

LAST EDITION.

MONDAY EVENING.

TOPEKA, KANSAS, DECEMBER 30, 1901.

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TWO CENTS.

COES.

Judge Hazen Knocks Last Prop From Liquor Ordinance.

Says City Can Not Pass Search and Seizure Law.

POLICE HAVE NOTHING.

Left With No Authority For Raids on Joints.

Judge Holds That City Charter Isn't Broad Enough.

No Provision For Seizure and Destruction of Property.

Judge Hazen this morning decided that the council of the city of Topeka has no right to pass an ordinance for the search of places where liquor is illegally sold and for the seizure of it unless the legislature gave express and not implied authority for a search and seizure ordinance or unless provision was made in the city charter for the destruction of property that the council could not pass such ordinance and that the present ordinance is invalid. This leaves the city practically without an ordinance under which the police can successfully prosecute the illegal liquor sellers.

In delivering his opinion Judge Hazen said: "If the city has authority to pass an ordinance authorizing the seizure and destruction of property it is by virtue of express authority granted by the legislature. The authority to seize and destroy property has been recognized and held to be the exercise of a high judicial power and a limited jurisdiction, the rule is reasonably adopted that such authority must be expressly conferred by the legislature. It is well supported by numerous decisions.

"In the case of Henke vs. McCord, the supreme court has held that a municipal corporation has no authority to pass an ordinance imposing a penalty for violating its by-laws or ordinances, unless such powers are expressly granted by its charter.

"In the argument of the question whether the legislature of this state has expressly conferred upon cities the power to seize and destroy property, it was contended by counsel for the city that such power is granted by subdivision 25 of section 11, chapter 18 of Dessler's statutes, and it was also admitted that no such authority exists unless it is conferred by that subdivision of section 11.

"Sub-division 25 provides that the mayor and council of cities of the first class shall have power 'To prohibit and suppress all houses of prostitution, dram shops, club rooms, to restrain, prohibit and suppress slaughter houses, houses of prostitution, gambling houses, dance houses, keno rooms, desecration of the Sabbath day, and all kinds of indecency and other disorderly practices, disturbance of the peace, assault and battery, and petit larceny, and to provide for the punishment thereof.'

"It is contended on behalf of the city that, in suppressing saloons, tipping shops, etc., enumerated in this subdivision 25, the city has authority to seize and destroy the liquor and other paraphernalia of such places. But if this construction is placed upon the statute, then the power conferred by that subdivision is not by reason of its being expressly conferred but arises solely by inference as an incident to the exercise of an 'express' power. The word 'suppress' as used in this statute does not mean the destruction of property but it contemplates the suppression of the place by punishing the keeper thereof or of the offending person, and means the same when applied to tipping shops and saloons as when applied to slaughter houses, houses of prostitution, desecrations of the Sabbath, etc. It cannot be reasonably claimed that in the exercise of the power conferred by that subdivision the city would be authorized to pass an ordinance providing for the seizure and destruction of personal property used in running a slaughter house or house of prostitution or to seize and destroy property used by a person engaged in the business of saloons.

"If the contention of the city is well founded that, as enumerated in subdivision 25, includes the right of seizing and destroying property, the logical conclusion would be that the city would be authorized to destroy the building in which such unlawful place was maintained, if that was necessary to the suppression of the place.

"Section 11 of the city charter act is divided into 44 subdivisions, and in each one of these subdivisions power is given to do the things therein enumerated in expressly conferred, but in the entire section there is no subdivision where authority is granted to ordain the seizure and destruction of property, except in subdivision 25, where the power is expressly conferred to destroy saloons, running at large contrary to ordinance.

"It seems clear that it was never intended by the legislature to confer this extraordinary power on the city in this case, for if such intention had existed the power would have been expressly conferred.

"The court holds that since there is no express authority granted to a city to pass ordinances for the seizure and destruction of property, it is necessary to construe property under such an ordinance would be unlawful.

CITY HAS NO APPEAL.

City Attorney Spencer, in discussing the search and seizure decision, by Judge Hazen this morning, said that the city has no right to work on what is left of November 21st. That was passed last November. The decision out this search and seizure clause of that ordinance and in addition means that the ordinance does not pass any search and seizure ordinance. The Gray habeas corpus case appealed from the police court to the supreme court will bring a decision upon the

same questions as were before Judge Hazen, in this way: If the supreme court holds contrary to Judge Hazen and that the section of the Hurrell law giving cities power to pass ordinances will have power to pass ordinances under the Hurrell law. All that has been passed by Judge Hazen up to this morning is a decision to quash in the Philadelphia case of the theory that the Hurrell law is not applicable. The majority question now to be decided is how far cases can be prosecuted under ordinance 2192 with the search and seizure clause knocked out. There are many cases pending and just what effect this decision will have on them will have to be decided. The nuisance ordinance clause may still be good. The city has no appeal from this decision of Judge Hazen's nor from the decision on the Hurrell law.

HE DROPS CRIM.

Rumored However That Burton May Again Take Him Up.

Secret Got Out Through President Roosevelt Himself.

Now that Christmas is over interest in the United States marshalship is reviving. At the time that President Roosevelt appointed Colonel Metcalf as pension agent it was rumored that L. S. Crum, whom Senator Burton had recommended for the marshalship, would be turned down, and in support of this a Washington dispatch quotes President Roosevelt as saying that Crum would have been turned down if Burton had not dropped him.

Notwithstanding this Crum stock is looking up a little. While other people have been celebrating the Christmas festivities, Crum has been bustling. Within the past few days he has been in a sort of endorsement to Washington. He is an old soldier and has been getting all the old soldier endorsements possible, and it is now reported that Senator McKimley once more getting behind Crum's candidacy. One thing in Crum's favor is the fact that Senator Foley is against him, although Foley himself gives it out that he will have sufficient influence with H. C. Payne, the incoming postmaster general, to be retained as postmaster at Parsons instead of being indignantly turned down as Postmaster at Parsons. President Roosevelt announced that he would do with Foley.

Approves of the appointment of Payne to a general position. The word cannot make a by-law ordaining the forfeiture of property. To warrant the exercise of such a power, the authority by a local and limited jurisdiction, the rule is reasonably adopted that such authority must be expressly conferred by the legislature. It is well supported by numerous decisions.

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SHOW STRANDS.

Willie Sells Has Trouble in the South.

Sells & Gray Circus Attached to the Officers.

ANIMALS GO HUNGRY.

Mr. Gray Arrested For Cruelty to Animals.

Unpaid Salaries and Other Obligations Make Trouble.

The Sells & Gray circus, owned by Willie Sells, of Topeka, and J. H. Gray, of Kentucky, has stranded in Louisiana near New Orleans.

The following is from the New Orleans Picayune: Following the dissolution of the partnership between the supposed owners of the Sells-Gray circus, which reached Algiers Monday morning from Jeanerette, La., and the failure of the proprietors of that show to take proper care of their animals, Special Agent James A. McQuaid, of the State Society for the Prevention of Cruelty to Animals, appeared before Recorder Barras, of the Algiers recorder's court, and preferred an affidavit against William Sells and J. H. Gray, charging them with violating the city ordinance relative to cruelty to animals. Warrants were immediately issued for their arrest, but up to a late hour last night they were not apprehended, though the police authorities know where they are residing.

Agent McQuaid said that he filed the affidavits on information received from E. D. Barnum, William Saunders, and Richard W. Quaid, who stated that the proprietors of that show to take proper care of their animals, Special Agent James A. McQuaid, of the State Society for the Prevention of Cruelty to Animals, appeared before Recorder Barras, of the Algiers recorder's court, and preferred an affidavit against William Sells and J. H. Gray, charging them with violating the city ordinance relative to cruelty to animals. Warrants were immediately issued for their arrest, but up to a late hour last night they were not apprehended, though the police authorities know where they are residing.

Yesterday Deputy Sheriff A. E. Auburtin served the following order on the Southern Pacific and the Morgan's Louisiana and Texas Railroad and Steamship company:

"Please take notice that by virtue of a writ of attachment issued in the above mentioned suit I have taken in my possession all the property of the Sells and Gray United Shows, exclusive of the elephant, camels, lions, and other animals constituting the menagerie; but will, however, seize the vans and cages in which said animals are kept, together with all other animals, property, appointments, cars, etc."

Immediately following the filing of the writ for \$5,000, the sheriff, by virtue of the plaintiff on a printing bill, a dispute arose between the circus owners and the sheriff as to the animals. The defendants maintained that it was the sheriff's duty to take care of the animals and other property. The city official said he was only compelled to feed the live stock implicated in the suit. He said that none of the animals had died during the last 24 hours. The show proprietors must take care of them.

McQuaid settled all doubts by telling the real owners of the menagerie that they must feed their animals, and if they did not do so pretty soon he would have to take care of them. The agent left the scene where the circus vans are lined out, and upon his return he reported to the sheriff that the menagerie animals had been provided with fresh meat. The remainder of the live stock were fed and whereabouts agent's entire satisfaction, but since Mr. Gray and Mr. Sells had neglected to feed them before, the affidavits were preferred.

Mr. Gray said that the horses, 25 in number, were taken care of by the show's bunch of live stock were not the property of the circus, but he declined to say who they belonged to. He refused to show the missing horses to the court, but not before. He refused to state their whereabouts.

Mr. Gray declined to say if he would attempt to buy in the show's property when it is offered for sale by the auctioneer.

A sale of the show was since ordered to take place on January 1st.

Mrs. William Sells who is in Topeka, said to a State Journal reporter: "There is nothing of any moment in these stories. I have no property in the show. I am simply exercising their right to support their friends."

Both factions have their respective lists of the caucus nominations and they are called the Hanna and the Foraker tickets as openly as the designation of the Democratic and Republican tickets.

Weather Indications.

Chicago, Dec. 30.—Forecast for Kansas: Fair tonight and Tuesday; moderate temperature; westerly winds.

UNDER WATER.

Tracks of the Philadelphia & Reading Submerged.

Schuykill River Out of Its Banks at Quaker City.

CELLARS ARE FLOODED.

Work Suspended at Many Manufacturing Plants.

Wissahickon Drive in Fairmont Park Out of Sight.

RAINS IN TORRENTS.

Four Lives Lost by High Water in the South.

Great Damage to Property and Much Suffering.

Philadelphia, Dec. 30.—The rain which has fallen almost incessantly since Saturday evening has resulted in a dangerous freshet in the Schuykill river and today the water of that stream is 10 1/2 feet above normal. All of the big industrial plants along the Schuykill at Manayunk and Norristown, near here, are flooded and work has been suspended.

The county bridge at Port Kennedy, Pa., has been wrecked by the flood and the tracks of the Philadelphia & Reading railway at Spring Hill, about eight miles from here, are submerged. The traffic, however, has not yet been seriously handicapped.

In this city the river is out of its banks along the Baltimore & Ohio railroad station, the water having backed out to Twenty-fourth street, the first thoroughfare east of the station. Cellars of dwellings are flooded and many residents along the river early today sought safer quarters.

Two new brick dwellings in Kensington in the northeastern section of the city collapsed early today, having been undermined by the heavy rain. The houses were on occupied. Nearby farms at Tacony, Wissinoming, Collegeville, Holmesburg and Torresdale, suburbs of Philadelphia, are also flooded and the water has been so high that the land between Frankford and Eridesburg is under several feet of water.

Reading, Pa., Dec. 30.—A foot flood was raging in the Schuykill river early this morning as a result of the heavy rainfall of the past two days. No serious damage was done, however, and the water is receding.

FLOOD IN THE SUSQUEHANNA. The Susquehanna river is again rising and there are indications of another flood if the rain continues to fall as heavily as it has during the past two days.

At midnight the river stood at 4 1/2 feet above low water mark, and this morning it was 5 1/2 feet higher. The water is rising and there are indications of another flood if the rain continues to fall as heavily as it has during the past two days.

Norristown, Pa., Dec. 30.—The Schuykill river, which had been steadily rising for the past 24 hours, receding and the danger is believed to be over. Such damage has been done to the mills and factories along the river between here and Philadelphia as to be reported by the Pennsylvania State Board of Public Safety.

FLOOD AT PITTSBURG. Serious Damage Is Averted by Cold Weather.

Pittsburg, Dec. 30.—The threatened flood as a result of the heavy rainfall of Saturday and Sunday has been averted by the cold snap and the rivers at this point will not reach over a twenty foot stage.

At 10 o'clock the marks registered 10 1/2 and rising slowly. Dispatches from the Pennsylvania State Board of Public Safety report the waters falling at all points.

During the night a big ice jam formed in the Allegheny river between the Port Wayne railroad bridge and the bridge at Sixteenth street and for a time threatened to sweep the new railroad bridge away. The gorge caused the rivers to overflow and at 4 o'clock this morning Pine street and River avenue, Allegheny, were flooded.

The heavy rain and the consequent high water in the Allegheny river, which at once sent out men to warn people living in the lower part of the city to vacate their homes, but a half hour later the jam suddenly broke with an awful crash.

The ice was forced between Fort Wayne bridge piers by the immense volume of water and some of the false work under the new bridge was torn away by the rushing water. The structure was not damaged. About 25 loaded coal barges, lying along the bridge on the Allegheny side were torn from their moorings and floated up on River avenue. They were badly damaged as was considerable freight in cars along the Pittsburgh and Western railroad tracks.

TORRENTIAL RAINS. Four Lives Lost and Much Damage to Property in South.

Atlanta, Ga., Dec. 30.—The torrential rains in the south during the past few days in Georgia, Alabama and East Tennessee and portion of North Carolina caused the death of four persons as far as known and much property loss.

TOPEKA IS CLOSED.

Populist State Convention Will Be Held Here Feb. 21.

Four Hundred Thirty-five Delegates Provided For.

MEETING IS IMPORTANT.

On Its Result Hangs Future of the People's Party.

Official Call Issued by State Central Committee.

The Populist state convention to determine the future policy of the party will be held in Topeka. There was a disposition on the part of some of the members of the state committee to take the convention to Wichita, but it was finally decided that it would be better to hold it in Topeka, as Topeka is more easily reached from all parts of the state. W. J. Babb of Wichita, presented the matter to the delegates, offering a free hall and the necessary printing free.

In the call which has been issued for the meeting, it is called a conference instead of a convention, in order to distinguish it from the nominating convention which may be held later.

It is said that there were three members of the state committee who were opposed to the conference idea at all. They were W. J. Babb of Wichita, H. N. Gaines of Topeka and Henry Honey of Manhattan. They favored calling a state nominating convention only, to put a state ticket in the field regardless of the Democrats, thereby ignoring completely the invitation of the Democratic state committee to the Populists to go into the Democratic primaries and become a part of the Democratic party.

There is an element in the Democratic party which desires to keep the Populists out. There is another element which is anxious to have the Populists accept the invitation, even if they take complete control of the Democratic party.

The Populist leaders who favor going into the Democratic party will immediately begin a campaign along that line, hoping to resolve their reward from the state convention in case they are successful. They figure that such an action would be the best way to get the Populist party, and the only way in which the Democrats can head off their taking full control of the machinery of the Democratic party.

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Washington, Dec. 30.—It was stated on good authority at the capital today that Senator Quay will never return to his seat in the senate; that he is preparing to retire from active political life in the near future.

It was positively asserted at the capital that Senator Quay has decided to resign from the senate. Mr. Quay has been unable to attend the sessions of the upper body except for one day since the Fifty-seventh congress convened. He has remained in Florida and gradually grown worse. To return to Washington, it is said, would be to impair his life.

Mr. Quay has at present, it is claimed, no desire to remain in public life, and he would like to retire from public life and do justice to his friends. He cannot longer take an active part in legislation, and as he has won all of his battles in the senate, he is content to rest on his laurels.

SCHLEY WON'T GO. Will Decline Roosevelt's Invitation For New Year's Day.

Washington, Dec. 30.—Admiral Schley has informed his friends that he could not accept the president's invitation to call at the White House New Year's day.

Admiral Schley is content to rest on his laurels. He has won all of his battles in the senate, and he is content to rest on his laurels.

SURE IT IS COMING. Both Sides Expect Mayor Declination January 11.

Albert Parker and John White Stevenson Frierson Falls Nell Hughes agree. Each one has expressed himself as reasonably certain that the supreme court will decide the majority contest on Saturday, January 11.

Your committee realizes that questions have arisen involving the rights and liberties of the people composing our party, their power to make their will effective through the ordinary forms of government, and that the election machinery, whose object should be to add the people in the expression of a free choice among men and measures, has been perverted so as to thwart such expression.

Believing that in all times of doubt and danger, as well as when questions involving the rights and interests of the people are pending, and having in view the fundamental principle of Populism which demands that they, the entire party membership, shall have a voice in deciding party policies and party courses, we have determined to call a delegates conference in which the entire party in the state may be represented and counsel together as to a future course.

STOP THE WAR.

Enthusiastic Meeting in Topeka in Behalf of Boers.

Addresses Made by David Overmyer and J. G. Waters.

GEN. HUDSON PRESIDES.

Says Time Has Come For United States to Intervene.

Audience Was Especially Demonstrative in Its Approval.

Topeka's pro-Boer meeting at the Crawford Sunday attracted an audience which filled the lower floor and balcony.

For nearly three hours the audience listened with eagerness to the speeches fired with patriotism. It is probably fair to say that no other audience that ever filled the theater sat through three hours so willingly and quietly as did the audience Sunday.

It was a representative Topeka audience, and the house was crowded, many being compelled to stand on the lower floor. At the meeting politicians sat beside other politicians and forgot their surroundings, lawyers beside artisans, merchants and coaches and doctors and clerks, all apparently unanimous in their feelings of sympathy for the Dutch fighting for their liberty in the Transvaal.

Before the close of the meeting the resolution was read urging England to stop the war. The resolution was adopted by the United States and the Queen of Holland as arbitrators of the questions in controversy between England and the Dutch in the South African war.

It was adopted with a storm of acclamation. It was adopted with a storm of acclamation. It was adopted with a storm of acclamation.

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