#### "THE CITY HAS SOME RIGHTS"

Dity Attorney Poppleton's Opinion in the Waterworks Case.

THREE WAYS OF ENFORCING THE LAW.

Do the Work at the Company's Expense, Force It to Do It or Forfeit its Franchise.

The waterworks company will go into court If necessary to resist the order of the council requiring the laying of water mains without hydrants on North Twentieth street from

Izard to Lake. This matter has been a subject for discus sion in council meetings for a year. The council has attempted to have mains laid preparatory to the paving of the street and the waterworks company has refused to lay the pipes without the council orders fire nydrants placed at intervals of 400 feet along the line. The matter was recently referred to City Attorney Poppleton, who presented his opinion to the council last night holding that the city has the authority to order the mains laid without at the same time ordering he location of fire hydrants. Mr. Poppleton's opinion is briefed as fol

"The provisions of the city charter contain clear directions and grant clear power to re-quire water, gas and sewer connections to be made before paving. Of course it is impossible to require water connections without water mains. The power, therefore, to com-pel the connections, carries with it the power

pel the connections, carries with it the power to compel the laying of all mains necessary to establish the connections.

"The only question left therefore is whether the waterworks company, under its contract with the city, is under legal obligation to lay water mains in accordance with the order and direction of the city, or whether the city is absolutely neverless, in respect to the order and direction of the city, or whether the city is absolutely powerless in respect to the laying of mains, and the water company is sole and exclusive judge of when and where, and how, and to what extent it will increase the water supply of the city of Omaha and by means of new water mains.

"The contracts and ordinances relating to the water works and the water supply of the city are decidedly one-sided and framed without reference to the interests of the city, yet I think they contain enough to show that the city has the legal right to control the lay-ing of water mains and to compel the waterworks company to lay such mains on any street, or in any case where the necessity of

works company to lay such mains on any street, or in any case where the necessity of the public, viewed with reference to an adequated water supply require such mains."

Mr. Poppleton cites the ordinances governing the acts of the company and then says: "Here is a clear and unequivocal declaration that the grant of right, of way and other privileges was only intended to be given to a company formed for the purpose of supplying the city of Omaha and the citizens and inhabitants thereof with water for domestic, mechanical, public and fire purposes. The franchise of the corporation is for that purpose. It is a public purpose, in part, at least, just as much as is a railway company or other corporation whose end and purpose is to perform a public duty. With this public duty it must accept public regulation by law, it had so the city council, from which it receives its franchise. The purpose of the grant of these franchises would utterly fail if one-third or one-half of the people of the city could be deprived of the use of water simply because the corporation did not choose to lay the necessary mains to supply that portion of the people.

"And while I do not claim that the city council could compet the waterworks company to lay mains for purpose of water supply where such supply was not needed, and where new mains were entirely unnecessary.

ply where such supply was not needed, and where new mains were entirely unnecessary, I so claim that they are under obligations to furnish the requisite water supply in all cases where there can be fairly said to be a

public need.
"That such a need exists upon North
Twentieth street no one can doubt for an instant. From Cuming street north to Lake it is one of the most densely settled portions of the city, occupied by mechanics and laboring men, living mostly in cottages and fre-quently upon fractional lots. It is doubtful whether any equal space of ground can be found in Omana more densely populated. "To say that its people can be deprived of

a water supply because the water company don't choose to lay water mains, in order to supply them, is to say that the Omaha water-works company system is an absolute and complete failure, and that 140,000 people are at the mercy of the waterworks company.

"Whatever the courts may do, I do not choose to put myself on record in favor of the autocratic power of the waterworks company to deal with the people of Omaha according to its own will in respect to water supply. In my opinion the people of the city have some rights as well as the corporation.

"While there is no express language in the ordinances or contracts out of which the franchise of the waterworks company spring, declaring that the city may control the location of mains and order the same put in where, in the opinion of the city council, the public interest requires it, the letter, spirit and purpose of the contract and ordinances, in my judgment is such as, coupled with the express provisions of the ordinances and contract to grant power to the city to control the laying of mains and order them in where there is clear public need therefor, "If this obligation exists, how is it to be en-forced!

"I know of but three ways:
"First, let the city go forward and do the work and charge it up to the waterworks company, and deduct the amount from nydrant rent, or other dues from the city to the

waterworks company.

Second, by a proceeding in mandamus to compel the waterworks company to perform Its duty in respect to the laying of mains, "Third, by proceeding to forfeit the fran-

chises of the company.

"Section 11 of ordinance 423 provides that in case of refusal or neglect of the waterworks company to comply with the provisions and requirements of the ordinances, and each thereof, and to do certain other things therein specified, all rights, privileges and im-munities granted and acquired under these ordinances shall be forfeited, and the city of Omaha shall be and become vested with the ownership, possession and control and management of said waterworks company and appurtenances thereto or connected there-

"Under this clause, in my judgment, if there is a clear forfeiture the city of Omaha has power to take immediate possession of the waterworks without waiting for any judicial proceedings.

"Of course, in taking this step, it would take the risk of a forfeiture being declared. But, in my judgment, it is the most effectual remedy.

"If it is true, as it is said to be claimed by

the waterworks company, that the city has no voice as to where and how it shall extend its mains and water connection the city practically has no waterworks system, and an absolute conflict between the municipality and the waterworks cannot longer be de

"If it is to come at all, in my judgment it it better that the city should resort to heroic measures and bring the waterworks com-pany under the control of the city at once, than to submit to a tedious and dilacry liti-gation for the purpose of compelling the company to perform its obligations to the

public.
"Unless some arrangements can be made "Unless some arrangements company to meet the with the waterworks company to meet the wishes of the city council in respect to the laying of mains and making connections, delay in testing the question of control is the worst possible policy for the city to pursue.

"The quicker these questions are met the better."

Superintendent Hall of the waterworks company, in speaking of the opinion of City Attorney Poppieton, said: "The opinion is a carefully prepared document and is good reading. Mr. Poppieton, however, is slightly mistaken. We do not refuse to lay the mains. We would only be too giad to do so, but before this is done we must insist the divergence of the property of the state of the property of the property of the property of the state of the property of the pro ao, but before this is done we must insist that the city plant the hydrants as provided for under the contract. When these con-tracts are placed we will lay the Twentienth street main, but not until then.

"The city pays the company \$50 per hydrant and aimply because these hydrants are not placed the mains have not been put down." Mr. Hall volunteered the information that the distance between Izard and Lake will require two hydrants. When these are put in he states that the mains will be

laid and that his men will keep out of the way of the pavers.

"Of course," continued Mr. Hall, "there must be a basis of coutract, and we claim that the basis of our contract with the city requires the placing of a fire hydrant at every 400 feet of main laid. Otherwise the city could order one hydrant out at Clifton Hill and compellus to run our line clear out there and compel us to run our line clear out there even if we did not get a consumer on the

Sarsaparilla belongs to the smilax family of plants, and is found very generally over the American continent; but the variety that is richest in medicinal properties is the Hon-duras root, of which the famous Ayer's Sar-

Children's Day at the People's. Tomorrow (Friday) between 4 and

. m., any child calling at our store will be presented gratis with a piece of work made by Prof. Gold Eagle, the paper king, now exhibiting in our show windows afternoons and evenings. People's Clothing House, 1303 Doug-

Gala week at the People's. In order to make this week long to be remembered we have decided to give some extraordinary bargains. Men's suits (pure all wool cheviot), \$4.75; actual value, \$11.00.

#### EVIDENCE ENDED.

of the Testimony Against the Institute Doctors Heard.

The hearing of the medical institute faculty was resumed at 10:30 yesterday morning after a half hour's wait for the coroner, who was engaged at the Lewis inquest. C. W. Gring, the undertaker who prepared the bodies of Miss Beaver and her child for burial, was the first witness called. His

direct testimony was mainly a repetition of that previously given by him at the inquest and detailed by THE BEE.

Dr. F. E. Coulter, who was present at the post mortem, was the next witness, and detailed at length what was discovered at that examination of the body. He saw the body of the child and was certain that its skull had been crushed. He thought craniotomy had been performed, but did not think there was any necessity for such an operation in this case.

On cross examination he stated he had changed his location five times in the past eight years, and had officiated at a couple of tozen post-mortems in Omaha during the

After drawing out quite an amount of in-formation of this nature, the defendants' at-torneys took up the case in issue. The doc-tor said the body of the child was badly de-composed, and admitted that the appearance of the head might have been caused by the decomposition the body had undergone. The attorney had some difficulty in pinning the witness down to the use of common, everyday terms. When the attorney wanted to know about the top of the child's head the doctor dissertated on the fontanelle, and when the questioner asked about decomposi-tion the medical gentleman gave information about the softening of the tissues and the lissolution of the body. The witness denied hat he was prejudiced against the defendants, out said he was prejudiced against any place where crime had been committed. The wit-ness was so evasive in his answers that the attorney for the defense, in replying to an objection by the prosecution, took occasion to roast the doctor to a turn. The roast had the effect of exciting the dander of the doctor, and in answer to subsequent questions he vehemently decied that he expected any pay or being present at the postmortem.

At half past 12 the witness was excused, and court adjourned until 2:30 o'clock.

Dr. J. E. Summers was the first witness at

the afternoon session. He stated that he assisted at the post-morten. From the condition of the child's head he supposed that craniotomy had been performed, but stated that the body was so badly decomposed that it was impossible to make much of an exam

From the inspection of the remains of Miss Beaver it would be impossible to tell whether craniotomy was necessary or not. The wit-ness said that there was always slight ruptures and hemorrhage at childbirth, and he could not state positively that the lacera-tions had been made by instruments.

Dr. Peabody said that his opinion was that the lacerations were caused by bunglesome midwifery. He saw the remains of the child and noticed the crushed condition of the skull, but no particular examination was made as the body was too badly decomposed. The condition of the skull might have been caused by decomposi-tion or from the effects of an attempted delivery. Witness could not say whether it had been necessary to perform craniotomy, but judged from the size of the child that it was one which demanded the use of forceps at delivery. He said a physician would be authorized in using instruments at the deliv-ery of the child. Hemorrhage always follows labor, and patients sometimes die in spite of all the doctors can do.

Dr. Victor Coffman said that in his opinion the lacerations were produced by mechanical violence. He would not say that craniotomy had been performed, and could not tell whether the head bad been crushed before

or after delivery.

At the conclusion of Dr. Coffman's testimony Attorney Gurley arose and addressing the court made a motion to dismiss the de

Mr. Gurley said: "This is not a charge of the state of Nebraska against these institute doctors, but a case of Harrigan and others against McLaughlin, Williams and Sinclair. There has not been enough evidence intro-duced here to bind a dog over. Your honor duced here to find a dog over. Your holder can't bind these men over without any evi-dence, simply because somebody wants you to, because these doctors want you to, for some reason, God only knows what; or because the county coroner, that assistant county attorney sit-ting behind Mr. Morgarity that friend of the

ting behind Mr. Morearty, that friend of the people, Post-Mortem Harrigan, wants you A ghastly grin pervaded the features of the coroner, which was quickly succeeded by a surprised stare and followed by a death like paleness. Mr. Gurley continued his speech. briefly setting forth what the prosecution had charged, and claiming that none of the charges had been substantiated. He closed again moving the dismissal of the ac-

Court adjourned at the conclusion of Mr. Gurley's remarks. This morning Mr. Mo rearty will argue for the prosecution.

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Of perfect purity. Lemon Of great strength. \_ Economy in their use Rose etc. Flavor as delicately and deliciously as the fresh fruit. IN THE COURTS.

The Jury in the Meyer-Olsen Case Fails to Agree. The jury in the case of Charles H. Olsen, administrator of the estate of Edward H. Olsen, deceased, against Max Meyer has been out since Monday, and the chances of an agreement are but little better than at the last term of court. Yesterday the twelve men appeared before Judge Irvine and asked for further instructions. These instructions were given, after which they asked for the reading of the testimony or Max Meyer, Chief Galligan and Superintendent of Build-ings George C. Whitlock. The point on which they stick is whether or not the build-ing was in a safe condition prior to the time

ing was in a safe condition prior to the time when it was blown down.

Mike Johnson, charged with assault and battery, was brought before Judge Estelle. The county attorney with-drew the charge and Johnson pleaded guilty to assault.

The case of Mike Whalen against George Wadell and J. E. Markel is on trial before Judge Irvine. Wadell contracted to build a house for Whalen, got the money, but failed to pay for the material and as a result, liens to the amount of \$3,000 were filed against the property. Markel is the bondsman for Markel is the bondsman for

Charles L. Oakford has brought suit against the Omaha street railway company and seeks to recover the sum of \$7,500. In June, 1888, Charles was employed in the com-pany's barn on Park avenue. While so em-ployed he was kicked by a horse and his leg broken. He now feels that a judgment must be obtained before he can ever become a well

W. H. Harvey of South Omaha was before Judge Estelle to ask for a writ of habeas corpus to take him out of jai'. The writ was denied and as soon as a requisition can be obtained Harvey will return to Mills county, Iowa, where he will answer an indictment that charges him with having disposed of

A box of Ayer's pills has saved many a fit f sickness. When a remedy does not happen of stckness. When a remedy does not happen to be within reach, people are liable to neglect slight ailments, and, of course, if serious illness follows they have to suffer the consequences. "A stitch in time saves nino."

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Spaulding Street Damaged. "I should like to know why the board of ublic works does not do something to save he pavement on Spaulding street," said

tizen of the Sixth ward last night, "About two weeks ago when a big rain ame and swept out a part of the intersection at Twenty-seventh and Spaulding, the attention of the board was called to the necessity of preventing a recurrence of the flood, but nothing was done. Last Tuesday night the heavy rain caused another cata-ciasm on Spaulding street and carried away nearly half a block of cedar block pavement. Some of the pavement is doubtless floating down the Missouri river and much of it is scattered along the gutter for half a mile below the place where it should be, between Twenty-seventh and Thirtieth on Spaulding

"Two weeks ago, \$100 judiciously expended would have saved this pavement. It will now require \$1,000 to repair the damage, and in the meatime Spaulding street in the vicinity of Twenty-seventh, Twenty-eighth and Thirtieth is practically impassable."

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Chicago by the Vestibule Limited night trains from the west.

New Line to Des Moin's. Commencing Sunday, May 31, the Chicago, Milwaukee & St. Paul railway will establish a through line of sleeping cars between Sioux City and Des Moines via Madrid. Passengers from Omaha and the west can leave Omaha at 6:20 p. m., secure sleeping car accommodations and arrive in Des Moines at 6 a. m. Returning, leave Des Moines 9:40 p. m., arrive Omaha 9:45 a. m. Dining cars on both trains. Ticket office, 1501 Farnam street. F. A. NASH, Gen. Agt. J. E. PRESTON, City Pass. Agt.

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deals in. How, do you think, he selects his chimneys? He buys those that cost him

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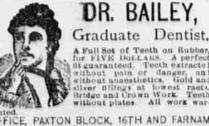
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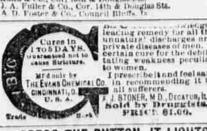
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