SALVATION ARMY IN SUPERIOR COURT

FAMOUS WILKES-BARRE CASE HEARD YESTERDAY.

Mayor Refused to Permit the Salvationists to Discourse Drum Music. Scripture Was Freely Quoted in Support of the Army People's Case. City Absolved from Blame in Judge McPherson's Charge in the Case of Giles Stanton to Recover Damages from the Scranton Railway Co.

Wilkes-Barre's famous Salvation Army case was among those argued before the superior court yesterday. Attorney Agib Ricketts appeared for the army and City Solicitor Charles F. McHugh for the city.

The army officers sought a permit from the mayor to hold their meetings on the square and play their drums during the meetings. The mayor declined to grant any permit, but it appears gave them to understand that as long as they did not violate the city ordinance against nuisances they would not be disturbed. The army proceeded to hold their meetings and beat their drums. Later the Volunteers of America appeared upon the scene, and, taking up a position on the opposite side of the square, proceeded to also hold meetings with bass drum accompaniment.

Complaints poured in from the business men and residents of the square, and finally formal complaint was made against the army, which it appears was the chief offender. The commander, Ensign Joseph Garabel, was arrested and at a hearing before Mayor F. M. Nichols, fined $6 and costs. The judgment of the mayor was appealed from and the matter presented for adjudication to Judge Stanley J. Woodward in the form of the case stated. The army people contended that the city ordinance was unconstitutional and it was in violation of the Fourteenth amendment and section 3, act 1, of the constitution of Pennsylvania, which substantially, makes a similar guarantee as the federal "freedom of conscience" clause. It was also held that the ordinance was enforced against the army while minstrel shows, organ grinders, circuses, hokey-pokey ice cream men, base ball team and such like organizations were not brought under its operations.

WEIGHTY ARGUMENT.

Mr. Ricketts quoted no end of scripture in support of his position before Judge Woodward. The judge in his opinion takes occasion to also go into the Book of Books and after saying that "it does not seem clear to us that the beating of bass drum is a necessary part of divine worship," goes on to quote from Paul: "Put them in mind to be subject to principalities and powers, to obey magistrates * * *," and from Peter: "Submit yourself to every ordinance of man * * * *;" also from Romans 13: 1: "The powers that be are ordained by God."

Judge Woodward decided that the city ordinance was constitutional and upheld the mayor's action in every respect. From this decision the appeal to the superior court was taken.

In his argument yesterday, Mr. Ricketts reiterated his contention outlined above and proceeded to make an elaborate defense of the army's action. Christ, he said, told his disciples to go forth and preach in the highways and byways. Paul, Peter, James and John did this and we cannonize them. The Salvation Army essays to do likewise and we ostracize them. Ancient Rome and modern Wilkes-Barre are alike in this manner of treating Christ's disciples.

Judge Rice interrupted Mr. Ricketts with the suggestion that he need not defend the Salvation Army's work before the superior court.

Thanks. That's a relief," said Mr. Ricketts, "I am glad your honors appreciate them. Wilkes-Barre doesn't."

In commenting upon Judge Woodward's opinion that the drum is not an instrument of salvation, Mr. Ricketts quoted extensively from the scriptures, making his own translations of the Hebrew or Greek as the occasion demanded, to show that the drum was very much an instrument of worship means drum or tambourine, and, that, the Hebrews "toph," which is translated variously as cymbal and drum means drum or tambourine, and, that, very frequently, where "cymbal" appears in the modern translations is should appear "drum" or "tambourine."

A DEVIL ALSO.

In answer to Judge Woodward's scriptural quotations, Mr. Ricketts contended himself with Shakespeare's "Hark you, Bassanio; the devil can quote scripture for his purpose.

In conclusion he said: "We submit, that the ordinance in question here, is at variance with the federal constitution, because instead of protecting the citizen by an equal law, it places him in a position wholly unprotected against the mere arbitrary and uncontrolled will of a single individual. And that it is at variance with the state constitution, because it places the matters of liberty of conscience, and preferences as to modes of worship, in the same unprotected situation."

City Solicitor McHugh contented himself with a brief argument against the base drum being a fitting means of communion between a worshipper and his deity, and making the claim that the drum in the case was analagous to a church bells or chimes, quoting a decision of the Pennsylvania supreme court sustaining an injunction against the ringing of the chimes of St. Mark's church, Philadelphia, when the neighborhood complained of them as a nuisance. He then entered into a defense of the city ordinance and a justification of Mayor Nichols' action, citing the complaints that had been made against the noise of the drums of the "rival" armies, and especially the complaint of the members of the Law library association, which has its headquarters on the public square.

The case of Giles Stanton against the Scranton Traction company, appellant, was argued by Hannah and Welles, representing the appeal and Attorney I. H. Burns, as counsel for Stanton.

The plaintiff is a farmer living in South Abington. In February, 1895, in attempting to drive diagonally across the street car track on Capouse avenue with a bob-sled loaded with hay, his sled overturned. While righting the vehicle he slipped on the slanting snow bank thrown up by the company's snow sweeper and broke his hip. He sued the company and the city for damages and secured a verdict of $800 against the company, the jury exonerating the city from liability.

CITY INVOLVED.

The company alleged at the trial of the case that Stanton was guilty of contributory negligence and proved that four days before the accident he attempted to drive across the street at identically the same point and experienced an upset. He made answer to this by alleging that the first upset was due to his hay being loaded unevenly on the sled. The company further contended that the city was the responsible party. The abutting property holders had thrown the snow from their sidewalks into the street, making a bank along the curb. This narrowed the driveway and in crossing the track Stanton's team, being compelled, by this obstacle along the curb, to make a short turn, upset the sled and caused the trouble which led up to the accident.

Judge McPherson in his charge ignored the alleged culpability of the city. He said the condition of the street was the proximate cause of the accident, but failed to tell the jury that the abutting property holders were even partly responsible for the condition of the street.

This, Judge Willard argued, was unfair and entitled the company to a new trial. He also contended that Stanton was guilty of contributory negligence, having failed to introduce any testimony whatever to show that he exercised due care while moving about the slippery snow bank.

Mr. Burns argued that the question of the city's liability had been submitted to the jury and the city had been exculpated.

This was Judge Willard's first appearance before his former brethren of the Superior bench and the first instance of an ex-judge of that court pleading before it as an attorney.

The case of N. S. Drum and R. C. Drum, appellants, against Jacob Uplinger was argued by Abner Smith for the appellants and George H. Troutman for the defense. It is an appeal from Judge Woodward's decision discharging the rule to strike off an appeal from the award of arbitrators, which was alleged to be irregular because of all the costs not having been paid.

EXCEPTION TO LUZERNE COURT.

Mr. Smith also argued for J. C. Powell, appellant, against W. C. Gayley, in which exception is taken to the action of the Luzerne courts in approving an appeal from an award of arbitrators taken after a confession of judgment before the arbitrators. It was contended by Mr. Smith that the action in question was virtually an appeal from the judgment of a court to the court from which the appeal was taken. Judge Rice said the court did not care to hear the opposite side, represented by Attorney M. J. Mulhall.

E. F. McGovern, for the appellant, and Frank A. McGuigan, for the plaintiff society, argued the case of the Sons of Poland against M. Filipiak, Ylaning Bonm and Rev. B. Dembenski, rector, appellant, an appeal from the common pleas of Luzerne county. The society loaned $325 to the building fund of St. Stanislaus church in 1893. Rev. B. Dembenski signed a judgment note for that amount, as rector of the church, and the other two defendants signed as sureties. Four years later Rev. Mr. Dembenski was transferred to Scranton. The society then proceeded to collect on its judgment note and secured execution. Rev. Dembenski appealed on the ground that he should not be held, as he simply signed as representative of the congregation, and that some equitable rule should be interposed to protect him. It was also pointed out that the Sons of Poland is a society composed of members of the church.

Mr. McGuigan claimed that the powers of equity should not be exercised in this case, alleging among other things that the money in question is now in Rev. Mr. Dembenski's pockets. Mr. McGuigan also cited the fact that the society and Rev. Dembenski well knew they could not bond the church because for any money borrowed except through the legal channel, namely, the bishop of the diocese, who is trustee for all churches in his diocese.

At adjourning time court was listening to arguments in the Carbon county case of P. J. Kistler and others against C. O. Scheirer, appellant. It is an effort to set aside judgment obtained under duress. Horace Heydt, of the firm of Freyman, Heydt & Nothstein, of Mauch Chunk, represents the plaintiffs, and James S. Biery, of Allentown, and N. M. Balliet, of the firm of Balliet & Seidle, of Lehighton, represent the appellant.

ROSMOZVITCH ARRESTED.

Wanted in Luzerne County for Robbing Freight Cars.

Tuesday an order of court was made for the release of such prisoners at the county jail as had had the bills against them ignored by the grand jury. Ignatz Rosmozvitch, who was charged with complicity in the Austin Heights' outrage, was among them.

Yesterday he was to have been set at liberty but he did not gain his freedom. County Detective Leyshon had him held on the strength of a warrant sworn out before Alderman Donahoe, of Wilkes-Barre, by James O'Brien, Lehigh Valley detective, in which Rosmozvitch is charged with robbing freight cars at the L. & B. junction.

Detective O'Brien came up last night to take Rosmozvitch down to Luzerne county.

WORSE THAN FIRST SUPPOSED

Jersey Judge Measure Has Passed the House.

The new federal district dilemma is even worse than at first supposed. The substitute measure, framed by Congressman Parker, of Newark, providing for a third circuit judge with headquarters in Newark, instead of a third district judge with headquarters in Scranton, has not only been reported from the judiciary committee, but has passed the house.

So Congressman Connell regretfully informed the new district boomers yesterday. It was introduced and sent on its way through the house while Mr. Connell was confined to his hotel with la grippe, and it was not until he had recovered and was able to resume his seat that he discovered the work of the Jerseyman. The measure will be attacked in the senate.

PROPERTY VALUED AT HALF A MILLION

CASE INVOLVING OWNERSHIP HEARD BY JUDGE GUNSTER.

Ejectment Suit Brought by the Hillside Coal and Iron Company—Yesterday's Trial Was Preliminary to Taking to the Supreme Court Judge Archbald's Decision on a Lateral Feature—Land Sold in 1872 for $127,125 and Afterward for $501,300—Instructions for Plaintiff.

An important case, involving the ownership of property which at one time brought half a million dollars was called before Judge Gunster in No. 2 at the opening of the morning session, yesterday. It is the ejectment suit of the Hillside Coal and Iron company against E. A. Heermans, George Watres, jr., F. W. Fleitz and Frank T. Okell and the property in question is the W. I. Pitt plot in Blakely.

The trial, yesterday, was a mere formality preliminary to taking to the supreme court an appeal from a decision of Judge Archbald on a lateral feature of the case.

The land originally belonged to H. S. Pierce. He sold it in 1872 for $127,125 to E. H. Watson, trustee, of New York. He afterwards sold it to the North Mountain Coal company for $501,300. The North Mountain Coal company was merged into the Hillside Coal and Iron company and in this way the Hillside company claims title.

In 1872 William I. Pitt entered into possession of the land, as a squatter, it appears. In 1881, nine years later, the Hillside company brought a suit in ejectment against him. The case was allowed to lie dormant. In 1895, Pitt sold his alleged right in the land to the present defendants. In June last, these defendants were permitted to substantiate themselves for Pitt as defendant in the ejectment suit. Thereupon they moved to have the suit non-prossed on the ground that the plaintiff had not pressed it with the diligence required by law, and that when they purchased from Pitt they had reason to believe that the company had abandoned the suit, inasmuch as it had made no move in it for fourteen years.

NON-PROS WAS REFUSED.

Judge Archbald refused to allow this non-pros, holding that there was no decision to base the defendants' claim and indicating that in the absence of any definite law on the subject, he would hesitate to allow a non-pros. in such a case unless a period of twenty-one years had elapsed.

The defendants desire to take an appeal from this decision and to do so it was necessary to have an adjudication of the suit in ejectment.

The trial consisted merely in the presentation of the facts in the case by Judge Gunster to a jury with binding instructions to find for the plaintiff, on the ground that the defendant, Pitt, had been in occupancy less than twenty-one years. Ex-Judge Knapp represented the plaintiff and A. A. Vosburg, the defendants.

In the case of Mr. Wrobelewski against Archbald borough, the jury, yesterday morning, returned a verdict in favor of the plaintiff in the sum of $200. Wrobelewski sued to recover for the value of a horse which broke through a patch of ice on one of the borough streets and fractured one of its legs. The plaintiff averred that there was a hole in the street over which the ice formed. The defense alleges now that the plaintiff's witnesses swore the hole in the ground. An effort will be made to secure a new trial.

The case of Ellen Taylor against the city of Scranton which was called Tuesday afternoon, was on all day before Judge Love. The jury spent the greater part of the morning in an examination of the premises. Mrs. Taylor, as explained at length, yesterday, sues for damages to her property, alleged to have resulted from the building of the retaining wall on Robinson and Ninth streets.

In the suit of Jesse S. Carter, administratrix, against M. Mullen, A. R. Raub, Dr. E. H. Throop estate, and George Kinback, bondsmen for Thomas Stewart, administrator of the estate of Jesse Stewart, Judge Purdy directed a verdict for the plaintiff in the sum of $9,800.12, subject to reserved powers which will come up at argument court. The defendants attack the validity of the bond and the proceedings to recover on it. These law points will decide the case. Welles & Torrey represent the plaintiff, and Messrs. Lowry, Newcomb and Warren, the defendants.

The jury in the Mill machinery case of Charles Hill against S. C. Whitmore was charged by Judge Purdy at the opening of the morning session. After four hours deliberation a verdict was agreed upon, but as court had adjourned it was sealed.

UNNECESSARY LITIGATION.

Judge Edwards Descants on the Foolishness of Wasting Money in Lawyers Fees and and Court Costs.

Judge Edwards delivered an opinion yesterday that might be read with profit by everybody. It is a criticism of the conduct of indiscreet parties who will insist on running into court on the smallest pretense. The case in question is a fight over a small estate left by Patrick H. Brown, late of Danville. Judge Edwards says in his opinion:

The history of this small estate shows that much expense and many difficulties could have been avoided by the use of a few grains of ordinary discretion.

Patrick H. Brown died in June, 1896, at Danville, Pa. He owned one piece of real estate, not of much value, and there was a certificate of deposit amounting with interest to $324.70. This certificate was in the hands of Michael Loftus. There was no other personal property. There was only one claim against the estate. This was made by the Carbondale poor district, who had taken charge of the decedent and of his property. The poor district's claim was finally adjusted before the auditor and fixed at the sum of $125. The personal estate, if not diverted to any other use was amply sufficient to pay the debt, leaving a balance for the heirs. There were two heirs, both of age.

Instead of amicably settling the estate without the expense of administration, one of the heirs seeks an attorney. The heir wanted his share of the estate and employed the attorney for that purpose. The first step was to secure letters of administration. The heir, aparently, could not secure a bond, and Mr. Gramer was selected as a proper person to administer the estate. Mr. Gramer qualified as administrator and proceeded at once and vigorously to settle the estate.

The first step was to secure the deposit in the bank. It had been there for years drawing only two per cent. interest. But Mr. Loftus had the certificate. He refused to surrender it to the administrator, claiming a right to the money either for himself or the other heir whom he represented. The administrator then brought an action of replevin for the certificate, resorting to arbitration. There was not a day lost. He also presented a petition to the orphans' court, and obtained an order, for the sale of the real estate, which sale was duly advertised in the newspapers and by posters.

The sale was for the purpose of paying the claim of the poor district and the expenses of administration. Before the day of sale Mr. Loftus' attorney petitioned court to stay the sale. This was allowed on condition that Mr. Loftus pay into court the sum of $500 to cover the costs and the poor district claim, which at that time was supposed to be about $400. The money was paid into the clerk's office and an auditor was appointed to distribute the fund to the parties legally entitled thereto.

After half a dozen sessions before the auditor, at any rate, some time during the proceedings, Mr. Loftus agreed to surrender all claims to the certificate of deposit, allowing the administrator to take the money, and the claim of the poor district by agreement of the parties was fixed at $125. But in the meantime the costs and expenses had been accumulating at a very rapid pace. All the machinery of the law had been put in motion to accomplish that which could have been done in the beginning without any expense, and which, after wasting over two hundred dollars, was done finally by agreement of the parties themselves. After the last skirmish of the legal battle was ended, Mr. Loftus through his attorney objected to some of the items of costs presented by the administrator and his attorney.

It was seen that the luxury of such litigation was expensive to everybody concerned. The auditor very wisely reduced some of the charges. Exceptions were filed to the auditor's report. It is these exceptions that are now before us for consideration. They are filed on behalf of Mr. Loftus. It may be pertinently said here that had Mr. Loftus promptly surrendered the certificate of deposit to the administrator, fully two-thirds of the costs would have been avoided. He made a mistake. It left the door open for the administrator to proceed against the real estate and to bring the replevin suit.

The zeal and promptitude shown by the administrator and his attorney are unmistakable and fully meet the highest demands of the law. We have examined the items of the account as stated in the auditor's report with considerable scrutiny and we have succeeded in finding only one item which should not have been allowed. The administrator claimed five per cent. on the $700 paid in court. The auditor allowed him two and one-half per cent. The money never went into the hands of the administrator and it will be paid out by the clerk of the court, who is entitled to poundage on it. The auditor erred in this particular. The exception to the allowance of $17.50 percentage on the money in court to the administrator is sustained. All the other exceptions are dismissed. The amount to be distributed to Michael Loftus is $681.70 instead of $664.20. Thus modified the report of the auditor is confirmed finally.

IMPORTANT EQUITY SUIT.

Throop Estate Sued by a New York Executor.

An equity suit was begun yesterday by Welles & Torrey at the instance of Daniel M. Stinson, executor of the estate of Willard Parker, late of New York, to recover from the B. H. Throop estate certain profits of lands which it is alleged were jointly owned by Parker and Dr. Throop.

The land in question is the old Sherwood, Spencer and Miller farms in what was Providence township and which is now known as the Throop addition to the city of Scranton.

Parker, it is alleged, originally owned the land. Dr. Throop secured a half interest in the first named tract and a third interest in the other two. He, by agreement, was to manage the property. Parker died in 1884 and Dr. Throop in 1897. In the meantime there was no accounting, it is claimed, and the Parker estate seeks to recover the profits of the property in that interim.

As the land has been divided into building lots which sell at good prices, the amount involved in the suit is extensive.

TO BRING HOSMER BACK.

Requisition Papers Have Been Asked for by Mr. Jones.

District Attorney John R. Jones yesterday made application to Secretary of the Commonwealth David Martin for requisition papers for S. B. Hosmer, the bunco steerer who was arrested and is being held at Niagara Falls, N. Y., for the frauds he committed here.

As soon as Governor Roosevelt grants the requisition, as he will in all likelihood do, Chief of Police Gurrell will send a man to York state to bring Hosmer on here to face his accusers.

The Hancock Fire Insurance company, of Hartford, which Hosmer claimed to represent, has retained Willard, Warren & Knapp, to press the prosecution against the fakir. They say he has also been working through New York state.

THE BEST MAN.

Why He Has a Part in the Marriage Ceremony.

From the Women's Home Companion.

While we smile at the wife-stealing propensity of the savage or half-savage nations, we cherish as our dearest form a custom that had its direct origin in this very self-same practice. The "best man," who plays so important a part in well-regulated marriages that nowadays have any pretense at all to the fashionable, once on a time in Sweden occupied a position that was useful as well as ornamental. In the old days the Swedish groom found it desirable, in fact, to have several "best men," to defend him from the assaults of rivals and prevent them from carrying away his bride. The Scandinavian warrior of ancient times was far too lofty in his ideas to condescend to plea for a maiden's hand. So he patiently waited until some other man who was more gallant had obtained the fair one's consent. Then when all the details had been nicely arranged, the proud warrior, with a body of well-trained retainers, dashed down on the wedding party, and, if strong enough, carried away the bride. The "best men" (and it was very essential that they should be the best men in those days), therefore, became necessary fixtures to the marriage ceremony, and they were so well esteemed and their popularity became so permanent that when the reason for their existence was removed they were still retained. Hence, the custom is preserved in the "best man" of today.

CAMPAIGN BUTTONS.

A Fad That Had a Lively But Very Short Existence.

New Orleans Times-Democrat.

"I became interested a few years ago in a campaign button manufactory," said Mr. Mark Goldberg, of Chicago, who is spending a few days in New Orleans, "and was fortunately just in time to catch the craze. We had quite a large plant, and were able to turn out 100,000 buttons a day. The device was printed on disks of specially prepared celluloid, which were then slightly softened and pressed on metal rings with a stud fastening. That part was done by a machine which was invented by a woman in Iowa. She made about $15,000 out of her patent. The first buttons were nearly all political, but the fad soon extended to other varieties, and at one time we made over 300 different sets, each set having sometimes as many as forty separate designs. Making the drawing alone kept a corps of ten men busy. They were originally printed in black, but after a while the demand for novelty forced us to put in color presses, and some of the work was really artistic. Eventually we used photography also, and printed from the negatives direct to the celluloid. The process was a secret one, and we had to pay a pretty stiff royalty.

"There was a great difference in the quality of the buttons. Some of them sold for half a cent apiece wholesale and some brought as high as a quarter. The latter were the large photographic buttons, with German silver mounts. At present the fad is about played out. Of course, a few are still sold, but not a hundredth part as many as were formerly called for. We thought that the war would create a demand for buttons bearing portaits of the celebrities, but we were badly left. We got out several series with pictures of Dewey, Hobson, Sampson, Schley and all the rest of them, but somehow they didnt catch on, and a set with pictures of the ships also got the cold shoulder. One order that we recently filled was for 100,000 handsome Roosevelt buttons, which went to New York and were bought by partisans of the Rough Rider. A phase of the fad that shows some vitality is the personal button—embellished with one's own portrait or that of one's sweetheart. A great many of these are made to order. We sell to the dealers and they dispose of their wares to the hawkers. Nearly all the buttons in the market are peddled on the curb."

COURT HOUSE NEWS NOTES.

Albert O. Widener, of 626 Harrison avenue, and Rose Buckingham, of 619 Delta street; Frank Lenahan and Miss Mary Kelly, of Scranton, were granted marriage licenses yesterday.

In the case of Mary McNulty, administratrix, against the National Life association, Judge Edwards yesterday made absolute the rule to open judgment, as prayed for by the defendant.