

DAILY RECORD-UNION ISSUED BY THE SACRAMENTO PUBLISHING COMPANY Office Third Street, between J and K. THE DAILY RECORD-UNION. A SEVEN-DAY ISSUE.

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UPTOWN BRANCH OFFICES. At Thomas W. McAuliffe & Co.'s Drug Store, southeast corner of Tenth and streets, and Harvey's news stand, 21 K Street.

OAK PARK AGENCY—Carter's Blacksmith shop, corner Third Street and Sacramento avenue.

Weather Forecast. Northern California—increasing cloudiness, with showers Friday in northwestern portion; fresh southeasterly wind.

NO PAPER SUNDAY.

As announced yesterday the "Record-Union" will not be issued Sunday morning, that its employees may have a clear holiday on Saturday.

CHRISTMAS EVE.

The "Record-Union" has no intention of preaching because Christmas eve is at hand, and the exchange of tokens of affection is about to take place.

The Christmas season preaches its own sermon, teaches its own lesson. Whoever attempts to add to or elucidate it, is more apt to mar than make.

Let the Christmas tide be its own herald, its own eulogist. To all the world of Christian civilization it comes with peace upon its wings and healing in its name.

If nations outfit for war and Kings and Princes frown upon one another—no matter, men and women and children will keep the Christmas time just the same and for the eve and the day give no heed that States wrangle and rulers wrestle with one another.

A mightier than their rules and over all those who will receive His benediction the hands of His loving kindness and mercy are outstretched.

The "Record-Union" to all its readers far and wide sends greeting upon the approach of the eve of a morrow that crowns the year supreme, the chiefest of all its days.

THE PULL OF A BOSS.

John Y. McKane, the notorious boss of Kings County, New York, was sent to State Prison, not so long ago, to serve a term of years for election crimes, and frauds upon the local government.

Two years ago an attempt was made to secure his pardon and though backed by a powerful pull it failed.

Now we have news that a second attempt to take the notorious corruptionist out of prison is on foot and behind it is the same pull.

The new ground for appeal to, and exercise of executive clemency, is presented by the District Attorney of Kings County and sets out that jurymen who tried McKane have since declared that they were intimidated.

As a New York contemporary remarks, if the declaration has really been made, it proves not the innocence of the prisoner, but the weakness and unfitness of the jurors, and hence their entire untrustworthiness so far as their alleged declarations are concerned.

These jurors say, in effect, that they knowingly convicted one they believed to be innocent, and that all these years they have permitted him to wear convict stripes, because they had not the moral courage to do their duty under their oaths.

But in the face of the new claim there stands the fact that he has never been seriously questioned that McKane was other than guilty as charged.

His defense was of the weakest kind and really amounted to no defense. It was a feeble attempt to justify and nothing more.

Just as surely as that McKane is guilty, so true is it the common judgment and admission in and about New York and Brooklyn that he was guilty of other and equally as grave offenses against the ballot and good government.

For which he could have been tried and that the presentation of the undeniable facts would have secured his further conviction.

If the offenses of which McKane was guilty, and in promotion of which he headed and controlled a notorious gang of hoodlums and assassins of the free and honest exercise of the suffrage, the tap root and the foundation of our free institutions are condoned by his pardon, it will amount to a confession on the part of the Executive that to break up such foundations is not considered grave and dangerous assault upon the sovereignty of American citizens.

Says the Marysville "Democrat": Women are frequently ridiculed because of their awkwardness in business affairs, says a friend in court.

Why awkward? Simply because of their lack of opportunity to learn and transact business. Reverse the order of things, and put men in charge of domestic affairs, and watch results.

The ordinary man on duty about the house is an object of pity, to say the least. But seriously, husbands, teach your wives some of the important ways of business.

That will do well enough so far as the husband's business affairs should be within the knowledge of his wife, to enable her to protect his and her interests, and those of their children in cases of his death.

thing goes on of projecting women into business life and making out of material that should give us good wives, mothers and home guardians, merely clerks, accountants, saleswomen, confidential agents, cashiers and the like. That sort of process takes from the sex the bloom of womanhood and the charm of femininity; robs them of that which protects them and makes them man's equal and of his superior—domesticity, modesty and womanliness. It gives the world instead chivalrous, husbandless wives, unwilling mothers, parentless children, homes without home carers, women without femininity, a sex with only the physical characteristics remaining.

The San Diego "Tribune" has done distinct service in originating the right phrase for designation of the mass of "stuff" the average metropolitan newspaper turns out in its Sunday issue—excepting, always, such journals as the New York "Times," "Post," "Tribune," Cleveland "Leader" and a few other conscientious papers.

Our San Diego contemporary pronounces the flamboyant gush, and thin plated stuff of most of the big Sunday dailies as "windy miscellany." That is just it. Superficial, unstable as the winds, unsatisfying and lurid, dished up for the taste that is morbid, gilded and burnished with the art of the dime novelist, untrue in fact, misleading as to science, deceptive as to social life, false as to most things, this stuff poured out by these big sheets is doing distinct injury to the rising generation, since its tendency is to accept what these gushing papers give as enough of knowledge, enough of pure English, sufficient of literature generally.

Indeed, if rising youth reads the Sunday newspapers of the order referred to, it has no time for the library, the lecture-room and the Good Book, much less taste for either.

An agent of the Russian Government is in this country studying American agricultural machinery. He declares that Russia will not, for a score of years, begin to make modern agricultural implements and machines, and that until she does, as we have the best he has seen, he is confident that very soon our exports of American-made farm machinery will largely increase, because of the purchases his people will make, as the Siberian lands suitable for cereal growth come on along the line of the new continental road.

He is particularly impressed with the great harvesting machines built and used in California, which he declares will be particularly useful in his country. Gentlemen of the watery eyes and calamity mouths, here is an opportunity for you to mourn anew.

For well you know that we cannot build up American trade abroad under the Dingley bill. That Russian is surely in the employ of the Black Republican administration.

The Fresno "Expositor," which is never happier than when whacking President McKinley, says: Postmaster-General Gary strongly favors the establishment of postal savings banks in this country, but McKinley, who stands shivering in dread in the shadows of the national banks, did not have the moral courage to give his Cabinet officer a word of aid.

Congress should take up this matter in earnest and force the President to show his hand in the premises.

All which is veriest bosh. The President distinctly, emphatically and unmistakably approved and confirmed the report of the Postmaster-General, and those of the several departments, by commending that to the attention of Congress, saying that only reference to them was necessary, and that he would not elaborate upon them because it would make the message unnecessarily lengthy.

There could have been no more emphatic approval expressed.

The Town Council of a Kansas community which proposes to stop the singing and whistling of a popular minstrel melody upon the streets is shortsighted and foolish, if its objection is based upon the taste for the roystering character of the song.

But if there is such shouting of it on the highway as to create disturbance of the peace and make the noise a nuisance, then the Council is right. But to legislate against a particular song or air is silly, and testifies to narrowness on the part of the local legislators, even if the lawfulness of such legislation is not questioned.

If a municipality aims to suppress a nuisance of the order complained of it must make the application general, and the legislation applicable to the singing or playing of any music in a way and at times to make the act a public nuisance.

Referring to the action of the recent river convention and the idleness of the money appropriated to dredge the Sacramento and San Joaquin Rivers, the San Jose "Mercury" says: Of course it is the duty of the Government to dredge and straighten the river, but would it not be advisable while waiting for a Congressional appropriation to use the money which the State has made available?

Advisable? Has not the legislative power of the people decided that question of advisability? The simpler and better question is, "Shall not the command and mandate of the representative body of the people be obeyed in this matter? If not, why not?"

It is stated in the dispatches that England is feeling for the sentiment of the United States concerning the partition of China, and has a desire to know how we stand on the proposition. Will we object, or do we want a slice? "No, thank you," will be Uncle Sam's answer, "Hawaii will do for me."

We must doubt the veracity of the dispatches, which report that Mr. Bryan declined to make a speech at one time during his visit in the City of Mexico. It is preposterous, too grossly mendacious to be for a moment received.

There is one consolation in this Orient scare—Japan will not be kept so busy looking after its home fences that it will have to drop the Hawaiian business and withdraw its paw from a mess of porridge that is our own.

VOICE OF THE PRESS.

EXTRACTS FROM EDITORIAL EXPRESSION.

State and Coast Opinions on Subjects of Living News Interest.

Fresno Expositor: San Francisco is to have some sort of a local show in the next few weeks, alleged to be in commemoration of the discovery of gold by Marshall. As a matter of fact, Jim Marshall was not the discoverer of gold in California. That precious metal was found in Mariposa County years before Marshall discovered it in the tail-race of the old mill at Colusa.

This is to be a San Francisco enterprise, but the country papers are to boom it—by no means. With its usual gall and audacity, it is now calling upon the papers of this valley to publish its press notices—as a gratuity.

AFTER THE LAWYERS. Santa Rosa Republican: The killing of Mrs. Clute in broad daylight in San Francisco the other day is taken as an excuse by some of our exchanges to pass severe criticism on the lawyers who fight to save the lives of their clients. This occurs to us to be foolishness. It would be the same foolishness if it were an outrage on the legal profession.

The trouble is not with the lawyers in their practice but with the laws under which they defend the ends of justice in their efforts to save their clients. The mistakes are made by the Legislature primarily. Attorneys, who care more for the practice of their profession and the results in a financial way to come from such practice are public enemies as members of the Legislature. The people should keep them out of such bodies.

Insist on the laws being made by men of the highest private axes to be ground at public expense.

The quarrel should be with the laws rather than the lawyers as such. This matter the public have in their own hands. If they use good sense in electing lawmakers, they will get laws under which the work of criminal lawyers will be reduced to the minimum. The evils of this kind of litigation are to be corrected elsewhere, and the quicker this is well understood the better will it be for society.

(S. F., No. 655—Department One—Filed December 16, 1897.) In the matter of the estate of Thomas J. Brannan, deceased. Order directing executrix to sell property to pay legacies affirmed.

The objection that a sale of property will cause loss to the estate, by reason of depreciation in value of land, is a matter to be considered only when a return of the sale has been made and it comes up for confirmation by the court.

(S. F., No. 755—Department One—Filed December 17, 1897.) Samuel G. Murphy, respondent; Pacific Bank, appellant. Recovery of dividends from insolvent concern. Reversed.

The powers, duties and liabilities of a corporation, and the rights of creditors, who are not stockholders, and of those who are, must be determined by the statute and the articles of incorporation; if these give a preference to creditors who are not stockholders it is not in the power of the stockholders or the corporation to change it.

Trustees appointed in a will to take property under a trust which by our law is void are not persons who are by law entitled to receive any portion of the estate. If the trust which the testator has attempted to create is void, the property which the will so disposes of must be distributed otherwise.

To determine who the persons are who are entitled to an estate and their proportionate parts the court must pass upon the validity of the disposition attempted by the testator. It may be found that to some portion of the estate the testator has died intestate. In such cases the heirs must be determined.

(S. F., No. 906—In Bank—Filed December 17, 1897.) In the matter of the estate of Solomon Heydenfeldt, deceased. Appeal dismissed. Beatty, C. J., dissenting.

Where there are appeals from more than one order and only one undertaking filed which does not distinctly refer to either appeal, the undertaking is utterly invalid for any purpose. In such cases the appeals can be dismissed.

(S. F., No. 909—In Bank—Filed December 18, 1897.) Samuel Irvine, respondent; John A. Perry et al., and E. C. Smith, intervenors; F. C. Martin, appellant. Foreclosure. Modified.

Section 2899 of C. C. applies only to those cases where in the language of the statute it can be followed without "injustice to other persons." Where all of the mortgage property has been sold in parcels to different persons at different times it would be inequitable to apply the statute.

Where the mortgage purports to be given for the purpose of securing the payment of a promissory note, which is recited in the mortgage, and does not purport to be given to secure the payment of attorneys' fees, allowance of such fees is no part of the decree of foreclosure.

(S. F., No. 1,011—Department One—Filed December 18, 1897.) Frederick Ball, respondent; George R. Tolman et al., appellants. Action under Act of April 23, 1880, amended. The Act of April 23, 1880, amendatory of an Act for the better protection of the stockholders in corporations formed under the laws of the State of California for the purpose of carrying on and conducting the business of mining, applies to all corporations formed for the purpose of carrying on and conducting the business of mining.

It applies not only to corporations which extract gold or silver from ores, but equally to those which extract it by the methods of plumb or hydraulic mining.

Under possible circumstances the Directors of a corporation, when they have failed to comply strictly with the law, may be held excused; but if so, the facts must be within the knowledge of the Directors who are sued and should be set forth and proved. Where there has been an entire failure to comply with the law mere ignorance of the law constitutes no exculpation.

(S. F., No. 634-35—Department Two—Filed December 20, 1897.) Wm. M. Fitzhugh, respondent; Thomas Ashworth, Superintendent of Streets, et al., appellants; C. S. Tilton, intervenor and appellant. Mandamus. Affirmed.

SUPREME COURT DECISIONS.

SYLLABI.

(Crim., No. 232—In Bank—Filed December 16, 1897.)

People, respondent; B. W. Van Horn and John Crow, appellants. Murder. Affirmed.

A motion to set aside an information is not in the nature of an appeal from the order of commitment made by the magistrate, and mere errors alleged to have occurred during the preliminary examination cannot be reviewed on such motion.

A party who has been convicted by a jury in the Superior Court after a fair trial, upon an information, cannot avoid the verdict for any reason founded on an alleged defect in the preliminary examination and commitment, unless by such defect he was deprived of some substantial right.

In a criminal prosecution for conspiracy it is not necessary that the conspiracy be actually shown to have been entered into by the conspirators; it is sufficient that the conspiracy can be proven; though, if the conspiracy is not ultimately proven, such declarations must be disregarded; and the order of proof is largely in the discretion of the court, which may determine how much evidence of the existence of the conspiracy shall be required before receiving evidence of the acts and declarations of one of the alleged conspirators in the absence of the other.

The drinking of intoxicating liquors by some of the jurors, in a criminal trial, after the case was submitted to them, before verdict, while in charge of an officer who had taken them out to dinner, is not such misconduct on their part as to warrant a reversal of the judgment, if they were not affected by the liquor which they drank.

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Trustees appointed in a will to take property under a trust which by our law is void are not persons who are by law entitled to receive any portion of the estate. If the trust which the testator has attempted to create is void, the property which the will so disposes of must be distributed otherwise.

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(S. F., No. 634-35—Department Two—Filed December 20, 1897.) Wm. M. Fitzhugh, respondent; Thomas Ashworth, Superintendent of Streets, et al., appellants; C. S. Tilton, intervenor and appellant. Mandamus. Affirmed.

The law which provides for work upon streets, lanes, etc., and for the construction of sewers within municipalities requires that a contractor for such work must advance to the Superintendent of Streets, for payment by him, certain enumerated costs, and other incidental expenses; and it is further provided that the term "incidental expenses" as used in the Act, shall include the compensation of the City Engineer for work done by him.

Plans and specifications do not constitute a necessary part of a resolution of intention.

(Crim. No. 206—Department Two—Filed December 20, 1897.) People, respondent; James Wilson, appellant. Assault with intent to commit infamous crime against nature. Affirmed.

The mere solicitation to commit the act is not made an offense under our code, but the solicitation preceding the alleged assault, together with the preparations made by the defendant, together with the fact testified to by the prosecuting witness that in resisting he made some noise, whereupon the defendant threatened and told him to say nothing about it, and that he, the juror, were sufficient to justify the conclusion that whatever force was used was with the intent and purpose to commit the crime and make it an assault within the meaning of Sections 220 and 240 of the Penal Code.

(S. F., No. 671—Department Two—Filed December 20, 1897.) Mrs. M. A. Peterson, respondent; City of Santa Rosa, appellant. Injunction to restrain pollution of waters. Affirmed.

The right of property in the waters of a stream is a corporeal hereditament, appurtenant to the land and running with it. A riparian owner has the right, not only to have the water of the stream flow over his land in its natural purity, and such pollution of the stream as substantially impairs its value for the ordinary purposes of life, and renders it measurably unfit for domestic purposes, is an actionable nuisance, and the fact that the defendant is a municipal corporation does not enhance its rights or palliate its wrongs in this respect.

(L. A., No. 270—Department One—Filed December 20, 1897.) S. Lyons and T. L. Lyons, co-partners, et al., appellants; F. A. Marcher and C. A. Marcher, his wife, respondents. Proceedings in aid of execution. Affirmed.

It is not incumbent upon the court to make express findings in special proceedings such as under an order of examination of a judgment debtor.

CHARLES GATES DAWES. To Succeed Eckels as Comptroller of the Currency.

On the 1st of January James H. Eckels will retire from the position of Comptroller of the Currency to accept the position as President of the large bank which recently chose him to that honor. He will be succeeded as Comptroller by Charles Gates Dawes, who is a native of Ohio.

When Eckels was appointed by President Cleveland he was known as the "Boy Comptroller." So well he conducted his work that it has been demonstrated that a man need not be

Why nascent, irritate and upset the stomach, and derange the bowels by loading up the system with all kinds of disagreeable and often inefficient internal medicines when you have so potent, powerful and positive an external remedy as

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which accomplish as much and more than the former without producing any of their bad effects. They are composed of medicinal concentrations that never fail to promptly relieve the most distressing cases of Rheumatism, Lumbago and Chest Pains, Neuralgia, Sciatica, Kidney Colic, Insist upon a BENSON'S. Refuse substitutes.

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IN THE SUPERIOR COURT OF THE COUNTY OF SACRAMENTO, STATE OF CALIFORNIA. In the matter of the estate of ANNIE F. HAMMOND, deceased.

Frank McKane, petitioner of the estate of said above named deceased, having filed his petition herein duly verified praying for an order to mortgagor certain real estate of said decedent for purposes therein set forth.

It is therefore ordered by the said court that all persons interested in the estate of said decedent appear before the said Superior Court on FRIDAY, the 21st day of January, 1898, at 10 o'clock a. m. of said day at the courtroom of said Superior Court in the City of Sacramento, California, to show cause why the following real property, to-wit: The west 1/2 of the block bounded by F and G Sixteenth and Seventeenth streets, in the City of Sacramento, County of Sacramento, State of California, should be sold together with the improvements thereon, or some part thereof, should not be mortgaged for the amount mentioned in said petition, to-wit: One thousand dollars (\$1,000), or such other sum as to the court or Judge may seem a debt.

Dated December 21, 1897. MARY T. JOHNSON, Judge of said Superior Court. Holl & Dunn, Attorneys for Executor.

IN THE SUPERIOR COURT, STATE OF CALIFORNIA, County of Sacramento. In the matter of the estate of C. CHAUNCEY TIETJENS, deceased.

Notice is hereby given that FRIDAY, the 7th day of January, 1898, at 10 o'clock a. m. of said day, and the courtroom of said court in the City of Sacramento, County of Sacramento, State of California, will be held for the purpose of appointing an executor of the will of said C. Chauncey Tietjens, deceased, and for hearing the application of Theresa Tietjens for the issuance to her of letters testamentary thereon.

Witness my hand and the seal of said court, this 21st day of December, 1897. (Seal.) W. B. HAMILTON, Clerk. By E. S. Wachhorst, Deputy Clerk. Indorsed: Filed December 21, 1897. W. B. HAMILTON, Clerk. By E. S. Wachhorst, Deputy. Holl & Dunn, Attorneys for Petitioner.

IN THE SUPERIOR COURT, STATE OF CALIFORNIA, County of Sacramento. In the matter of the estate of S. W. RALSTON, deceased.

Notice is hereby given that FRIDAY, the 21st day of December, 1897, at 10 o'clock a. m. of said day, and the courtroom of said court in the City of Sacramento, County of Sacramento, State of California, will be held for the purpose of appointing an executor of the will of said S. W. Ralston, deceased, and for hearing the application of Marie A. Ralston for the issuance to her of letters testamentary thereon.

Witness my hand and the seal of said court, this 20th day of December, 1897. (Seal.) W. B. HAMILTON, Clerk. By E. S. Wachhorst, Deputy. White & Seymour, Attorneys for Petitioner.

IN THE SUPERIOR COURT, STATE OF CALIFORNIA, County of Sacramento. In the matter of the estate of CATHARINE BROWN, deceased.

Notice is hereby given that FRIDAY, the 21st day of December, 1897, at 10 o'clock a. m. of said day, and the courtroom of said court in the City of Sacramento, County of Sacramento, State of California, will be held for the purpose of appointing an executor of the will of said Catharine Brown, deceased, and for hearing the application of Mary A. Brown and S. S. Shaw for the issuance to them of letters testamentary thereon.

Witness my hand and the seal of said court, this 20th day of December, 1897. (Seal.) W. B. HAMILTON, Clerk. By E. S. Wachhorst, Deputy. White & Seymour, Attorneys for Petitioner.

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