

## UNLAWFUL ACTS OF SEVEN SUPERVISORS.

They Will Now Add Another to a High-Handed Series.

### NO EXCUSES ARE OFFERED

Petition of One Railroad Company Ignored in Favor of Another.

### THE ONE WOULD NOT BLEED.

How Behrend Joost Did Not Get a Franchise Is Still in the Fight.

To-morrow the Street Committee of the Board of Supervisors will make its report to the board favoring the petition of the Market-street Railway Company for a franchise out Ocean House road to the proposed new race-track and the ocean.

And Behrend Joost—the man who has been pleading week after week for this same franchise—will probably be there to hear it done—just as a matter of melancholy satisfaction. Neither the Market-street Railway Company nor any one representing the able-bodied corporation will

Company the same consideration that it has accorded to the bigger corporation. That it is a flagrant disregard of the law a single reading of the law will prove to lawyer and layman alike.

So far as the equities of the case are concerned these have been clearly violated in favor of the Market-street Company.

For years the San Mateo Railway Company has been asking for a franchise out the Ocean House road. Twice the petition has been favorably considered by preceding Boards of Supervisors, but it has always been finally denied on the grounds that it would destroy perhaps the finest drive that the outskirts of the City afford. In the present board—or strictly speaking, in the Street Committee—this same objection was raised.

Mr. Benjamin was particularly anxious about this splendid drive. He did not think it should be cut up by street railway tracks and said so meeting after meeting as Joost and Mullany and the rest of them made their repeated pleadings and retired to give the committee a chance to think.

At last Mr. Joost withdrew that wing of his petition and left standing only his application for the right to run out Sunnyside avenue. This took him off the Ocean House road entirely and left him, at the end of Sunnyside avenue, a couple of miles from Ingleside, the objective point, with private property—the property of Adolph Sutro—lying between him and that point.

He was relying upon his talents in the matter of securing rights-of-way to get through that land. He claimed to have the assurances of Mr. Sutro that he could get through. The Supervisors had nothing to do with that. But straightway Mr.

much for it as I am sure the Market-street Company had to pay for it. It could not have cost them less than \$10,000. Little things like so-called 'extensions' to franchises do not merely cost the \$500 required by the law, it seems. But I have been bled all I'm going to be bled, do you see? But it's little any one can get from the board who takes that view of it. Why, one of the members said to me in so many words, but a few days ago, 'We are not in this thing for our health, Joost. Understand that.' The name? Oh! no! I'm not going to give anybody away by name. But I paid nothing and I was turned down."

A. P. Van Duzer, one of Joost's attorneys, not only considers that the members of the board are acting contrary to the law, but that the City ordinance under which they classify certain franchises as only "extensions" of other franchises is contrary to the law, and all the franchises granted under it are unlawful. Here is the State law as he quoted it. It is an act of March 23, 1893:

Section 1. Every franchise to construct or operate a railroad on any public street or highway or to erect or lay telegraph poles or wires or to exercise any other privilege shall be granted by the Board of Supervisors as is provided in this act and not otherwise. The fact that an application for such franchise or privilege has been made to such Board of Supervisors, together with a statement that it is proposed to grant the same must first be advertised in a daily newspaper for at least ten days. Said advertisement must commence at least thirty days before the franchise is sold. The only things stated in the advertisement are the character of the franchise, the terms of its continuance, the route to be traversed and the day on which bids will be received. On the day mentioned as the one on which the bids are to be received by the board the Supervisors must meet in open session and read the tenders. The franchise must then be awarded to the highest bidder.

Mark how the word "must" is used. Section 2 of the act makes it a misdemeanor punishable by imprisonment for any member of the board to seek to defeat the law.

The first railroad granted a franchise under this law paid but \$1 for it—as it was the only bid.

"There was a public outcry at this and the Supervisors passed an order providing that no bid for a new franchise should be less than \$500, and no bid for an extension of a franchise over additional streets should be less than \$500," said Mr. Van Duzer. "The result is that the spirit of the general law is defeated. No new franchises will ever be asked for, as they cost so much more than the new extensions that only the holders of franchises will ask for them. You will notice, further, that in all the advertisements for bids for these extensions asked for by the Market-street company this language is used: 'That they are to be granted and operated as an extension of and adjunct to and in connection with the railroads now owned and operated by the Market-street Railroad Company.'

"What inducement is there for any person other than the Market-street company to bid for the franchise? Nobody else under those provisions could get title to it. It is claimed further by the railroad company that when the bids are in the board must grant the franchise to the highest bidder without discretion or further consideration. This interpretation cuts out the Mayor's veto powers.

"I hold this to be clearly wrong, for all these proceedings are only preliminary, just as in the awarding of a street contract, which is governed by almost the same conditions, but to complete which, it is not questioned, the Mayor's signature is necessary. The law must be taken in conjunction with the consolidation act, section 68 of which reads:

Every ordinance or resolution of the Board of Supervisors providing for the granting of any privilege shall, after its introduction, be published five days, and before it takes effect after its passage shall be presented to the Mayor for his approval. If he approves it he shall sign it; if not he shall deliver it to the board with his objections in writing and it shall not pass unless it receives the votes of nine Supervisors.

"Nothing in the act of March 23, '93, repeals or attempts to repeal or modifies this section of the consolidation act," said Mr. Van Duzer.

"The method of the railroad companies to obtain these franchises is to formulate their application and present it to the board with the advertisement and ordinance, all of which is prepared at the railroad office. The advertisement of the sale of the franchise contains the ordinance, itself with its conditions. As a matter of course only one bid is put in and that by the railroad company that asks for the franchise.

"At the same session of the board which opens the bids a resolution is offered granting the franchise to the applicant. This grant is made in the form of a resolution to avoid the Mayor's veto. This is in defiance of the consolidation act, which pro-

hibitedly held cannot be done. It is also one of the strongest arguments in favor of a new charter. The general law says there shall be open bidding for the franchise. That settles it. The board has no power to attach a condition of \$500 or \$5000 in the first place, and then that it shall be controlled by this or that company in the second. Every extension over a previously unoccupied street is a new franchise and should be treated as such.

### BIG BEN BUTLER DEAD.

The Great Sea Lion of the Seal Rocks Expires on the Sand.

He Fought Some Hard Battles, but Was Worsted—The Sad Scene on the Beach.

"Ben Butler" is dead. That magnificent specimen of the sea lion who for forty years has been one of the attractions at the Cliff House, floated in with the tide yesterday morning sorely wounded and lay his great bulk down on the soft sand in the shallow water and calmly awaited the end.

As the tide ebbed away he raised himself with great effort, turned his eyes toward his companions on the rocks and bellowed pitifully as expressing his intense sorrow. The cry was answered by a number of roars such as had never been heard before on the seal rocks. Then he turned upon his side prepared for his fate.

The workmen at the new Cliff House, which is in course of construction, were struck by the unusual scene, and W. G. Blunt and L. Samuel, engaged in arranging the museum, waded out to the death-bed of the aged bull. When they reached him he was fast expiring. He turned his great eyes upon them, attracted by the sympathy which they expressed. Making one feeble effort to raise his head he uttered a moan and died without a struggle.

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One of the letters was to the Coroner, and read as follows:

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Armstrong, registered at the Royal Hotel last Wednesday night as "J. Wilson." He had no money, but A. J. Turpin, the proprietor, gave him credit. When the suicide was discovered there was a photograph pressed to his breast, and at his head was an empty whisky flask and morphine vial. The photograph was identified as that of Mrs. Nellie Hughes of 315 Leavenworth street. Two letters and a penciled memorandum were lying beside the whisky bottle. The memorandum was as follows:

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## MR. ARMSTRONG'S SUICIDE

Unrequited Love and Financial Difficulties Cause the Act.

### HE MADE ALL PREPARATIONS.

Asked His Brother in England to Send a Gift to Mrs. Hughes of San Francisco.

Financial troubles and unrequited love have driven another man to suicide. Walter Armstrong, a civil engineer, was found in an unconscious condition in his room at the Royal Hotel, 126 Ellis street, by H. E. Marshall, the night clerk, about 3 A. M. yesterday. His heavy breathing first drew attention to his room, and when the door was opened with a pass-key it was found that he was beyond help. He was sent to the Receiving Hospital in an am-



Walter Armstrong.

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## AN UNSATISFACTORY BOND.

The Mayor Refuses to Accept the Sureties of Treasurer Widber.

### ALL BUSINESS SUSPENDED

His Honor Objects to the Financial Standing of One of the Bonds-men.

Treasurer Widber vainly tried to throw open the treasury vaults to the public holding demands against the City yesterday, but Mayor Sutro interposed, and business was suspended until to-morrow morning.

The trouble was about the new Treasurer's bond. Mr. Widber had named for his sureties H. N. Morse, I. W. Lees, R. J. Teahan and H. A. Crane. Morse was secretary for \$100,000 and the Mayor's secretary, J. T. Rogers, raised a question as to his qualifying under the consolidation act, which provides that no surety can be accepted for a public official unless he has property in the City and County.

Auditor Broderick and Judge Murphy approved the bond on Friday, but the Mayor remained obdurate until yesterday afternoon, when he satisfied himself that the acceptance of the bond should be in accordance with the general law and not the consolidation act. But his Honor was not yet through with his investigation. His next step was to inquire into the responsibility of the sureties, and at 1 o'clock in the afternoon he declared that the bond was insufficient.

All day long there were knots of people around the corridors waiting for the big doors of the treasury to swing open and an air of melancholy pervaded the City Hall. The extra clerks of the Assessor who were let out on the 1st of January expected to get their salaries on Wednesday, but their warrants have not yet been issued.

Mayor Sutro held a conference in his office yesterday morning, at which were present Auditor Broderick, Taylor Rogers, City and County Attorney Creswell and others. His Honor asked the opinion of Creswell, who promptly replied that the general law should guide the action of the Mayor, Auditor and Superior Judge. Still the Mayor was not satisfied and he harped on the consolidation act.

"I will see Judge McKinstry," he said. "He's a good lawyer." "You asked my opinion as the City's legal adviser," exclaimed Creswell with considerable asperity, "and I gave it to you. I don't care to have that opinion harped about now."