

# THE TETON PEAK.

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NO. 40.

## SUPREME COURT REFUSES WRIT.

The State May Go on With The Issuing of Its Bonds.

The Idaho Supreme Court has rendered a decision denying the application of Edwin Stein for a writ of prohibition against the governor, secretary of state, attorney-general, and state treasurer, restraining these officers from issuing the state bonds authorized by the last legislature. As \$20,000 of this bond issue was for the payment of any sugar bounty that might be earned, last year, the case has excited much interest in that city and all over the state. The court does not go into the question at all on the constitutionality of a sugar bounty, but merely decides against the application on the technical point that a writ of prohibition will not lie against an officer of the state from performing a ministerial act. This decision refers to a former decision of the court in the case of Williams vs. Lewis.

Major Richard W. Young, attorney of the Idaho Sugar company, said that the sugar bounty question will have to come up separately and will be tried on its merits before the court. What the next step will be has not as yet been decided on, but as the representatives of the state of Idaho are daily certifying to the correctness of the sugar company's claims against the state in turning out sugar, and as certificates will be issued to the company for the bounty earned, it is probable that the company will have to take steps to enforce the issuance of state warrants, should such issuance be denied by the state auditor. It is hoped however, that the official will not refuse to follow the plain mandates of the law, and that there will be no trouble in the collection of the claims.

The case decided was conducted before the supreme court by John A. Bagley, attorney-general, on behalf of the validity of the act. Messrs. Wood & Wilson, attorneys for other defendants interested, and Ralph P. Quarrels, attorney for the plaintiff, Stein. The points relied upon by Mr. Bagley were as follows:

First—The official capacity of the defendants and of the boards created by the constitution and laws of the state of Idaho, authorized to perform the acts mentioned and complained of in the petition, does not sufficiently appear therein.

Second—The writ of prohibition will not issue to prohibit or restrain the acts of executive or ministerial officers.

Third—The petition does not state facts sufficient to show that the appropriation made by the last legislature exceed the limitations contained in Section 11, Article 7 of the constitution.

Fourth—The petition does not state facts sufficient to show that the state's indebtedness, authorized by the last legislature taken with the then existing indebtedness, exceeds the limitations contained in Section 1, Article 8 of the constitution.

Fifth—The acts of the legislature referred to in the petition can not be collaterally attacked in an application for prohibition.

Sixth—The petition does not state facts sufficient to show that the plaintiff is entitled to the issuance of the writ of prohibition in this case.

Among the other points advanced by Mr. Bagley in his argument were the following:

The importance of this case can not be over-estimated. This action runs to the fundamental principles of our state government. The plaintiff in a single action attempts to discredit the actions of the state legislature, which has met with the

approval of the governor, and, at the same time seeks to shackle the hands of the entire executive department and present state administration by depriving them of the use of the funds authorized by the legislature for the erection and equipment of the state university, the state normal school, the Idaho reform school, to aid in the erection and construction of needed bridges across some of the largest streams in this state; to aid in the construction of needed public roads into the interior of our state; to encourage the raising of beets and the manufacture of sugar therefrom; to improve the state penitentiary and secure a water supply therefor; to erect and furnish a supreme court building at Lewiston and to publish the decisions of the supreme court.

He asks this court to establish a precedent and hold that any person alleging that he is a citizen and a taxpayer, may have an extraordinary writ issued by the legislature and thwarting the will of the people as therein expressed—arresting the official acts of the governor and the executive department for an indefinite time without giving a bond for any damage that might accrue to the defendants, the state or the people.

Plaintiff asks this court to prohibit the people of this state from building, equipping and maintaining the state university, normal and reform schools; he asks you to deny the people of this state the right to aid in the building of bridges for the public use across large streams, or the construction of wagon roads in the unsettled mountainous portion of our state.

He further asks you to deny the people of this state the right to aid in the development of our natural resources and the encouragement of the production of sugar, a right which has been claimed and enjoyed by the people of this nation and by almost every state in the Union since its admission.

He asks you in a collateral proceeding to declare numerous acts of the legislature unconstitutional, null and void.

He asks the highest judicial tribunal of this state, which stands at the head of a co-ordinate department, to issue a writ of prohibition and invade the realm of the executive department, an action which courts from time immemorial have refused to do.

### TREASURERS' REPORT.

Jan. 11, 1904.	
Victor Hegsted, Auditor:	
I have the honor of reporting to you the following receipts and disbursements for the month of December:	
Cash on hand last mo.	\$32572 46
Rec'd on acct Z. T. Clay	6524 43
" " " State of Ida.	5611 63
" " " Red. tax sale	763 24
" " " Fines	23 00
" " " Error school dis.	27 80
" " " Fish and Game	174 50
	\$45670 06
Pd on acct school dist.	\$5393 23
" " " Cur't exp. '03	2233 67
" " " Road 1903	980 76
" " " Treas. Red.	
" " " tax sales	94 00
Cash on hand	36968 40
	\$45670 06

Respectfully submitted,  
Lee S. Borrows, Treasurer.

T. R. Jones left yesterday for the Upper Snake river country where he goes by order of the court to look after matters which have to do with the big Teton water suit, that involves more people and larger water interests perhaps, than any case that has ever heretofore come up in Idaho courts for settlement, so far as the jurisdiction of the suit has brought it before Judge J. M. Stevens of the Sixth District, but whether the case will be adjudicated here is a question for the future to solve.—Blackfoot Mail.

WANTED.—One hundred and fifty hogs at once. Fremont Meat & Provision Co.

## Bought by Farmers.

J. T. Brady of Pocatello, Idaho's most distinguished organizer and financier, has concluded one of the biggest deals in canal property ever consummated in Idaho by the sale to a syndicate of farmers of all that portion of the Idaho canal, lying above Idaho Falls, including all waters of Willow and Sand creeks for a consideration of \$125,000. For five years prior to last February this property had been involved in litigation that retarded the settlement of the lands under it and finally last February it was sold by order of the court to the highest bidder, Mr. Brady as president of the Idaho Canal & Improvement company, being the fortunate buyer at \$100,000.

The system under Mr. Brady's original purchase was the largest in the entire arid west, comprising over 350 miles of canal and laterals. Under Mr. Brady's energetic management several thousands of dollars were expended in improving the system last year with the result that its capacity was greatly enlarged. This transaction only disposes of about one-fourth of the property, the balance remaining in the hands of Mr. Brady and his associates. It is their intention to extend this part of the system across the reservation to Pocatello and reclaim rich agricultural lands which are to be put on the market by the Dubois bill now before congress and which will doubtless be passed at this session.

## Cattleman Dead.

J. R. Wilkins, a well known cattleman of Idaho and the father of Miss Kitty C. Wilkins, the "Idaho horse queen," died in San Francisco on the 13th inst. He was a native of Indiana, 73 years old, and came across the plains to the coast in 1853.

## Brave Young Girl.

Miss Tessie Edwards, a miss of 14, residing near Clark Fork, bounded into fame with a jump last Sunday when, alone and without assistance, she brought down a huge mountain lion with two shots from her rifle. Tessie and her father were out rabbit hunting at the time and were over on Blue creek, six miles from Cabinet. They had separated in their quest for smaller game and when the father returned to his daughter and asked "what luck", she coolly informed him she had shot a mountain lion. The father was so surprised that he could not believe it, but the little girl pointed to the spot where the big game lay. The lion measured 11 feet.

Miss Tessie showed a nerve in the dispatching of the big king of the forests which would well have made a man proud. When she was confronted by the huge beast she was going along a little pathway in the mountains and he came toward her. She brought up on him, but the first shot only wounded the beast. He made a bound for her, but she took deliberate aim the second time and this time the unerring aim of the little miss brought the lion to the ground with a broken back. Snarling and crawling toward her, he tried to reach her but was unable to do so, the wild animal dying almost at the feet of the child. When her father came to her and they both realized in what eminent danger she had been, the girl became a little weak in the knees but regained her nerve in a short time and assisted her father in taking the big quarry back to their home.—North Idaho News.

### NOTICE.

All persons who have permits are hereby notified to send same to the State Game Warden, W. V. Jerns, at Hagerman, Idaho, and licenses will be issued.

## Big Sugar Deal On.

There is a rumor afloat here to the effect that a consolidation of all sugar factories of three states is a possibility of the near future. Local sugar magnates decline to discuss the matter and profess to know nothing about any deal of the kind. Nevertheless it is said that something of the kind is likely to occur. Should it take place it would mean the consolidation of eight different factories, as follows: The Ogden, Logan, and Le Grande factories of the Amalgamated Sugar company, stories at Lehi and Garland, Utah; the Lewiston factory; the Idaho Falls and St. Anthony factories in Idaho.—S. L. Tribune.

## Pension Decision.

The Commissioner of pensions has decided that all rights to pensions are barred by conviction of crime and sentence to prison for life. The decision is made in the case of William B. Marsh, a convict in the house of correction in Detroit, serving a life sentence for robbing the United States mails in Idaho.

Commissioner Ware holds: "A pension is for the purpose of supporting a soldier during his declining years and is a gratuity. As the claimant in this case is being treated kindly and taken care of by the government, it is fulfilling its duty to him already; and, as this is to continue during the life of the claimant for an offense against the government, it is not reasonable to suppose that the case is within the purview of the statutes.

By "conviction of the crime and sentence to prison life, the man has become civilly dead, and I do not think it is an unfair interpretation of the law to hold that when a man becomes civilly dead, he becomes dead for pensionable purposes therefore, let the claim be rejected."

## Lands are Withdrawn.

The United States land office at Boise has received notice from the Interior department at Washington of the withdrawal of a large body of land lying between the Snake and the Boise rivers.

It is practically the land to be irrigated by the proposed government project which is being agitated, and of which so much has been said during the past few weeks.

It is the understanding, however, that the withdrawal of these lands will in no way effect lands now under irrigating ditches or those under process of construction.

In an interview with Hon. J. H. Lowell the other day he stated that this is the territory embraced in the requests recently made by Caldwell, Nampa, Middleton, Star, Roswell, Parma, etc., at the mass meetings held for discussion of government reclamation in Boise and Payette valleys.

## Sixty-Five Lives Lost.

Seattle, Wash. Jan. 9.—Twenty-six lives were lost by the foundering of the steamer Chalam in the straits near Port Townsend early this morning. The vessel broke down soon after leaving Victoria yesterday afternoon and drifted before a terrific storm until she met her fate. She began sinking shortly after midnight. The news of the most terrific catastrophe that has ever occurred in these waters was received in this city this morning by the Marine Exchange in a telegram from the masters of the tugs, Sea Lion and Richard Holyoke. The former brought 24 survivors and the latter three to Port Townsend.

WANTED.—One hundred & fifty hogs at once. Fremont Meat & Provision Co.

## COUNTY GOSSIP.

Dished up by the Peak Staff of Correspondents.

### INDEPENDENCE.

The health, happiness and happenings of this neck of the woods are fair.

L. S. Loomer, a cattle buyer from Omaha, left for home on Wednesday with a train load of cattle. Mr. Loomer has every appearance of a gentleman and shrewd stock man. The abundant supply of first class crops, fed with a bountiful hand, where the cattle can get to spring water, has a telling effect, so that we need never hunt for buyers.

Several of our residents crept out of the brush to attend the rabbit drive at Market Lake last Saturday, and report a fine time.

A farewell party at Mr. Joseph Perry's in honor of Mrs. Frank Weaver of Ogden, was a swell affair last Monday night. Cards, games, lunch, and renewing old friendship as well as forming new acquaintances was the order of the evening. Among the guests were the following:

Theo. Daniels and wife, Jno Summers and wife, Selvester Daniels and wife, O. O. Corey and wife, J. B. Wyatt and wife, Mrs. Julia Corey, Mrs. Ida Brown, Mrs. Mary Priest, Mr. Loomer, Mr. W. J. Steeley, Mr. Geo. Heardvigson, Mr. Jno. McCray and wife, Mr. Thos. Priest, Mr. Peter McGarry, Miss Lucy Priest, Misses Jessie Stole, Gertrude Stole, Ray Preston and John Powers.

### WILFORD.

District school commenced Monday morning.

The quarantine having been removed from the last case of diphtheria about the 14th inst., all seems smooth sailing now save for the report from East Wilford to the effect that three of Gustave Johnson's children are sick with smallpox and the family have been quarantined. Alonzo Daw has been appointed marshal to attend to their needs.

Mr. and Mrs. Joseph S. McArthur and Mr. and Mrs Robert Woolsey, who have been employed at the Fogg saw mill above Ora, for the past season, have returned home for the winter. Sam. Higby and wife and Will McBride and wife have also returned from the Snake River Lumber Company's saw mill in Island Park. Mrs. Thomas Birch left for Caldwell, Utah, last week to attend the funeral of her brother at that place.

Stephen White and Nettie Birch are attending the bedside of their father at Willard, Utah, who is suffering from hemorrhage of the brain.

Carl Larson is getting around again after a severe attack of quinsy, which caused him several days' suffering.

The dance given Friday night by the losing side in the rabbit drive was a grand success, while the farmers are delighted to know that a few hundred of the hare pests have been disposed of.

Wm. Davis, jr., the champion of the winning side took a prominent part in the quadrille, and was a favorite when the ladies turn came to choose. Mr. Bigler the head of the losing party says he "is still alive", and feeling jubilant over the happy time had during the hunt and at the dance. Rumors are afloat of another episode in the near future.

Andrew Stewart and Eli Bagley are spending a few days visiting here this week and will return to Blackfoot Monday.

A grand prize dance at the opera house on Saturday evening Jan. 23rd., tickets of admission at the usual prices entitles the holders to a chance in the drawing for a beautiful pearl and opal ring to be pre-

## Pretty Close Call.

The supreme court of Idaho has decided that a man can drive his sheep across a two-mile limit zone, and take practically all the time he wants in doing so. That is, he mustn't stop while crossing, but he can graze along if he keeps his sheep moving. The decision, if reported correctly, comes very near nullifying the two-mile limit law, as nobody ever saw a sheep stand still and graze. Even on the open range, they are moving all the time they are feeding. According to the decision, a man with a bunch of, say 3,000 sheep can just about clean up all the feed there is in a two-mile limit space while crossing. Certainly two or three bands could, and if allowed to "cross" in this way a couple of times during the season, a farmer, whom the law seeks to protect, would have all his close-in pasture eaten up.

The supreme court in another decision, has again affirmed that a man cannot sell a homestead without the wife's consent in writing.

sented to the lady partner of the gentleman holding the lucky number. Every one has an equal chance as only such tickets as are sold will figure in the drawing. Good music by Professor Carter & J. R. Sharp, and a good time assured. See the ring in Curran & Co. drug store window.

### SQUIRREL.

Snow about 18 inches. Temperature around 20 above. Weather fair. Roads good up to last Monday, when one of the worst storms of the year struck us, making the roads well nigh impassable.

Our new mail schedule is just the thing; it leaves Squirrel on Monday, Wednesday and Friday at 11 a.m., returning on Tuesday, Thursday and Saturday at 2 p. m.

That little girl that is stopping at the Highland ranch says that Wm. L. Campbell, manager of the place is all right, as he is around every three minutes to see that she has plenty of candies, nuts, oranges and all good things of life.

The stock on the Highland ranch are wintering in fine shape.

Chris Jessen and Sons are getting out a fine lot of fence posts and can make you the right price on any amount you may want.

Mr. Riley Howard and family, also Mr. Winters and family all of Chester, were visitors in Squirrel this week the guests of Mr. Chris Jessen.

The district school under the management of Mrs. Lizzie Wilson, is progressing finely.

The little one of Mr. and Mrs. H. O. Burton has had a touch of pneumonia, but we are glad to say, is now out of danger.

A dance on Wednesday evening of this week is the next in line.

We would suggest that some who have not helped in any way (or very little at least) on the school house, do something by hauling a load or two of wood. Wake up, fellows, wake up.

Hugh McDerment, the genial ranger, was a visitor in our village for a few days. Mrs. Louis Patrie, who has been visiting with Mrs. W. L. Campbell for some time, left for her home at Market Lake on Sunday last.

Mr. Geo. Harrigfield and Otto Garz were in attendance at the Odd Fellows installation on Saturday evening last.

H. E. Campbell, the merchant, is still doing business at the old stand and reports business good for this time of year.

What is the matter with a musical and literary in our burg this winter? Stir it up boys.

The next on the program is telephone connection with the outside world, we understand a scheme is on foot now looking to that end. Ha, just wait till we ring up Central. My, but how we do grow!

(Continued to 2nd page.)