

DECLARE FOR A SEPARATION

Stockholders Want the Omaha and Denver Plants Divorced.

NEW PHASE OF WATER WORKS LITIGATION

Claims that the Consolidation of the Two Concerns Was Effected by Fraud—Judge Dundy Grants a Temporary Injunction.

A suit was begun in the United States court in this city yesterday which renews the fight among the stockholders of the American Water Works company and promises to indefinitely prolong the legal battle. The suit is for the purpose of obtaining an action of the court separating the Omaha and Denver plants, which, during the past two years, have both been under the management of the same company. Upon the application of the petitioners Judge Dundy has issued a temporary injunction restraining the company from applying any of the revenues received from the Omaha plant for the payment of the debts or expenses of the Denver institution until the facts at issue shall have been decided on by the court.

The petition is a bulky document, comprising nearly 100 pages of typewritten copy, and recites a long story of the corporate existence of the several companies, during which it is claimed that gross deception has been used for the purpose of promoting the interests of a certain number of stockholders and to the detriment of others. The suit was instituted by the United Water Works company in behalf of itself and other stockholders of the American Water Works company and the list of defendants includes the American Water Works company of Illinois, the American Water Works company of New Jersey, the Denver City Water Works company, E. Hyde Rusk as receiver and William H. Hall and Son, L. Wiley of this city.

The American Water Works company of Illinois was organized prior to 1891 for the purpose of furnishing water for Omaha, South Omaha and Florence, and according to the understanding of the petitioners its charter included no authority to dispose of its property and franchise either by sale or consolidation. On July 1, 1887, the Illinois company issued bonds amounting to \$4,000,000, of which \$400,000 was deposited with the Farmers Loan and Trust company of New York to retire bonds to the same amount when had been issued in 1880. The remaining \$3,600,000 was used to purchase stock being secured by a mortgage on the Omaha plant.

Alleged Star Chamber Proceedings.
The United Water Works company secured control of \$800,000 of the stock of the Illinois company in March 1890, which is still in its possession. It claims that on February 20, 1891, a special meeting of the stockholders of the Illinois company was called for the purpose of considering a contract for the consolidation of the said company with the Denver company. The meeting was held not adjourned from day to day without taking the intended action until March 20, when it was given out that the contract had been formally approved by the stockholders. It was also declared that a contract with C. H. Verner & Co. had been approved pending the prospective consolidation, by the terms of which the latter company was to carry on certain repairs and construction in return for the 5 per cent twenty-year gold bonds of the Denver company.

The petition alleges that these contracts were never legally approved by the Illinois company as fraud was used in securing the alleged approval. At the meeting March 20 the petitioners claimed that 1,800 shares of preferred stock of the Illinois company were voted without the consent of approval. It is also claimed that 10,000 shares of common stock belonging to the Illinois company in this city were voted without the consent of their owner, and 5,000 shares of common stock belonging to the petitioner, making 16,500 shares of stock which were voted in favor of the consolidation and without which the contract could not have been approved.

The vote of the United Water Works company in favor of the consolidation was secured through a written proxy issued by F. H. Mills, at that time treasurer of the company, in favor of Joseph G. Griffin, assistant secretary of the Illinois company, which purported to be sufficient authority to cast the vote of the company. The aggrieved company now demands that Mills had no authority to issue the proxy and the action obtained through its use was illegal and should be declared null and void. It is also claimed that the proxy as delivered to Griffin only gave him authority to vote stock at the meeting called for February 26, and that Griffin changed the instrument so as to extend the effect to cover the subsequent adjourned meeting at which the consolidation was brought about.

Wiley Was Misrepresented.
Clarence H. Verner held Mr. Wiley's proxy, but it is not claimed that the owner did not intend that he should vote it for the consolidation, and that the stockholders present were well aware that none of the stock held by Joseph G. Griffin, assistant secretary of the Illinois company, could be legally voted at the meeting.

The next move of the consolidation contingent was to dissolve the new company, known as the American Water Works Company of New Jersey into which the Omaha and Denver companies were merged. William A. Underwood was elected president and director of the new company, and the remaining twelve directors were selected equally from among the stockholders of the Omaha and Denver companies.

On April 24, according to the petition, William A. Underwood and William H. Hall, who were president and secretary respectively of the Illinois company, with offices in the city of Omaha, executed two conveyances, turning over all the property of the American Water Works company in Omaha, together with its franchises and contracts, to the newly organized New Jersey company. It is claimed that the stockholders of the Omaha and Denver companies were not notified of this transaction, and that the petitioners were left out of the deal.

Reputed the Combine.
On May 1, 6,250 shares of stock in the New Jersey company were turned over to their treasurer, F. H. Mills, in return for the stock of the American Water Works company which was owned by the United company. Mills made no report of his action to the directors of his company until the next December, when the directors adopted resolutions repudiating his action in accepting the stock and also repudiating the proxy which Mills had given to Griffin on the former occasion. It is claimed that this report from the treasurer was the first intimation the directors of the Illinois company had received of the consolidation, and failing in this institution suit to compel their delivery on the ground that they had been removed from their possession by fraud.

The United company refused to accept any portion of the stock of the New Jersey company, and offered to return the certificates of stock in the latter company which had been accepted by Mills. It was impossible for the directors of the New Jersey company to take any action in the premises on account of an injunction which had been obtained by one Dennis Sullivan, restraining the directors of the company from holding a meeting unless there were seven directors present, which amounted to a prohibition, as Sullivan controlled a sufficient number of the directors to prevent seven directors from getting together.

Injunctions Come Fast.
In March, 1892, Catherine Archer, a stock-

holder, brought a suit in the court of chancery of New Jersey and enjoined both factions from holding a directors' meeting. In the meantime the Denver company had brought suit in the circuit court of this state praying for the appointment of a receiver for the property of the company situated in Nebraska, as the company was said to be unable to manage its affairs properly on account of internal dissensions, and the result was that the petitioners were granted and Ellis L. Bierbower and Alonzo B. Hunt were accordingly appointed as receivers.

In April, 1892, a similar suit was instituted in the court of chancery of New Jersey, and E. Hyde Rusk was appointed receiver for the New Jersey company. The order was issued April 20 and soon after Mr. Rusk instituted a suit in the Nebraska courts for the removal of Messrs. Bierbower and Hunt as receivers for the Omaha property and for his own appointment in their place. He was successful, and since then has been in charge of the Omaha plant.

The petitioners now want the court to declare that the consolidation of the water companies and the subsequent transfer of their property to the New Jersey company was illegal and void, and that the petitioners, Messrs. Rusk, Bierbower and Hunt, shall render an account to the plaintiffs of the business of the company during their term of supervision, and that an injunction shall be issued preventing them from applying any of the proceeds of the Omaha plant to the payment of the obligations of the Denver company.

Card from N. B. Falconer.

On Saturday night at 7:30 we will offer the greatest value in dress goods that we have ever placed before the public. The goods fell into our hands at an extraordinary sacrifice and we will place them on sale Saturday night, giving all the advantage of our bargain to our friends. They consist of wool belgels, wool chevrons, wool diagonals and illuminated wool mixtures. They are all this season's goods. They will be sold in dress patterns of seven yards; the price is \$5.00, and will be sold by us on Saturday night at \$2.48.

N. B. FALCONER.

HAD MANY VICTIMS.

Three More Complaints Against Accountant.

Three more complaints have been lodged against J. B. Smith, the instructor in book-keeping. This time it is three young ladies who paid Smith \$10 for instructions and \$1.50 for books. Two of them, Miss Priscilla Owens and Miss Ellen Jurgens, were to receive situations, one in March and the other in April, but the instructor was not to be found, and the situations never materialized. Both young ladies have agreements in writing signed by Smith, who was to furnish them the positions at the times specified. They called on City Prosecutor Cochran and he informed them that it was simply a breach of promise on the part of Smith, and that there existed no grounds for a prosecution. The young ladies were not satisfied with the answer given by the prosecutor, and referred to City Attorney Connell. Mr. Connell said a clear case could be made against Smith for obtaining money under false promises, and Mr. Cochran will be called to time and requested to cause the arrest of the instructor and prosecute him.

Fought on a Motor.

At the last up-town Farnam street motor stopped at Seventeenth street Wednesday night a South Omaha packer, who was somewhat intoxicated, got into an altercation with the conductor and finally struck at him. The conductor struck back and in an instant both men were down upon the pavement pounding at each other at a lively rate. The street was in a state of commotion and most of the blows failed to count. The South Omaha passenger was pretty handy with his fists, although he was rather full, and the conductor was laboring under the advantage of one crippled hand and an overcoat.

When the conductor had worked his opponent over to the sidewalk and was getting the better of him, some of the passengers, probably fearing the packer might get pretty badly hurt if the fighting continued, called out to the conductor: "Oh that will do; stop!" The conductor desisted and returned to the car, the passengers clamored on, and the packer was left behind, groping around in the darkness for his hat, which had fallen off. The conductor came out unscathed, but the packer probably did not fare so well.

Desperadoes With Reputations.

If Jesse James was laid away in his grave his ghost will not down. Jesse stands charged in police court this city with disturbing a religious meeting. His place of residence is given as Omaha and, though street and number are omitted, his habitation is somewhere near the many streets. Change of residence seems to have brought with it a change of age, which is given as 18.

But this is not the only important arrest the police force has accomplished. They added more laurels to their reputation by taking in charge one of the Younger boys as a suspicious character and a beggar. His initials are given as J. G. and the age as 16. Both arrests were made by the wily force without any blood being shed.

Stole a Coat.

Detective Savage found Frank Wilson in a Tenth street pawn shop yesterday afternoon with a new coat and vest which he was trying to dispose of. Wilson is pretty smooth for when he saw the officer enter he pretended to be purchasing a pair of socks, but the officer didn't go and Wilson was in jail. It is supposed that the clothing had been stolen and Savage would like to have any one who has lost the articles mentioned call at police headquarters and identify the property.

Hutchinson Released.

Chief of Police Seavey received a telegram yesterday afternoon from the sheriff at Laraine authorizing him to release E. M. Hutchinson, the ex-postmaster who was wanted in Wyoming for an alleged shortage in the office accounts. Mr. Hutchinson was seen by a reporter as he was leaving the jail, but he declined to say anything for publication beyond the fact that he would remain in the city for two or three days yet.

Police Briefs.

George Reaser, a dishwasher at the Barker hotel, was fined \$5 and costs for using obscene language toward Hannah Hughes, a dining room girl employed there. The walls of the old Orchard street on Douglas street were yesterday reported to the police as being unsafe and liable to be blown down by the gale, and so the police protected pedestrians by placing ropes about the place.

A couple of detectives arrested Frank Fish yesterday afternoon at the instance of Jim Stephenson. The complainant alleges that Fish was one of the backmen who went on a strike and declined to turn over his night's collection, amounting to \$4.

Word reached the city jail yesterday that Charles Thumare had been arrested in Little Sioux for arson. Thumare used to run a fruit stand out on South Thirtieth street, and one cold night last winter the stand was totally destroyed by fire before the department arrived. It was thought then that the place had been set on fire.

WRAITH OF A DEAD REVEL

Merchants Week Carnival Haunts Its Promoters in the Courts.

ONE JUDGMENT OBTAINED AGAINST THEM

St. Louis Firm that Delivered Printed Matter Too Late for Use Receivers in Full for Its Claim—Other Court News.

In September, 1889, the Omaha Merchants Week association gave a series of parades, band contests and other entertainments in connection with the exposition which was then in progress at the Coliseum. The contract for printing advertisements, etc., was given to the Great Bank Note Lithographing company of St. Louis, which delivered the printing only two days before the beginning of the meeting. Of course the matter was valueless at that late date and the association refused to pay for it unless a material reduction was consented to. This the St. Louis company would not hear to and began suit to enforce payment.

The suit was tried before Judge Ferguson at the present term of court and judgment was rendered in favor of the plaintiffs for about \$800. The judgment lies against W. A. L. Gibson, John A. Fuller, S. W. Croy and Nathan Croy, who were the prime movers in the merchants week display. The amount left in the hands of the treasurer of the association, together with a discount of \$100, which will be allowed by the St. Louis company, reduces the amount to \$400, and John A. Wakefield, as secretary of the association, has addressed letters to a number of business men stating the facts in the case and representing that as the gentlemen against whom the judgment was rendered were working in the public interest a subscription should be raised to pay the amount. It is estimated that \$5 apiece will be sufficient to relieve the association from its embarrassment.

Court Calendar.

The call for today is as follows:

LAW ROOM NO. 4—JUDGE HOWELL.
29-196—Holman vs. Cowin.
30-250—Hay vs. Mullin.
30-277—First National vs. St. Louis Furniture Co.
31-18—Lind vs. Troup.
31-100—Lindsay vs. Maul.
31-130—Wright vs. Gies.
31-150—Linn vs. Hauck.
31-160—Montgomery vs. Pelker.
31-170—Haverhill vs. Storch.
31-207—Leonard vs. Hammond.
31-217—Saunders vs. Forbes.
31-225—Smith vs. Gies.
31-262—German Savings bank vs. Tuttle.
31-300—Hill vs. Meyer.
31-351—Nelson vs. Omaha Fire Insurance Co.
31-262—Murray vs. Cunningham.

LAW ROOM NO. 6—JUDGE GIBBS.
30-173—Meyer vs. Hodson.
30-260—Curtis vs. Dolan.
31-277—Hill vs. St. Louis Furniture Co.
30-307—Murphy vs. Ryker.
30-340—Omaha National bank vs. Atkins.
30-353—Yoder vs. St. Louis Furniture Co.
30-389—Saunders vs. B. & M. Railway company.

EQUITY ROOM NO. 6—JUDGE FERGUSON.
32-338—Eugene C. Bates vs. E. A. Tillotson.
32-181—Union Trust company vs. Joseph Fish.
33-135—Nelson vs. Anderson.
33-132—Nebraska National bank vs. Maria Heiman.
33-233—McShane vs. Lee.
33-250—Pratt vs. Portsmouth Savings bank.
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33-233—McShane vs. Lee.
33-250—Pratt vs. Portsmouth Savings bank.
33-262—Chicago National bank vs. Tuttle vs. Brown.
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