GEAR'S WORD IS LAW

Opens Prison Door to Self-Confessed Murderer.

(From Saturday's daily.)

By the order of Judge Gear yesterday morning, Chida Manzabaro, a self-confessed murderer, walked out of the court house a free man—into the hands of an officer, who again made him a prisoner.

The order was made on the application of Attorney Brooks upon a writ of habeas corpus, in which he alleged that the defendant was illegally restrained of his liberty because he had never been indicted by a grand jury. The court, without hearing arguments as to the legality of such a proceeding, ordered the release of a man, who by his own admission is guilty of the crime of murder. Chida was one of the Japs arrested for the killing of Yee Fook Sing during the Kahuku riots of March 26, 1899, and when he was brought before Judge Perry he entered a plea of guilty in the hope of receiving a light sentence. He was sentenced to Oahu prison for a term of twenty years, and has served over two years.

When the application for the release of the Jap was presented to Judge Gear yesterday morning Attorney General Dole appeared and asked a postponement of the hearing on the ground that similar cases were before the Supreme Court.

"I understand there is a doubt of what is before the Supreme Court, and it is only a question of whether the appeal is to be allowed," replied the court. "If the Supreme Court is to legislate on Congressional matters, I presume you have the same remedy in this case. The duty of this court is to grant writs of habeas corpus when proper cause is shown, and unless the Legislature takes away that power, or the Supreme Court legislates in the matter, this court will act under the powers given it. It seems there having been no indictment by a Grand Jury, this man is illegally restrained of his liberty. There is only one law in this matter in the Territory, the decision of this court, and I am bound to follow that decision until it is overruled. I see no reason for withholding a decision in this case. The writ is asked for on the ground that this man was not convicted according to law. In the wisdom of the United States Congress, all municipal laws of the Territory not in conflict with the Constitution were to remain in force here. There is only one thing this court can do, and until a higher court tells it what to do, it will act as it sees fit. Under the decision of the Supreme Court of the United States this man had a right to a trial by a jury of twelve men, after indictment by a Grand Jury, and anything in violation of that right was contrary to the Constitution, whether the Constitution was here or not. The defendant is entitled to his discharge on the ground that his trial was not based on a Grand Jury indictment."

The court ordered the discharge of the Jap, through the interpreter, and the erstwhile prisoner strutted out of the court room without even looking back. He maintained his dignity and his freedom only until he reached the outer door of the court house, where Detective Kaapa was waiting for him with a warrant, and again took him back to prison.

IS JUSTICE PERRY DISQUALIFIED?

The right of Associate Justice Perry to act in the habeas corpus cases was attacked by Attorneys Davis and Brooks yesterday on the ground that he was the judge who originally heard the cases of the prisoners and sentenced them to prison. Messrs. Brooks and Davis expect if their contention is sustained to get a divided court, which, in case a decision was given, means that the decision of Judge Gear would stand. In that point they are very likely to be disappointed, even did the members of the Supreme Court hold that Justice Perry was not qualified to sit upon the cases in question. In the event that such a finding is made, some member of the bar will be called to sit with the remaining justices and the case will be re-opened.

Along with the briefs filed by Messrs. Davis and Brooks yesterday morning was the following notice to the Supreme Court:

"To the Honorable the Supreme Court of the Territory of Hawaii: Upon examination of the records in the within cases we find that Associate Justice, the Honorable Antonio Perry, presided at the trial of the following cases (here follows a list of the cases in which Perry was the circuit judge) in the circuit court and sat in judgment upon the said cases. We, therefore, respectfully submit that under and by virtue of section 84 of the act to provide a government for the Territory of Hawaii the said associate justice is disqualified from sitting as judge and hearing and deciding the appeal of the Territory in all of the within causes, they having been argued and submitted together as one case on appeal to this honorable Supreme Court."

Attorney Davis contends that with Justice Perry disqualified, and one other justice dissenting, the opinion rendered by a divided court would not affect the decision of the lower court. That this position is not sound is claimed by several attorneys who were questioned in the matter yesterday. The only way the Supreme Court could hand down an opinion of that kind would be in case of agreement between the opposing counsel, a condition hardly obtainable under the present status of the case.

Chief Justice Frear, in commenting on the matter yesterday, stated that in the event Justice Perry is disqualified, no opinion would be rendered unless by agreement between attorneys on both sides, otherwise the case must be reopened for further argument, with some member of the bar sitting in place of Judge Perry.

"Has the Supreme Court taken any action on the position alleging Justice Perry to be disqualified?" was the question put to Chief Justice Frear yesterday by an Advertiser reporter.

"The court has not considered the matter as yet," was the reply.

"Does the fact that Judge Perry heard these three cases disqualify him in all of them, they having been presented at the same time?"

"Mr. Davis makes that claim."

"Would he not be qualified to render a decision in the cases not previously passed upon by him?"

"We have not considered the question at all as yet."

"If the Supreme Court does hold that Judge Perry is disqualified to sit in these cases, could the two remaining justices render a decision?"

"Only in case of agreement by the attorneys interested."

"What course could be followed in the event that the attorneys did not agree to such a course?"

"The case would have to be opend for further argument, and some member of the bar would be asked to sit upon the bench."

In connection with argument made by the attorneys for the prisoners, in regard to the alleged disqualification of Judge Perry, Attorney General Dole yesterday filed the following reply:

"REPLY BRIEF FOR TERRITORY OF HAWAII.

"The point raised by brief filed this morning, that Mr. Justice Perry is disqualified to sit in consequence of having sat at nisi prius in the original criminal trials, does not apply to the petition of Ah Oi, Judge Stanley having sat at that trial.

"The Territory prays a reasonable time in which to examine the law and prepare a brief upon said point, in so far as it pertains to the other petitioners."

The brief of the attorneys for the prisoners in this same case was filed with the Supreme Court yesterday, following out the general line of argument made to the court orally. The arguments were reported fully at that time.

HARRISON V. MAGOON.

At the opening of court yesterday afternoon Judge Gear took up the case of James M. Harrison vs. J. A. Magoon, F. B. McStocker, L. C. Ables, Dorothea Emerson, E. C. Dowatt, J. H. Kirkpatrick, A. E. Powter, J. Wolfladen and George D. Moore, an action for damage growing out of an alleged breach of contract made in New Auckland in 1897. There was some objection on the part of the complainant to the answer of defendant, and it looked for a time as if the case was to be continued until depositions could be obtained from New Zealand. The court refused to allow the amended answer, and the case was then proceeded with on the evidence. The following was the jury selected for the hearing: H. Bertelmann, A. W. Pearson, P. C. Jones, J. S. Walker, F. Harvey, Isaac L. Cockett, E. K. Hanapi, R. C. Lane, George Naavaakoa, D. B. Renear, W. F. Irving, J. Kunewa.

CHILDREN OF MINISTER KING WANT MONEY.

Mrs. Charlotta King, widow of the late Minister of the Interior James A. King, filed a petition in court yesterday asking a larger allowance for the support of the minor children. She claims that the guardian, J. O. Lightfoot, has allowed her but six dollars a month for each of the five children, or thirty dollars in all, which, it is alleged, is much below the amount required for their support. She alleges that she has been forced to take money out of her own income for the support and education of the children; that she has been ill and involved in debt because of her heavy expenditures for the children and herself. She asks that she be allowed thirty dollars per month for the support of each child. It is further alleged in the petition that the estate is worth about $14,000, and much of it is unimproved real estate, which is not bringing in the amount of revenue that it should. She asks also for an order to compel Lightfoot to make new leases of the property so that the income might be increased.

SUPREME COURT DECISION.

The Supreme Court yesterday affirmed the decision of the Circuit Court in the case of Wailuku Sugar Co. vs. Claus Spreckels and the Hawaiian Commercial and Sugar Co. The suit was begun in 1897 for the acquisition of a right of way for a water way and flume through Claus Spreckels' land. He executed a conveyance of the land to the Hawaiian Sugar Co., and upon application the suit was dismissed by the court as to him. An appeal was taken by the plaintiff from this action. Later the plaintiff was given the right of way through the disputed land by the court, who assessed the damage at $100. From this decision the defendant appealed. In conclusion the court, in an opinion written by Chief Justice Frear, says:

"We have considered only the questions raised by the parties and not certain other questions which naturally suggest themselves, but which we are led to believe the parties have intentionally omitted to raise.

"The defendant's appeal is dismissed. The plaintiff states that it does not care to press its appeal in case the defendant's appeal is not sustained. Its appeal also is dismissed on the ground that the order appealed from was not prejudicial to it, in view of the final decree in its favor."

ORPHEUM ORDERED SOLD.

An order for sale was made yesterday in the case of Charles S. Desky vs. the Orpheum Co. The decree stipulated the sale of the property upon the notes due plaintiff in the sum of $8,449.91. An allowance of $500 for attorney and $250 for auctioneer's fee is made. The sale will take place Saturday, August 24, at noon.

KAPIOLANI ESTATE LOSES.

The court directed a verdict for the plaintiff yesterday in the case of Sister Albertna, trustee, vs. Kapiolani Estate, Ltd., and others, on the ground of adverse possession. The verdict follows:

"We, the jury, find for the plaintiff against the Kapiolani Estate, Ltd., David Kawananakoa and Jonah Kalanianaole, three-fourths undivided of the premises described in the complaint and damages assessed at $668.37.

P. C. JONES, Foreman.

COURT NOTES.

Leave to file an amended bill of complaint was asked yesterday in the case of John Fowler & Co. vs. Robert Catton and Geo. W. McFarlane, bill for accounting. This was the case in which the lower court was reversed by the Supreme Court and a new trial ordered. A claim of $13,000 for goods alleged to have been withheld by Robert Catton is made.

The Love-Magoon hearing will be resumed this morning.

DEATH COMES TO MOTHER OF THE GERMAN EMPEROR

CRONBERG, Aug. 5.—Empress Frederick died at 6:15 p. m. The death of the Empress was somewhat sudden. At 4 o'clock her physicians had reported no change in her condition. Emperor William and her majesty's other children were in the sick room most of the day.

Relatives of the dying empress had been continually arriving here throughout the day, and a detachment of the One Hundred and Fifteenth Infantry had come from Homburg to do sentinel and patrol duty around the castle. By special desire of Empress Frederick, Dr. Waller, the English chaplain of Homburg, had been summoned.

At 11:30 a. m. it was said there was no change in the empress' condition. She was fully conscious, and all her children, with the exception of Prince Henry, who is at Cadiz, were assembled in the sick room. The Eleventh Company of the Eightieth Regiment of Infantry, of which the dowager empress was honorary colonel, had also been ordered here to do duty at the castle.

The authorities of Emden issued a notice, saying that in consequence of the condition of the dowager empress the ceremonies in connection with the opening of the new harbor and the unveiling of monuments to the great elector and Frederick the Great would be indefinitely postponed.

IT BEGINS TO LOOK DARK FOR THE POLITICAL JUDGE

[By Associated Press.]

WASHINGTON, August 5.—The charges against Judge Humphreys of the United States Court, District of Hawaii, are still under consideration at the Department of Justice, but it is probable an announcement in regard to the appointment of his successor will be made within a short time. Judge Humphreys, who has come to the United States to refute charges made against him, called at the Department of Justice today and had a long talk with Attorney General Knox.

Humphreys has gone to Washington and called on Attorney General Knox to refute the charges against him. Contrast this with his authorized and acknowledged interview in the San Francisco Examiner wherein he said: "Kindly correct a statement in the San Francisco press to the effect that I am on my way to Washington to defeat the disbarment motion made against me by the attorneys whom I sentenced for contempt during the trial of Walter G. Smith. I have not been invited to appear in Washington and would have no business interfering with the Department of Justice there."

FOREIGN SPORTS OF VARIOUS SORTS

Bullman heads the list of winning jockeys in Chicago.

Warren Lewis, the well known sporting man, committed suicide.

W. S. Fenn rode a mile in 1:57 4-5, a new record for an indoor track.

Willie Smith has regained the open golf championship of the United States.

Joe Curtin of Chicago knocked out Pat Early of Boston in the tenth round.

Objectionable baseball rooters are being barred from the Chicago grounds.

Barney Schreiber's Otis won the $5,000 Hepburne stakes at Brighton Beach.

William Stinson reduced the world's 20-mile motor-paced bicycle record to 30:18 2-5.

Water Color comes close to being the greatest race horse in training in America.

Dutch Thurston and Tom Tracy are matched to fight in Tacoma on August 23d.

Jack Downey, the former pugilist, lost both legs in a railroad accident in Washington.

Jack Roberts, England's best 126-pound man, has been matched to fight Terry McGovern.

Albert Champion broke the world's record for a mile, flying start, going the distance in 1:29 4-5.

Goldsmith won the $5,000 Flash Stake at New York and Rockton the $10,000 Saratoga Handicap.

Jockey Maher's career on the turf is ended. He is dying of hemorrhage of the lungs in London.

Frank Kramer broke all previous marks for the half-mile. He rode in 0:58. This is a world's record.

Bobby Walthour of Atlanta has made a world's indoor bicycling record for one and two miles of 1:49 1-5 and 3:21 2-5, respectively.

At Buffalo, Shadow Chimes went a mile in 2:07 1-2, a new record for green pacers. The race was the $5,000 Pan-American stakes for 2:24 pacers.

A team of British cricket players will visit the United States next month. The team is not a very strong one, as the best players are going to Australia.

Lawson will keep the Independence in racing condition for one month ready to meet all comers, and if a race is not forthcoming at the end of that time the yacht will be broken up.

Walter Smith of New York reduced the 5-mile amateur American paced bicycling record to 8:27 1-5. He also made records for two and three miles of 3:20 4-5 and 5:40 respectively.

IT SAVED HIS BABY.

"My baby was terribly sick with the diarrhoea, we were unable to cure him with the doctor's assistance, and as a last resort we tried Chamberlain's Colic, Cholera and Diarrhoea Remedy," says Mr. J. H. Doak, of Williams, Ore. "I am happy to say it gave immediate relief and a complete cure." For sale by Benson, Smith & Co., Ltd., general agents, H. T.

TUNNEL TO STEAL GOLD

Selby Strong Room Is Robbed of Thousands.

SAN FRANCISCO, August 10.—On Tuesday morning last, when the strong-room of the Selby Smelting Company's plant, near Crockett, was opened it was discovered that bullion to the value of $280,000 had been stolen during the night, and a hole in the steel flooring of the vault showed plainly how the precious metal had been removed. A search disclosed the fact that the robber or robbers had dug a tunnel from a point just alongside the wall, down underneath the vault and upwards to the floor. The robber had then bored about 150 holes to within a hair's breadth of the surface and then when everything was in readiness to carry off the plunder, carefully cut away the remaining shell and gained access to the bullion room. Everything showed the most painstaking accuracy and care, and it is thought that the work of excavation and the cutting of the flooring must have taken weeks.

Word was immediately sent to this city and a force of detectives commenced work on the case. At first they were completely at a loss, but soon evidence began to pile up and the bullion was traced from the vault to the bay shore, about 300 feet from the works, a trail of red pepper leading the way. On the bay shore was found two gold bricks of $25,000 value, and this was taken as evidence that the robber or robbers had escaped in a boat. Further search revealed facts which pointed to one man, Jack Winters, as the leader of the gang and the detectives went to work with the result that indisputable evidence that he was connected with the robbery was found in his cabin, a lonely little affair, situated on a hill near the works. Winters had been an employe of the works for seven years and quit his job six weeks ago, on account of ill-health, he says. He was arrested in San Rafael and brought to this city, where he was put through a most thorough examination, but he stoutly maintained his innocence, and although interrogated for two days he gave the officers no great satisfaction, though, from his conflicting statements, they were positive that he knew all about the crime. Late yesterday afternoon he showed signs of weakening, and at last asked to see Superintendent Ropp, his only friend, he said, and to him he made a full confession.

SAN FRANCISCO, August 10.—The gold bars, amounting to $280,000, stolen from the strong-room of the Selby Smelting Works during Monday night last, have been located and over $70,000 worth of the precious metal has been recovered and the balance will be taken from its hiding place within a few hours. The detectives worked on the suspect, Jack Winters, all yesterday afternoon and the greater part of last night, with the result that he confessed his crime and at an early hour this morning took the detectives to the spot where he hid the gold. The spot chosen by him was a poor one for the secreting of so much treasure, it being at the end of the railroad wharf, but a short distance from the company's plant.

SAN FRANCISCO, August 10.—Jack Winters, who was arrested for the Selby Smelting Works robbery, has confessed his crime, and so far $130,000 worth of bullion has been recovered from the bay, where he had sunk it. For three days the detectives have tried all sorts of intimidation to make Winters confess but their threats apparently had no effect upon him. Finally he asked to see Supt. Ropp of the works, who, he said, was the only friend he had. In his conversation with Ropp, Winter's manner indicated that he knew where the gold had been hidden. Ropp told him that they had a strong case against him and that he would be sent to prison for thirty years. He said, "You will be an old man when you get out and it will do you no good to hide the gold. We know it is hidden in the water near the works and we will search every inch. You may be sure that the gold will be found before you get out of prison."

Winters finally weakened and told Ropp that he had taken the gold and would take him to the spot where it had been hidden. The criminal, in company with Superintendent Ropp and a force of detectives went on a tug last night, to Crockett. There they waited all night for low tide. Winters pointed out the place at the end of the railroad wharf, behind the coal bunkers at the beginning of the Vallejo ferry slip. At that point, at low tide, the mud is about four feet deep, covered by a foot of water. When the tug first reached Crockett, Winters pointed out the spot in the water where he said he had thrown the gold. Superintendent Ropp marked the place on the wharf and steamed away to wait for low tide. This morning Winters himself got into the mud and water up to his neck and for an hour and a half groped for the missing bullion. Up to 10 o'clock $130,000 worth had been recovered. This includes the four bars of fine gold. Winters had put some of the bars in bags. He said that one of the bags had broken and some small bars had dropped out. He threw the large bars into the water without covering. It is now only a question of careful search to find the rest of the $283,000. Winters claims that he did the job all alone. He said that he made fourteen trips from the vault to the wharf, from which he dropped the gold. The smelter officials, however, are positive that he received assistance from some one. The detectives think that his story that he did it all himself is correct.

A special dispatch from Rotterdam says the mental condition of Kruger is arousing serious apprehension. A specialist in nervous diseases has been summoned by telegraph from Berlin.

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