

Judge Lochren's Decision.

UNITED STATES CIRCUIT COURT, DISTRICT OF MINNESOTA, Fourth Division.

Little Falls Electric & Water Company vs.

City of Little Falls, Charles E. Vasily, as mayor; Frank E. Hall, as city clerk, and Aloysius Simonet, as treasurer of said city, and Edward C. Lane, Henry Hill, Carl E. Carlson, Thomas J. Martin, George F. Moeglein, Jerome Meckner and Nels Peterson, as members of the common council of said city.

DECISION.

Final hearing in this suit was had on March 27, 1900, upon the bill, answer, and the evidence taken in the cause. From the admissions in the answer, and from the evidence presented at the hearing, it appears that all the allegations of matters of fact contained in the bill are true as therein set forth. It was conceded by the defendant's council on the hearing that all the works and appliances constructed by the complainant and constituting its water plant and electric lighting plant, at the city of Little Falls, were efficient and fully complied with all of the provisions, stipulations and conditions of the contracts between the complainant and the defendant city, under which these plants were erected and established, and that complainant has at all times performed its contracts and obligations as alleged in the complaint. Since the commencement of this suit the common council of said city has, by ordinance, granted to the complainant the right to continue and maintain its water main upon the bridge across the Mississippi river; so that the matters alleged in subdivision VIII of the bill need no longer be considered, excepting in so far as that paragraph may state matter of equitable jurisdiction, existing at the time the suit was begun. As to the allegations of conspiracy and confederation to injure the credit of the complainant and to destroy the value of its property, an inspection of the ordinances and resolutions of the common council, commencing over the mayor's veto, April 4, 1896, assuming to abrogate and take away all the franchises and contract rights of the complainant, while refusing to pay for water and light received and used, shows a settled and persistent purpose by unlawful means, to disable the complainant from carrying on its business, destroy its credit and the value of its property; and to coerce the complainant to sell its water and light plants to the city for the inadequate price offered. The acts of the defendant city and its officials admit of no other explanation.

The contracts under which the water and light plants were constructed and operated appear to be valid and should be enforced. The village council, and subsequently that of the city, was authorized and empowered to contract for the construction of such plants and for the supply of water and lights for public uses; and had the right to grant the use of streets for such purposes. This is conceded, but it is claimed on the part of the defendants that the contracts were invalid, because made for an unreasonable length of time, at rates to be paid which were unreasonably high.

Contracts on the part of a municipality for the supply to the municipality and to its citizens of water and light, are not made in the exercise of the governmental powers vested in the municipal council, but of its proprietary or business powers. It is acting for the private benefit of itself and its inhabitants, and its contracts of that character are governed by the same rules that govern contracts of private individuals and corporations. Illinois Trust company vs. City of Arkansas City, 22 C. C. A., 186, and cases cited.

There is in this case no allegation or pretense of any actual deception or fraud on the part of the complainant or its grantors in obtaining the franchises and contracts from the village or the city; or of misconduct or unfaithfulness on the part of the village or city councils in granting such franchises and entering into such contracts. It is charged that a larger number of lights and of hydrants than were necessary were contracted for, but that was a matter for the judgment and discretion of the councils who made the contracts, and the evidence shows that all have been used by the city, and the number of each has been voluntarily increased from time to time by subsequent councils. The defendants also claim that the rates to be paid by the city for water and lights is unreasonably high. This again was matter of contract and agreement. It does not appear that at the time these contracts were made, any one else was willing to construct and operate such works at that place upon better terms, or to furnish water or lights at lower rates; and compared with

rates obtained in other cities, as shown by the evidence, the rates in this instance, though liberal, do not appear to be unreasonable. The most serious contention of the defendants is that these contracts were invalid, as attempting to bind the city for an unreasonable length of time; and the holding of our state supreme court in Flynn vs. Little Falls Electric & Water company, 74 Minn., 180, is relied upon as sustaining this contention in respect to the very contract for water supply now under consideration. That case does not hold that the municipality could not make such a contract for a term of thirty years, if favorable and reasonable in other respects; but that a contract for such a length of time, requiring the city to pay for between thirty-five and forty per cent more hydrants than its needs required, at one hundred per cent more than their value, as admitted by the demurrer in that case was unreasonable and void. On re-argument even this statement of the law is obscured and buried under a mass of superlatives. There is no doubt that such a contract as the demurrer admitted in that case, would be void as showing on its face that the council had either been grossly imposed upon or had acted in bad faith; and the length of time during which the city was to be bound by such admittedly outrageous stipulations, even if for twenty or fifteen years, would be a very important element in the fraud. No authority is cited to tend to sustain the proposition that thirty years is an unreasonable length of time for a contract to supply a city with water, and from the evidence adduced and cases cited on the hearing in this case it appears to be not an unusual length of time. Considerable investments of capital seek long terms. Thirty years is not an unusual length of time for the running of municipal bonds, where after the periodical payment of interest the whole capital invested is returned in cash at the maturity of the bonds. The capital invested in a water or light plant is subject to hazards from the elements and other dangers, and is permanently expended; and no prudent person would make such an investment except upon a contract for a fairly long term of years. In the light of all the evidence in the case it cannot be said that these contracts were unreasonable in respect to the time they were to run, or that they were not in every other respect honestly, intelligently and fairly entered into, and as favorable for the city of Little Falls as that city could have obtained at the time they were made and entered into.

It follows from the foregoing that the ordinance, a copy of which marked "Exhibit A," is attached to the complainant's bill, as amended by the ordinance, a copy of which, marked "Exhibit B" is also attached to said bill, both of which were duly accepted by W. M. Fuller and S. Stoll named therein, were and are legal and valid, and vested in the said W. M. Fuller and S. Stoll, and their assigns, the rights, privileges and franchises therein granted and set forth, and together with the resolution, a copy of which, marked "Exhibit F," is attached to said bill, constituted a valid and binding contract between the said city of Little Falls and said Fuller and Stoll, and their assigns, which rights, privileges, franchises and contract rights were duly transferred to and vested in the complainant by the said Fuller and Stoll, by the instrument, a copy of which marked "Exhibit D," is attached to said bill. As the complainant within the time provided for in said ordinances, constructed, completed and had in use the system of water works, in all things as specified in said ordinance and to the satisfaction and acceptance of the council of said city, and has ever since complied in all things with said ordinances and said contracts, and all subsequent resolutions of said council set forth in said bill respecting additional hydrants and water service, the said city is obligated to pay therefor, at the rates provided for by said ordinance and contracts, and the mutual obligations of the complainant and of said city will continue to the end of the term of thirty years fixed by said ordinances.

Similar conclusions follow in all respects from the facts shown in regard to complainant's electric light plant, and the franchises, contracts, construction, maintenance and furnishing of light to the city, and the continuing obligations resting upon the complainant and said city during the term of twenty years provided for in the contract between them of August 21, 1890, a copy of which marked "Exhibit U" is attached to said bill.

An ordinance passed by a municipal council within the scope of its powers, has the force of law. I Dill, municipal corporation §308. The common council of Little Falls, having the power to contract for the supply of water and light to the city and its inhabitants, could lawfully grant by ordinance such

franchises in respect to the occupation and use of its streets and public grounds as are necessary or convenient for the construction, maintenance and use of the works, appliances and instrumentalities, by which such supplies must be furnished. In Walla Walla vs. Walla Walla Water Co., 172 U. S. 19, the court after referring to several decided cases, adds "It is true that in these cases the franchise was granted directly by the state legislature, but it is equally clear that such franchises may be bestowed upon corporations by municipal authorities, provided the right to do so is given by their charters. State legislatures may not only exercise their sovereignty directly, but may delegate such portions of it to inferior legislative bodies as, in their judgment, is desirable for local purposes." And such grant of franchise, after performance by the grantee, is a contract protected by the constitution of the United States against state legislation to impair it.

New Orleans Gas Co. vs. Louisiana Light Co., 115 U. S. 650.
New Orleans Water Works vs. Rivers, 115 U. S. 674.

Louisville Gas Co. vs. Citizens Gas Co., 115 U. S. 683.
Walla Walla vs. Walla Walla Water Co., 172 U. S. 19.

State legislation includes of course legislation by municipal bodies created by the state, with powers of legislation for local purposes. In the case last above cited, at page 19, the court says:

"We know of no case in which it has been held that an ordinance alleged to impair a prior contract with a gas or water company, did not create a case under the constitution and laws of the United States."

It follows therefore that the ordinance (Ex. "J" attached to the bill) passed by the common council of Little Falls April 4, 1896, (over the veto of the mayor), purporting to repeal the prior ordinances (Ex. "A" and Ex. "B.") which granted the franchises under which the water plant was constructed, as well as the resolution (Ex. "W" attached to the bill) passed by the same common council on the 3rd day of February, 1896, purporting to amend, set aside and cancel the contract (Ex. "U") between said city and the complainant of August 2, 1890, whereby said city contracted to use and pay for 22 arc lights at the rate of \$96 per year for each for the term of 25 years from that date, were acts of a legislative character relating to matter within the general scope of authority of the common council, but having the effect, if valid, to impair and destroy the franchises and contracts under which the complainant had constructed, maintained, and was and is operating its water plant and electric light plant, and performing its contracts with said city. Hence the said ordinance (Ex. "J") and the said resolution (Ex. "W") are both invalid; being in contravention of that clause of Section 10 of Article I of the Constitution of the United States which forbids any state from passing any law impairing the obligation of contracts. They injuriously affect the complainant by casting a cloud upon its franchises and right to occupy and use the streets and public grounds of the city, and upon the validity and continued existence of its contracts with the city for the supply to it of water and light; and thus tend to seriously to depreciate the value of complainant's property, impair its credit, and embarrass its business.

As to the showing to the effect that the city of Little Falls is taking steps to construct a plant for the supply of water and electric light, it appears that the complainant's franchises are not exclusive, and that there was not, as in Walla Walla case above cited, any contract on the part of the city that it would not during the term for which the franchises were granted erect, maintain, or become interested in other like works. The bill also alleges that private consumers of water will not make connections with the proposed plant of the city, so that the case does not come within the holding in the recent case of Southwest Missouri Light Co. v. City of Joplin, 101 Fed. 23. There seems to be no sufficient reason for enjoining the city from constructing and operating a water plant and electric light plant to supply itself, over and above the water and light which it has contracted to receive from, and pay for, to the complainant; as such construction of a new plant would not release or effect its contracts with complainant.

Unless counsel for the respective parties shall stipulate as to the amount owing and unpaid at the time of the commencement of this suit from the defendant city to the complainant, for light and water furnished by complainant to said city under said contracts, the case may be referred to a Special Master to compute such amount from the evidence already taken in this case and the admissions in the pleadings; taking any further

evidence he may deem necessary. And decree may be entered adjudging and decreeing that the complainant's franchises and its contracts with the city of Little Falls (which may be particularly described therein) are valid and subsisting; and that said ordinance passed April 4, 1896, (Ex. "J") and said resolution passed February 3, 1896, (Ex. "W"), are invalid and of no force; and that the complainant recover of the defendant, the City of Little Falls, the amount of money owing and unpaid by said city to said complainant, as the same shall be fixed by stipulation or by report of Special Master as above provided for, together with the costs and disbursements of this suit.

WM. LOCHREN,
Judge.
Minneapolis, June 16, A. D. 1900.

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JOHN FLECKENSTEIN.
PIERZ, May 7, 1900.



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The New Ulm Coal Rate Case Sustained by the Supreme Court, as Was Expected.

"And There's More to Follow"—The Week's Roundup of State and National Politics—The County Democratic and the State Conventions—Every Indication of Enthusiasm and Harmonious Outcome—Now for Kansas City and Next for Victory.

Reform Press Bureau, St. Paul, June 18, 1900.

Step by step administration of state government in the interests of all the people of the state goes on at the hands of Governor Lind and those entrusted to state duties under him, of which the state supreme court decision, sustaining the railroad and warehouse commission, in their action known as the New Ulm coal rate case is the latest incident. This letter recently quoted Governor Lind as entirely confident that the state, in that case, would be sustained, and the decision fully confirms his view.

This case, in brief, was the result of efforts to obtain a fair and equitable rate for hard coal for the people of the southwestern part of the state, where for years and years exorbitant rates have been enforced by the railroad companies. Action originated in the city of Governor Lind's home, New Ulm, on complaint to the railroad and warehouse commission by the Commercial union of that city against the prevailing rate of \$2.50 per ton, Duluth to New Ulm. The roads being cited to a hearing, such were held Nov. 3 and Dec. 14, 1899. On Jan. 19, 1899, very soon after Governor Lind's inauguration, the commission made an order reducing the rate to \$1.95 for New Ulm, and other points in proportion, on a fixed schedule of places and distances, a very material average reduction, which rates being all that the companies could charge in the aggregate from Duluth to the said points, was known as the "joint rate" that the roads could divide between themselves. The companies interested made every possible legal defense on a test case by the Minneapolis and St. Louis road and were defeated, first in the Ramsey county district court, and now in the state supreme court. The latter finds clearly and unmistakably for the people, sustaining the commission. The company announces that it will still further contest, however, which means the slow length of the United States supreme court, possibly, before the people will come into the actual benefits of the efforts made in their behalf.

The railroad and warehouse commission is about all the machinery possessed by the state for protection of the small interests which the people in the past have not voted away in franchises. The people are, therefore, more interested in its administration than in almost any other department. That they are pleased with the present board is conceded on all sides.

There was opportunity last week for only the merest mention of the state's "No," uttered by the railway commission, against the proposed consolidation of the Northern Pacific and the St. Paul and Duluth railroads, which Wall street and railroad and business men had accepted as accomplished fact until the state stepped in. The state holds that those roads are competing lines in the sense that brings them under the same inhibition that was successfully maintained against the Northern Pacific and the Great Northern, and has taken the firm stand that the consolidation shall not be carried out except it be shown that the state is wrong. At the moment the game is blocked, and the Northern Pacific and the Wall street interests concerned are looking around for some way out.

And speaking further of the commission, it has ordered stations maintained at Wylie, on the Great Northern's St. Hilaire branch, and Crow Wing, on the Northern Pacific. A commission that commishes is what the people have now.

The state Democratic convention to select the Minnesota representation for Kansas City, will have been held before this letter reaches all its thousands of readers. There is every indication of that enthusiasm and harmony which is marking like conventions in other states all over the Union. Such certainly have been reports of the county conventions of last week, and certainly it is true of the Ramsey and Hennepin county action. Harmony and enthusiasm have great big capital letters this year with the Democrats and those co-operating with them.

Let all of our friends bear in mind that nobody should stay away from Kansas City who can possibly go, and the opportunity, as to trains and low rates, was never equalled. You can go with either the official Democratic train or with the Silver or Lincoln Republicans. The full particulars are widely published and are obtainable from either Secretary T. R. Kane, St. Paul, for the Democratic, or of E. S. Corser, Minneapolis, for the other. The best way to do is to remit to either, immediately, the advertised cost, thus making sure of accommodations, and that you will go. The round trip transportation cost is \$13.55 by chair car, \$16.55 by tourist sleepers, or \$19.55 by Pullman sleepers, the sleepers in both cases, being also used for beds at Kansas City during the stay, without extra cost. Band of music with each train.

Speaking of Kansas City, state after state joins the procession for Mr. Bryan's unanimous nomination. There

are also from all parts of the country kindly expressions toward Mr. Towne. Where are we going to do better in the whole situation? is what the Democracy is asking itself.

Mr. Towne certainly has reason to be pleased with the endorsements given him by the Minnesota county conventions.

Speaking of those who are at Philadelphia booming Washburn for vice president, it is safe to say that their pockets are not stuffed full with the Washburn anti-trust and pro-Bor pamphlets. Watch the troopers and the English administrationists do up the able man from Minnesota.

These jobs at Methodist Brother McKinley are almost more than even a "Napoleon" can endure. And they do change him with insulting Miss Frances Willard, "treated her with less respect than he would a ward heeler," is the open charge made by the temperance vice presidential candidate.

Ex-Senator Gil Pierce is showing the G. O. P. "What to Eat," vice presidentially, and is for Washburn. The outlook is that while the senatorial vegetables may "wash," they will also "eat," and the trusts "throw them out."

Speaking of the vice presidential ticket, a Chicago Times-Herald correspondent looking for Republican campaign slogans, wants something discovered that will compare with the cry, "Polk and Dallas," which was made to stand for "pork in the stomach, and dollars in the pocket." Well, what's the matter with taking on Bliss of New York, and then it would be McKinley and Bliss for the trusts.

At this writing Mr. Bryan and Mr. Towne are ransacking where the wicked (politicians) cease from troubling, and where the weary are at rest.

The following are the figures of McKinley prosperity as applied in the St. Louis strike to date:

Strike (commenced May 8) has lasted (days).....	36
Number persons killed.....	13
Number wounded by bullets.....	65
Number otherwise injured.....	90
Estimated business loss, per day \$100,000	
Business loss, 36 days.....	\$3,600,000
Loss of strikers in wages.....	\$275,000
Cost of armed posse comitatus.....	\$325,000
Number in posse comitatus.....	1,500
Number police on duty (regulars).....	1,000
Number special police.....	600
Total number armed men.....	3,000
Men on strike.....	4,000

And gold was not going abroad to any amount this season. The total shipments have already exceeded \$20,000,000, the government \$100,000,000 of gold being now depleted to close to \$70,000,000, and more going to the tune of \$3,500,000 to \$5,000,000 weekly.

Indiana as an asylum for Republican political murderers is a success. The shielding of Kentucky Taylor ought to make the state certain for the Democrats, and such are our advices.

And speaking of the Philippines, how different a situation we would be in had we told the Filipinos to go ahead with their independence, under our protection, we taking as they would have been glad to have us do, whatever we wanted for station. In the new Chinese situation we would have had ships or men at hand, whereas few or no men can safely be taken from the Philippines. But, best of all, we should have done right.

To date all that the gopette press has been able to say for the remissness of the Republican secretary of state as to foreign corporations not paying their taxes is that some 60 companies have been found in Governor Lind's list that are not liable. Well, that leaves some 200 or more of the delinquents. What is this Republican official going to do as to those?

The repudiated St. Paul Republican city administration died harder than any one supposed. Comptroller McCurdy has barely skinned in, by the means of "recount," often so disreputable, especially when election machinery is under careful guard of the other fellow, and the old chief of police, and other heads of department, refuse to surrender except as they are thrown out. Meanwhile Mayor Smith is pursuing the even tenor of his "good old Democratic ways," greatly to the satisfaction of the people.

The date now set for that great flood of Northwestern prosperity was after the farmers' spring work was over. Now it is after harvest, and a little later it will be after the election. S-U

Speaking of business, the much wanted Russian loan which was to have been floated in the United States, has floated out of sight, the Wall street statement being that it was absurd to expect the loan to be placed here, when "seven United States bonds are not in active demand."

Now that McKinley and Otis have swapped praises, let the Philippine war go on. But it is rather a dampener on imperialism, that Otis praises the Filipinos so highly. That they learn English with surprising rapidity, and are eager for schools, illy agrees with the estimates of McKinley himself, of their dense ignorance, their lacking in patriotic inspiration, and that they are "not qualified to be more than an abject people."

An important development of the week is the attitude assumed by the local Silver or Lincoln Republicans of Minneapolis, who through an authorized committee announce that they join the Democratic organization in fact, as they have in reality acted during the past four years. This will strengthen the Democratic organization materially, and it is well known that many Republicans are leaving their party on other issues than silver coinage, and will go to the Democrats. G. S. C.