

LAWYERS TROUBLED THE JUSTICES

Rival Boards of Supervisors Open the Fight in the Supreme Court.

COULD NOT AGREE ON FACTS.

Attorneys Wrangled Until the Justices Decide Testimony Must Be Taken.

REFERRED TO JUDGE SEARLS.

Rainey Shows His Hand by Inducing Joseph Greenberg to Petition as an Intervenor.

The rival boards of Supervisors looked menacingly at each other in the Supreme Court yesterday afternoon. A galaxy of pleaders ranted along the desks facing grave Justices. Political hangers-on crowded the corridors leading to the hall of justice were occupied and the aisles were blocked by the surging crowd.

The petition of Thomas Morton, ex-Supervisor, for a writ of mandamus which would compel Auditor Broderick to spread on his books the tax levy fixed by the Fulton lodge-house lawmakers was to be argued. It was a matinee performance for the "push" and many citizens, but for the ousted Supervisors it was different. To them it was a most serious affair.

The petition of Morton was to be heard in the morning by the Justices in bank, but, owing to the absence of Justice Temple, the hearing was continued until the afternoon. All of the Justices occupied their seats when the court convened, and the argument over the petition was soon in full blast. The Justices soon tired of it, and, concluding that the attorneys could not agree on facts, adjourned, after instructing them to present testimony that would determine the facts in question to Commissioner Niles Searls. Testimony was taken until 5 o'clock, and then an adjournment was taken until this morning.

The proceedings proved quite interesting. The hand of the bulky Democratic boss, Sam Rainey, appeared in no uncertain light. It was through his agency that Joseph Greenberg, a foundryman who has some contracts with the city, was induced to file a petition in intervention yesterday morning. As an intervener, he joined with Morton and asked that the writ be granted. The admissions of Greenberg when asked his reasons for filing the writ caused a mild sensation, but when he was asked by the ex-janitor selected by the ousted Supervisors as clerk, declared on the witness-stand that he had not been sworn in by anybody as clerk, and that he had given no bonds to faithfully perform his duties, the crowd smiled and the late Supervisors looked at each other in a forlorn sort of way.

The Auditor, who was the respondent to the petition, was represented by Attorneys W. T. Baggett, E. W. McKinstry, George W. Schell and City and County Attorney Creswell. The latter, however, took no part in the proceedings. The fight of the old board and Petitioner Morton was looked after by Attorneys Garret McKinstry, E. S. P. Hilsbury and John Garret. Mayor Phelan, who was the respondent for a while, but when the discussion became interesting he secured a chair behind Attorney Baggett.

The proceedings opened with the reading by Attorney Baggett of the respondent's answer to the petition. It admitted the election and qualification of the old board, and also that it had entered upon the duties of office, but denied that the old board was in possession of the office and that the complaint filed in the superior court, which ousted it, was a pretended one.

The answer recited all the facts relating to the ousting of the old board and stated that on September 16, the day on which Judge Wallace rendered his decision, the old board of Supervisors ceased to exist and at that date it had not been in office. It recited the fact that since September 16, the respondent had not performed the duties of the office. It stated that the old board had, on September 20, pretended to appoint James E. Britt as acting Mayor. The answer denied that the respondent had any claim that he ever approved the tax levy.

It denied the fixing of a levy by the old board and that the real board of Supervisors ever demanded that the Auditor compute the taxes at the rates fixed by Morton and the other ousted Supervisors. The appointment of the new board by Governor Budd and Mayor Phelan, subsequent to the decision of Judge Wallace, was set forth. It recited their qualifications and the taking of possession of the offices and rooms of the board without hindrance. The meetings and doings of the new board were related. It declared that the levy fixed by the new board was approved by Mayor Phelan, certified by Clerk Russell and delivered to Auditor Broderick with a demand that he, as Auditor, should compute the tax.

It ended with the statement that Clerk Russell had control of the books and papers of the Board of Supervisors, that Mayor Phelan had presided at all the meetings of the new board and that the right of the new board to act as the Board of Supervisors had been recognized by City and County Attorney Creswell, the legal adviser of the Board of Supervisors. After the reading of the answer Attorney Baggett moved for a dismissal of the petition for a writ of mandamus, and stated that certain questions of fact had been raised and they must be decided.



The Justices of the Supreme Court Sat in Bank Yesterday to Hear Arguments in Reference to the Supervisory Wrangle.

Ernerney, said: "He denies that you acted as a Board of Supervisors, and alleges that you ceased to be a board when the judgment was rendered."

Mr. Baggett, for the petitioner, answered by saying: "We claim that we were never ousted and that we are still the de facto board. They claim they were appointed by Mayor Phelan, and took possession of the office without hindrance. The assertion has been entered on the beginning that they took possession except by act of violence after this appeal had been taken."

Mr. Baggett—That is the first time I heard it claimed that the new board took forcible possession. That is to be contested. We must show that the new board is the de facto board, and that the writ is a null and void.

Mr. McKinstry—We also want to show that Mayor Phelan never organized the so-called board, and that six of them are not electors of the wards from which they were appointed.

The argument then drifted from one proposition of law to the other. The form of the mandamus proceedings was argued, and Justice Beatty, addressing the attorney of the new board, said: "The fact that you show that the Auditor refused to accept the levy is not a question of mandamus?"

Mr. McKinstry replied that it must first appear that the board is a legal body. "We show why they were removed," added Mr. Schell.

"They want to show whether or not the proceedings by law removed them," answered Justice Beatty.

Mr. Baggett said he wanted to get at the proposition as to what matters were to be considered.

Justice Beatty, addressing Mr. Baggett, said: "You claim to be a de jure board, and that if you are not de jure you are de facto. Then you make that an issue of fact. You make that claim formally on the record and then it is a disputed question. I don't see how we can decide it without taking evidence."

"We claim that we acted as a board until the Mayor called upon the Chief of Police, who forcibly ejected us," said McKinstry.

"The matter is disputed," said Justice Beatty. "We will have to refer it. We have no time to hear the discussion."

Justice Beatty, who was appointed by Britt and Haskins, and the delivery of their alleged tax levy to him.

Robert P. Barton, the ex-City Hall janitor, who was selected by the old board to act as clerk, was next called.

He testified to the correctness of the minutes he kept and amused the crowd by declaring, "I am the clerk of the Board of Supervisors elected by the people."

"Who swore you in as clerk of the Board of Supervisors?" asked Attorney Baggett. "I have not been sworn in," answered Barton.

"No, but I repeat I have ten days to file them," replied Barton.

At this stage of the proceedings Thomas V. Cator insisted on placing Intervenor Greenberg on the stand. When Mr. Baggett asked him who got him to intervene he said: "I was informed by the Fire Commissioners that I would have to intervene to get my money. I received a telephone message to that effect from George Maxwell, secretary of the commission. I went out to the Commissioners' rooms and Mr. Maxwell introduced me to Mr. Cator, who he said was the attorney in the case. Mr. Cator then said he heard that I wanted to find out if my contracts with the city were legal. I let him attend to the matter."

ROTTANZI IS NOT SATISFIED

Resigns From the Chair of the Health and Police Committee.

The Board of Supervisors Holds Two Quite Interesting Sessions.

Positions Are Abolished in the Interest of Economical City Government.

The Board of Supervisors went on with its work yesterday just as though an "ousted eight" was not striving in the Supreme Court to regain positions from which Judge Wallace had ousted them for disobeying the law.

An adjournment was then taken until 8 o'clock in the afternoon with Mayor Phelan in the chair and proceeded at once to discuss the committee as prepared by Mayor Phelan.

Supervisor Barry objected to the consideration of the matter on the ground that he could not be well considered as a member, inasmuch as his resignation had been in the hands of the Mayor for a week.

In spite of his objections the committee as printed in THE CALL were ratified.

A resolution calling for more energetic work in finishing the roof of the hall was passed.

The resolution recited that inasmuch as the rainy season is approaching and valuable public documents were in danger through the unfinished condition of the roof it was imperative that the structure should be completed at the earliest possible moment.

The Committee on Public Buildings recommended that Haterman Bros., contractors for the Hall of Justice, shall be given thirty days' extension of time on the job, and the board voted to approve the matter.

The board was in session the members were served with subpoenas to appear before the Supreme Court to-day in the suit for a writ of mandamus brought by the ousted board to compel Auditor Broderick to recognize its tax levy.

An adjournment was then taken until 8 o'clock in the evening, at which time the full board assembled. Dr. Rottanzi arose to a question of personal privilege and stated that he desired to resign the chairmanship of the Committee on Health and Police, and that if deficits were to occur he did not want to be a party to them.

Supervisor Barry objected to changes, and Supervisor Rottanzi in reply scolded the Mayor and Dr. Clinton for advising the board to go into the matter of fixing water rates. He also strongly criticized Judge Wallace for his decision in the matter.

His resignation was accepted, and the chairmanship of the Committee on Health and Police will be filled by Mayor Phelan.

Mayor Phelan's veto of the appointment of Joseph Dunne as Assistant Prosecuting Attorney was sustained, and on motion of Supervisor Clinton the office of Police and Game Warden of the city and county was abolished.

A resolution was adopted warning the heads of all departments that they must live within their appropriations.

STREET IMPROVEMENTS. Summary of the Week's Work Acted On by the Board.

The following is a complete summary of the street work acted on by the board during the week, including recommendations still to be considered:

RESOLUTION ORDERING STREET WORK. S. O. CROFT AND O'FARRELL—PAVING. RECOMMENDED PASSED TO RESOLUTION ORDER.

Pond, Sixteenth to Seventeenth—Curbs, paving, etc. Market and Castro—Paving.

RECOMMENDED BY SUPERINTENDENT OF STREETS. Broderick, Washington to Jackson—Curbs and paving.

Broderick and Pacific avenue—Paving and sidewalk.

Lyons, Jackson to Pacific avenue—Curbs and paving.

Lyons and Jackson—Paving.

Lyons, Bush to Pine—Same.

Devaladero, Pacific avenue to Broadway—Same.

Twenty-second and Alabama—Sidewalks and paving.

Clinton Park, Valencia to Guerrero—Same.

Clinton Park, Guerrero to Dolores—Same.

Clinton Park, Dolores to Valencia—Same.

Clinton Park, Valencia to Guerrero—Same.

Clinton Park, Guerrero to Dolores—Same.

Clinton Park, Dolores to Valencia—Same.

Clinton Park, Valencia to Guerrero—Same.

Clinton Park, Guerrero to Dolores—Same.

Clinton Park, Dolores to Valencia—Same.

Clinton Park, Valencia to Guerrero—Same.

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Clinton Park, Valencia to Guerrero—Same.

Clinton Park, Guerrero to Dolores—Same.

Clinton Park, Dolores to Valencia—Same.

Clinton Park, Valencia to Guerrero—Same.

Clinton Park, Guerrero to Dolores—Same.

Advertisement for a sale of black silks by Newman and Levinson. Includes text: 'A Sale of Black Silks. When the hour of 10 comes around to-morrow (Wednesday) morning we will hold another of our silk sales. A lot of exceptionally handsome brocaded silks, worth \$1.00, \$1.25 and \$1.50 per yard, will be sold for 75 Cents per Yard.'

Advertisement for United States Laundry. Includes text: 'UNITED STATES LAUNDRY, OFFICE, 1004 Market St., Near Powell. Telephone, South 420.'

Advertisement for Anti-Jag. Includes text: 'ANTI-JAG. A marvelous cure for DRUNKENNESS, can be given secretly at home. It is harmless. Large bottles of Anti-Jag at druggists, retail agents, wholesale and export. Wholesale and export, A. J. & M. CO., 1004 Market St., San Francisco, Cal.'

Advertisement for San Francisco & North Pacific Railway Co. Includes text: 'SAN FRANCISCO & NORTH PACIFIC RAILWAY CO. Tiburon Ferry—Foot of Market St. San Francisco to San Rafael.'

Advertisement for Electro-Medical Institute. Includes text: 'STATE ELECTRO-MEDICAL INSTITUTE. Cor. Market, Powell and Eddy Sts., S. F. Entrance, 3 Eddy St. New and Successful Methods for Curing Disease.'

Advertisement for Santa Fe Route. Includes text: 'SANTA FE ROUTE. PRACTICALLY A NEW RAILWAY. Trains leave from and arrive at market street, Ferry, San Francisco Ticket Office, 104 Market Street, Chronicle Building, Telephone No. 1321, Oakland, 1125 Broadway, The Best Hotel—San Francisco to Chicago.'

Advertisement for North Pacific Coast Railroad. Includes text: 'NORTH PACIFIC COAST RAILROAD (Via Sausalito Ferry). From San Francisco, Commencing Sept. 19, 1897. For Mill Valley and Sausalito—7:25, 9:30, 11:00 A. M.; 1:45, 3:45, 5:15, 6:00, 6:30 P. M. Extra trips for San Rafael on Mondays, Wednesdays and Saturdays at 11:30 P. M.'

Advertisement for Wright's Indian Vegetable Pills. Includes text: 'Wright's Indian Vegetable Pills. Are acknowledged by thousands of persons who have used them for over forty years to cure SICK HEADACHE, GIDDINESS, CONSTIPATION, torpid liver, Weak Stomach, Pimples and other troubles.'

Advertisement for Crossman's Specific Mixture. Includes text: 'Crossman's Specific Mixture. With this timely mixture you can cure yourselves without the least exposure, change of diet, or change in application to business. The medicine contains nothing that is of the least injury to the constitution. Ask your druggist for it. Price, \$1 a bottle.'

Advertisement for Mount Tamalpais Scenic Railway. Includes text: 'MOUNT TAMALPAIS SCENIC RAILWAY (Via Sausalito Ferry). Leaves San Francisco Commencing Sept. 13, 1897. WEEK DAYS—9:30 A. M. Arrive S. F. 4:55 P. M. SUNDAYS—8:30, 10:30, 11:30 A. M.; 1:15 P. M. Special trips on Wednesdays for by applying to THOS. COOK & SON, 621 Market St., San Francisco, or telephoning 1261 of Market St.'