

THAW DECLARED TO BE INSANE

THE COURT REFUSES TO ORDER HIS RELEASE.

Declares That His Commitment to the Asylum Was Legal and That the Safety of the Public Is Better Insured by His Remaining in Custody Until Cured.

POUGHKEEPSIE, May 25.—Judge Morschauer has dismissed the writ of habeas corpus obtained by Harry K. Thaw. He holds that Thaw is insane and that his detention in the Matteawan State Hospital is legal.

Thaw at the time of his trial for homicide as a defence pleaded insanity and presented proof to show his insanity at the time of the killing of Walter White.

If upon all the evidence and the verdict of the jury the court should decide his discharge to be dangerous to the public peace and safety and commit the defendant to an insane hospital until sane, under the provisions of section 41 of the Code of Criminal Procedure, and Thaw having had the opportunity of a full hearing, this right to be represented in person and by counsel, this right of entering proof in his own behalf, there was no violation of Article I, section 6 of the Constitution of the state of New York, nor of Article XIV, of the United States Constitution.

Justice Morschauer adds that in concluding the matter by his decision, he is of the opinion that the public interest is better served by his remaining in custody and under observation until he has recovered or until such time as it has been reasonably certain that there is no danger of a recurrent attack of the delusional insanity.

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THAW MARRIAGE ANNULMENT.

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WILL HE OPEN BALLOT BOX?

JUSTICE LAMBERT TO DECIDE A CRUCIAL POINT TO-DAY.

"Will Have Them If We Want Them," Says He, "and We Won't Stand on Ceremony"—Mayor's Counsel Urges That There Is No Law for Opening Them.

Mayor McClellan tried once more yesterday to prevent a recount of the ballots cast at the Mayorality election in 1905. The fight turned on the opening of one ballot box. The result will be known to-day.

Supreme Court Justice Lambert, who with a jury has listened for seven weeks to testimony regarding the preservation of the ballot boxes, heard the argument on the proposition to open this one box, that from the State Election district of the Second Assembly district.

After Deputy Attorney-General Dolson had offered the box in evidence Eugene Lamb Richards, personal counsel for McClellan, and Gilbert D. F. Hasbrouck, retained as special counsel, entered into long addresses to the Court, begging Justice Lambert not to establish a precedent whereby future election results might be disputed. They entered sixteen objections to the opening of the box.

Furthermore, the Mayor, through Corporation Counsel Pendergast, was before Justice Guy and asked that the subpoena served some weeks ago on John T. Dooling, president of the Board of Elections, directing him to produce before Justice Lambert the ballot boxes and their contents, be vacated. This move, which took the Hearst contingent somewhat by surprise, was based on the theory that as the ballot boxes had been entrusted to the Board of Elections by a Supreme Court order in 1905 only another order of the Supreme Court and not a simple subpoena could compel the surrender of the ballots.

Justice Guy refused the motion to Justice Lambert, who on hearing it remarked tersely that if he decided that the ballots be brought up for recounting they would be brought up and that was all.

"We'll have the ballots here," said Justice Lambert with some emphasis, "if they are wanted. I don't want you gentlemen to understand from this that my decision is to be for the opening of the ballot boxes. But we will have the ballots here if they are wanted. We won't stand on ceremony."

Some minutes later Justice Lambert announced that he would not decide until this morning whether the particular ballot box offered should be opened or not. If the decision is adverse to McClellan it is more than likely that all the boxes offered by the Attorney-General will be recounted for Mayorality votes. On the other hand if this box is not opened it is unlikely that any others will be, as the proof in favor of its opening according to the requirements laid down by the Court of Appeals in the decision last February, which practically gave Attorney-General Jackson carte blanche to have the boxes opened if there were proof enough to show that they had not been tampered with since the night of the election.

Chief among the Mayor's sixteen objections are: That there is no authority in law for the opening of any ballot boxes after the statutory period of six months from the date of the election. The boxes had not been deposited immediately after the election with the Bureau of Elections. That it had not been shown that the boxes had been in the proper legal custody since the election.

That various unauthorized persons, including policemen and Hines warders, had had control and guard over the ballot boxes from November 1, 1905, to March 1, 1906, and again from January 7, 1907, till January 17, 1907. During these ten days Attorney-General Jackson had control over the boxes in personal custody of some of the ballot boxes under an order of the Supreme Court, afterward set aside.

That the present proceedings were not begun until after the expiration of the statutory period of six months from the date of the election. When the argument switched to the notice to vacate the subpoena to Dooling an Assistant Corporation Counsel was on his feet to urge that if Dooling obeyed the subpoena he would be in contempt of the Supreme Court. In replying Clarence McClellan said that it was not the first nor the third time that the Corporation Counsel had proffered his office to defend Mr. McClellan and delay the recount suit.

"That will do," interrupted Justice Lambert, "I don't want to hear any more of that."

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MINERVA VANDERBILT'S SUIT.

Action to Annul Father's Marriage to Mrs. Pepper is Delayed. The trial of the suit which Minerva Vanderbilt has brought in the Supreme Court, Brooklyn, to annul the marriage of Edward Scannell Pepper-Vanderbilt to Edward Ward Vanderbilt, the plaintiff's father, was held up unexpectedly yesterday by Lawyer George Williams, who objected to the action for annulment on the ground that the plaintiff's father and Judge Hurd, as committee of his person and estate, are parties to the action and should have been named. The case was immediately transferred to Special Term, where Justice Kelly refused to sign an order in the matter until the papers had been changed.

SAVES TWO CHILDREN.

Tugboat Fireman Overboard for a Fair Afloat from a Boat. Peter Johnson, a fireman on the tugboat Waterfront, moored at the foot of West Twenty-second street, dived into the Hudson river last night and saved Walter Shea, 8 years old, and Grace Vanderhoff, 13, of 440 West Twenty-sixth street, who had fallen overboard from a boat. The children were carried out on the tide and were going down together when Johnson plunged in. He caught them and swam with them to the tug. Neither was the worse for the bath. Walter dried his clothes in the engine room of the tug.

AMUSEMENTS. THE WOLF LYRIC. 820 Mat. 1.00. 820 Eve. 1.00. GIRLS. 820 Mat. 1.00. 820 Eve. 1.00. EXTRA MAT. FRIDAY BY CHICAGO CO. Matinee Saturday 2.15. CASINO. SAM BERNARD. 820 Mat. 1.00. 820 Eve. 1.00. LEW FIELDS. 820 Mat. 1.00. 820 Eve. 1.00. JOHN WITCHING. 820 Mat. 1.00. 820 Eve. 1.00. MASON. 820 Mat. 1.00. 820 Eve. 1.00. Empire Theatre. 820 Mat. 1.00. 820 Eve. 1.00. W. H. CRANE. 820 Mat. 1.00. 820 Eve. 1.00. HUDSON. 820 Mat. 1.00. 820 Eve. 1.00. OTIS SKINNER. 820 Mat. 1.00. 820 Eve. 1.00. SAVOY. 820 Mat. 1.00. 820 Eve. 1.00. HENRY MILLER. 820 Mat. 1.00. 820 Eve. 1.00. ASTOR. 820 Mat. 1.00. 820 Eve. 1.00. CIRCLE IN FULL. 820 Mat. 1.00. 820 Eve. 1.00. MR. SOTHERN. 820 Mat. 1.00. 820 Eve. 1.00. HANMERSTEIN'S. 820 Mat. 1.00. 820 Eve. 1.00. DEWEY. 820 Mat. 1.00. 820 Eve. 1.00. PASTOR'S. 820 Mat. 1.00. 820 Eve. 1.00. MURRAY HILL THEATRE. 820 Mat. 1.00. 820 Eve. 1.00. GRAND. 820 Mat. 1.00. 820 Eve. 1.00.



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