessors of Cache, Davis, Utah, Salt Lake and Sanpete shall be ex officio trustees for the Agricultural college, and by an act of March 3, 1892 (Compiled Laws) he is to be the financial affairs of the college, and the supervisor of the erection of the college building, and the making of all contracts hereof, were placed in his hands, but the governor and legislative council seem to have assumed that Sec. 3 of the act of 1888 was invalid so far as it provided who should fill the office of trustee, etc.

By the organic act of the territory (section 7) it is provided that the governor shall nominate and by and with the advice and consent of the council appoint all officers not otherwise provided for, etc.

We think that the position of trustee provided for in the territorial act of 1888 is an office within the meaning of section 7 of the organic act, and must be filled as therein provided. The college was designed to be one of the permanent institutions of the territory, to be under the control of trustees, etc. It was made their duty to establish professorships, take charge of the agricultural experiment station, and that they should give bonds for the performance of their duty.

It will be seen that they are charged with important public duties, affecting the whole people, of a continuing nature, and have a fixed compensation. We also think that section 3 of the act establishing the college is invalid so far as it designates the persons who shall be trustees, being in contravention of section 7 of the organic act, but as far as it established a board to be appointed by the governor and council it is valid. It is contended by plaintiffs that the members of the board of construction, named by the act of 1892, are officers and must be appointed by the governor, and that so much of the act as appoints them is invalid, while the remainder of the act is valid and the appropriation must be expended by the trustees. While the intervenors insist that the board of construction are not officers but merely agents or employees, and if it shall be held that they are officers then they must be appointed by the governor in lieu of those named, and until such appointment there is no one to draw and expend the money.

The court then discusses the question of what constitutes a public officer and quotes many authorities. In the case of the state vs. Stanley (35 C. 25) it is held: "A public office is an agency for the state, and the person whose duty it is to perform this agency is a public officer." The essence of it is the duty of performing an agency, that is, doing some act or acts, or series of acts for the state. A clerk in the department of government, persons authorized by legislature to appoint commissioners to build a state house, a commissioner for the construction of a highway, a levy commissioner, etc., etc., and so on, have all been held to be officers.

In the 3, N. Y., p. 605 Judge Davis said: "Probably the true test to distinguish officers from simple servants or employees is the obligation to take the oath prescribed by law." In the 6, Utah, 409 it was held that where the county court appointed a member of the body to attend to the business during vacation, at a fixed salary, and designated the position as superintendent of county affairs, it was held to be the creation of an office.

In the present case it would seem that the legislature intended to establish an office by requiring the officials of it to be taken. In the case of United States vs. Maurice, 2 Brock 108, Chief Justice Marshall said: "An office is a public charge or employment," and if the duty be of continuing one, which is defined by rules

prescribed by the government, and not by contract, and those duties continue, it seems difficult to distinguish such charge from an office."

The principal case relied on by the appellants is Hunt vs. the people, 45 Ill. 357, in which it was held that commissioners to build a state house were not officers, but in that case the court says: "There is no intention manifested in the act to create an office." They are not required, as they would have been if the law makers supposed they were officers, to take an oath to support the constitution of the United States and of this state." The members of the board of construction are charged with an important public trust— their duties are of a continuing nature— the duration of their office may be more than one year. They are required to give bond and take the official oath, and hence we think they are officers and must be appointed by the governor and legislative council. The fifth section of the act of March 10, 1892, contains a clause repealing all acts inconsistent with it. This takes away the right of the trustees to expend the appropriation and confers it upon the board of construction.

The intervenors not having been appointed by the governor such board are not entitled to draw and expend the appropriation. It resulted therefore that neither the trustees nor the intervenors are entitled to a writ of mandamus against the auditor, and the judgment of the district court must be reversed and the case remanded with directions to dismiss the application of the plaintiff and the petition of intervention.

The appropriation does not, however, necessarily fall by reason of the conclusion reached by us. Under the authority of Clayton vs. Utah territory, the governor is authorized to appoint suitable persons as members of the board of construction, and that board, when appointed, will be authorized to draw the appropriation and spend it in the erection of buildings as contemplated by the statute.

The defendants to pay costs of themselves and defendants, and the intervenors to pay the costs made by themselves. The opinion was by Judge Anderson, Blackburn and Zane concurring.

MINOR COURTS. COMMISSIONER BHOOTH. Grand Island Clear Co. vs. Joseph Dunder; judgment, \$127.35.

Hake & Redington vs. S. F. Denery; suit for \$125.85, merchandise.

Samuel Ditchfield vs. H. C. Neilson; suit for \$80.25 on note.

J. B. Blaser vs. H. G. Fox; to recover two horses and buggy.

COMMISSIONER GREENMAN. Ernest and Ed Green; charged with horse stealing; discharged as to Ed Green and continued till Tuesday next.

JUSTICE HALL. S. D. Evans vs. Lottie Miner; for \$64.30, promissory note.

Godde Pitts Drug Co. vs. J. D. Trumbo; for \$100, on account.

A. C. Ewing vs. A. W. Windberg; for \$38.75, services.

JUSTICE KROEBER. Edward Brook vs. O. D. Aitkens; judgment for \$27.70.

Anthony Kosen vs. D. G. Whitbore; for a horse; set for Sept. 5.

THE SPRINGVILLE CREAMERY CO. The Capital Stock is \$10,000—Shares, \$10 Each.

The Springville Creamery company has been incorporated to do business at Springville, U. T.

The capital stock of the company is \$10,000, consisting of 1,000 shares of a par value of \$10 each.

The following are subscribers to the capital stock.

Table with columns: Name, Shares, Amount. Lists subscribers like S. S. Wood, L. D. Crandall, J. H. Allman, etc.

Beecham's pills will save doctors' bills. Fat man's race, old man's race, woman's race, girl's race and other sports and games at Castile Springs tomorrow.

ACADEMY OF DANCING. H. B. Younger's school for ladies and children every Saturday afternoon at 2 o'clock. Ladies' and gents' class every Tuesday evening at 8 o'clock.

WALTER L. PRICE & CO. 64 Main street, vegetables, fruits and poultry. We make these the lines of goods a specialty. Give us a trial.

ANTE-ROOM ECHOES.

I. O. O. F. Grand Lodge Members and Delegates Elected.

Death of Two Rejourning Masons—Pythian Sister's Sealable—A. O. U. W. Increases—Sons of St. George and Calceola Club.

More activity has been apparent in the fraternal orders during the week just past than for some months. The local lodges are getting down to work again. The Masons are rousing themselves from the summer lethargy and commencing their regular meetings again for the coming season. The Odd Fellows are looking forward to the meeting of the Supreme Grand Lodge at Portland on Sept. 19, and also to the meeting of the grand lodge of this jurisdiction early next month.

The Knights of Pythias are getting into line for the winter campaign, and the A. O. U. W. folks are working like beavers to secure the necessary number of members to make a separate jurisdiction of Utah and Wyoming. They believe that Active is a good boy but Rustle brings in more members.

A. F. & A. M. The Utah chapter met in the Masonic hall on Wednesday evening and worked in the past master degree, into the mysteries of which three novices were initiated. The chapter will meet on Wednesday and confer the most excellent degree and the royal arch on three members. The proceedings will finish with a grand banquet, to be held at the Saddle Hook restaurant.

The regular meetings of the blue lodges commence again this month. Argenta lodge will meet on Tuesday evening and the other two lodges, Wasatch and Mount Moriah, will hold their first meetings next week. The Commandery meets on Thursday evening for regular business.

The board of relief had two cases to attend to. One was that of Brother Frank Armstrong of Terre Haute, Ind., who died at the Knutsford hotel in this city on Wednesday morning. The remains were taken charge of by the board at the request of the brother of the deceased who arrived on Saturday and the body was shipped to the home of the deceased. A number of the brethren accompanied the remains to the depot.

The other case was that of Dr. J. R. Nichols, member of the Grand lodge, who died at Sandwich, Mass., and was buried under a visitor to Salt Lake and was buried under the auspices of Mount Moriah lodge, in the Mount Moriah plot at Mt. Olivet cemetery in this city. A large concourse of Masons followed the remains to the grave and tenderly laid away all that was mortal of the brother.

Odd Fellows. The delegates from the east to the Sovereign Grand lodge, which convenes at Portland, Or., on Sept. 19, will stop off at Salt Lake for a day en route to Portland. The patriarchs will arrive in this city early on the morning of Sept. 14, in their special car, over the Union Pacific road, and will be met at the depot by the Salt Lake lodge, which will be in charge of them until they reach Portland.

The elections in the local subordinate lodges for delegates to the Grand lodge and also for members of the Grand lodge for the coming year were held in most of the lodges throughout the jurisdiction during the past week. Just who has been elected to the positions of Grand lodge officers will not be known until the second day of the meeting of the present Grand lodge officers in the city about the middle of October, as the ballots will not be opened until then. It is, however, generally believed that Harry E. Evans will be the successful candidate for grand master and that the present grand secretary, J. J. Thomas, will succeed himself in that office.

The elections on Monday night in Jordan lodge for representatives to the Grand lodge resulted in the return of Past Grand W. H. Roy, B. W. Jensen, A. Hollander and J. C. Harnay. There was no meeting of the encampments last week, but the Canton met to transact routine business and nothing of special interest transpired.

On Wednesday evening Enterprise lodge No. 15 met and did the usual work besides electing nine representatives to the Grand lodge. Enterprise is a very large lodge and is entitled to send nine representatives, who are Past Grand E. P. Newell, W. H. Culmer, W. H. Hodges, G. D. Somers, J. C. Schmidt, E. Walker, C. W. Wiesco, J. M. Breece and N. M. Elliot.

Enterprise lodge had also a good and well attended meeting on Wednesday night at which Past Grand Dr. S. Ewing, E. W. Loder and F. J. Herman were elected to represent Enterprise in the Grand lodge. There was a very interesting meeting of Utah No. 1 on Thursday evening, at which a presentation of a beautiful diamond ring was made to Brother Rowe, who left this city yesterday for San Francisco to reside permanently. Brother Rowe has been connected with the firm of Walker Bros. & Fryer for some years. He was always a zealous Odd Fellow and distinguished himself as deputy master of the Union degree staff of Utah and Salt Lake lodges. The presentation was made jointly by these two lodges. The grand master made some very appropriate remarks and in a graceful manner did the presentation. The lodges lose a good member and a faithful worker by the departure of Mr. Rowe.

The representatives from Salt Lake lodge No. 1 are Past Grand C. O. Farnsworth, J. W. Greenman, A. C. Ewing, William McGuffey and C. W. A. Seall. There was no degree work at the meeting of this lodge on Friday night. There was, however, a fair attendance, and an interesting evening was spent. Fidelity lodge also met on Friday evening and conducted the regular business. The representatives elected at the previous meeting were Past Grand C. W. Harris, Dr. George G. McKibbin and James Nelson. On Saturday evening Miriam Rebekah lodge had a good meeting. Several visitors were present who enjoyed the evening very much. The degree of the order was conferred on three novices. The work was done in good shape and a profitable and pleasant time enjoyed.

Pythias. The delegates to the convocations at Kansas City came home on Monday. They were well pleased with their trip and were highly elated with the manner in which they had been entertained by the Kansas City folks. The Uniform Rank have commenced their regular meetings again, the first one of the season being held Friday evening. The Knights were present in strong force and full of energy and hope for the coming season. Drills will be conducted every Friday evening from this on. Caliente lodge held its usual meeting on Monday evening. The rank of page was conferred on two candidates and that of knight on one. The following were very long on, lasting till near midnight, and a good deal of routine business was transacted.

Mertie lodge had a business meeting on Tuesday evening. There was no degree work, but several visiting brothers were present and were cordially received. There are half a dozen candidates to come up to receive the rank at the next meeting of the lodge. Rocky Mountain lodge had a big meeting on Tuesday night. The first or party's rank was conferred on eight candidates. It was a very big evening's work, but it was well and carefully done and could not fail to make a deep impression on all those who were present. There were several strangers present who expressed themselves as highly gratified with the workings of the lodge.

The dedication of the new Pythian hall will take place some time this month. The members of Ivy Temple Pythian Sisters gave an ice cream festival Saturday evening. The entertainment was well patronized by members of the order and their friends, and the Knights of Pythias hall on Richards street was well filled. There were songs, recitations and speeches and a most pleasant and enjoyable time was had.

A. O. U. W. The members are all working hard and new names are being added to the roster every meeting night. Salt Lake Valley lodge on Thursday evening initiated five new candidates, viz. J. W. Taylor, John Smith, George Braby, Robert Braby and William Thomas. Eight applications for membership were received and placed on file, and will be acted on in due course. Temple lodge had a well attended meeting on Monday evening, and several applications to join were received. This lodge is picking up and seems to have entered on a new course of prosperity.

The Rocky Mountain Workman for this month is out and is the best number of that paper which yet appeared. It contains three very fine cuts relating to the early history of the order; also an excellent cut of J. J. Upchurch, the founder of the A. O. U. W.; also the full proceedings of the grand lodge at its meeting in this city Aug. 17 to 21. The Workman is undoubtedly one of the very best fraternal papers in the country. Organizer J. P. Meakin, assisted by John P. Meakin, will start out Sept. 15 on a journey through northern Utah, Idaho and Wyoming to organize new lodges. They have a fine field to work in and expect to institute a dozen new lodges within the next three months. In reference to the defections of grand receiver Heinrich of Ogden the Workman has the following to say: "The daily press several days ago indulged in some startling headlines and sensational reading matter concerning Grand Receiver Heinrich. Of course it was a case of where there's smoke there must be fire; but the magnifying of the matter did so good to either the dailies or the 'defector.' That a wrong was done by Mr. Heinrich is conceded, but not irreparable one; the shortage was made good by his bondsmen yesterday, so the order loses nothing by his error. "H. W. Day of Salt Lake Valley lodge, was the recipient of a handsome past master workman's gold badge, bestowed by his fellow workers, who recognized in him a faithful, devoted and efficient officer. The presentation was cutely and cleverly done by Brother W. H. Culmer."

Temple of Honor. This order met on Thursday evening. There was little beyond routine business to employ the members. The pamphlet which a committee has been working on is about completed and will be printed in a couple of weeks. The publication will set forth the aims and objects of the order, and will be republished with additions and alterations to all members throughout the territory, as the pamphlet treats of general as well as local matters. An interesting discussion was held in which Brothers Clark, Knowlton, Folsom, Spencer, Allen and others took part. The next meeting will take place on Thursday evening, and as matters of interest are to be discussed, a full attendance is requested.

Order Sons of St. George. The air knights of the Sons of St. George held their next meeting on Wednesday, Sept. 7, at the Temple of Honor hall, when all Sir Knights who can make it convenient to be present are requested to be there to determine when and where their 'out' is to be. It is a great satisfaction for the officers to announce to all the members that the lodge is entirely free from debt with a snug little sum in the treasury as well. There is not the least doubt that the Sons of St. George will be one of the leading benefit societies in Utah and one of the best. The progress made during the last year has surprised the members themselves, but it is all owing to the

indomitable pluck and perseverance that is bound to show itself in the blood of every true born Briton. One of the most pleasing evidences of this was demonstrated on the night the Sir Knights conspired together and planned a surprise on Brother Holgate at his residence 924 E. Ninth South street, and spent one of the most enjoyable evenings of their life. The ties of brotherhood and country all help to make a most enjoyable social. Most of the Sir Knights bringing their wives while those who were not fortunate enough to be in possession of one brought along some of the most beautiful ladies they intended to make so one of these days. The festive dance and joyous song with other entertainments that ladies and gentlemen from the old country know how to dispense an evening's entertainment and make it enjoyable being passed. Brother Holgate being absent from the city for something, the Sir Knights came to the conclusion that they could not do better than welcome him back by getting a genuine surprise on him, which they did to his heart's content, and his earnest wish that they would do it as many more of the same sort upon him as they thought proper, especially when they came from the Sir Knights of the Sons of St. George.

Caledonian Club. The Caledonian club begins its regular meetings next Tuesday eve, Sept. 6, at 8 o'clock in Temple of Honor Hall. A full attendance of present members and visiting brethren is requested, as the club desires to make the season of '92 and '93 a memorable one. The applications of good law-abiding social Scots are earnestly desired, as the club wishes to add to its already good name in the community. The social events of the Caledonian club are our most popular affairs of the winter season, and Governor Thomas and other Zanes are always guests of honor, and they always enjoy themselves. The leading officers and members of the club are Judge McDowell, Simon Grove, J. D. Armet, John Alexander, the chronic billiardist and champion of Utah, David Henderson, Utah's Scotch poet, James Milligan, W. S. Scott, W. H. Gallagher and last, but not least, the "Caledonian Twins," "Jimmie" Moffat and "Willie" Robertson. The club promises a grand New Year's entertainment.

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