

HASLETT INCOMPETENT TO SIGN, SAYS ALIENIST

Period of Mental Inability Also Covered Lord's Power of Attorney, It Is Said.

OLD MAN'S MEMORY GONE

Doctors Examine Him Again—New Affidavit Against Decker, Whose Bail Is Increased.

Just five days before ex-Senator Frank J. Gardner secured his power of attorney in a midnight visit to the house of Samuel V. Haslett, the Brooklyn recluse now said by alienists to be incompetent, another had been signed over to John B. Lord, the lawyer who caused the arrest of Gardner and Nurse Geogor Decker on charges of conspiracy to defraud the aged man out of his estate.

It was the conflicting powers of attorney that led Chief Magistrate Kemper to hold an investigation at Haslett's house and it was the failure of the old man to recollect signing any papers for Gardner that led to the arrest of the former Senator and the professional nurse.

Now it appears from a statement made by one of the alienists that Mr. Haslett was incompetent when he signed the power of attorney for Mr. Lord as well as when he signed for Gardner. Mr. Lord's power of attorney, it is now said, was made out on February 17 last, two days after he had called in Dr. Henry B. Minton of 165 Jerusalem street to attend Haslett.

At that time Mr. Haslett was suffering from senile dementia, according to Dr. William Morris Butler, an alienist called in to examine Mr. Lord at about the time that Mrs. Ellen Haslett Samuel, Haslett's second cousin, applied to County Judge Fawcett for an order compelling Haslett, Lord and Gardner to show cause why a committee of the old man's person and estate should not be appointed because of his incompetency.

Dr. Minton received no report from his alienists yesterday, although he was expecting a written one. He was not quite sure that the man was suffering from senile dementia, and was inclined to favor a diagnosis of plain senility, but he admitted Mr. Haslett's memory was so bad he could not recollect matters of either minor or major importance. The old man was unable to name the present President of the United States when questioned by Dr. Butler and Dr. John E. Wilson, the other alienist, nor could he recollect what he had had for lunch that day.

Haslett is brightening up perceptibly, Dr. Minton claims, and is able to talk quite reasonably on almost all subjects, but has no memory. Dr. Minton was not sure how long this condition had lasted, but he was certain that it had been bad for some time and is progressive.

Increased bail was asked for Decker when he was arraigned in the afternoon before Chief Magistrate Kemper at 40 Adams street police court, Brooklyn. The nurse who, has been in the Raymond street jail, arranged to have a surety contract in his bond signed up by Attorney Lord last night prepared a new affidavit against Decker, charging the nurse with conspiring with Gardner to defraud Haslett at his house, 125 Benson street.

The affidavit by Deyo in which the affidavit of Mr. Lord and the charge against Decker is based, goes minutely into the incidents leading up to Deyo's first meeting with Gardner at the Clerendon Hotel on February 15 and the circumstances surrounding the signing of the will by Mr. Haslett. Deyo says Decker acted as the go-between or agent, arranged the various interviews and meetings and handled Mr. Haslett. On one occasion, Deyo says, a mail scratcher, Mr. Haslett as Decker was seating him in a chair and the old man cried, "Damn it, you are hurting me."

Haslett took exception to a provision in one of the wills which left \$15,000 to a certain relative. "Oh! \$15,000," he is reported to have said, "that man ought to have been dead fifteen years ago instead of getting \$15,000."

Among other things, Dr. Deyo denied the charges that Mr. Haslett's signature was written by another of the wills, as Mr. Lord has insisted.

Dr. Turner was brought into the case, according to the affidavit, because of Dr. Minton's opinion.

"There were some things in the case that looked queer to me," the deponent says. "I had heard that another will had been drawn up only a week previous and I therefore decided to call for a personal friend and associate."

Counsel for Mrs. Samu admitted an understanding with Mr. Lord to accept the offer in return of the alienist at the incompetency hearing before Judge Fawcett to-morrow.

"When I was convinced that these men were reputable alienists I agreed to accept their reports most certainly," the lawyer said, "and with all the more willingness as they were practically agreed already on the man's incompetency, thus sustaining our contention."

But Mr. Lord had not learned, even as late as yesterday afternoon, that the alienists considered Mr. Haslett incompetent. He inclined to the belief that the old man is sane but said he wanted the matter decided one way or another.

"I was asked whether he would accept a position on the committee if the court decided to appoint one, Mr. Lord replied emphatically, 'Not much. I have known Mr. Haslett too long and been too long with him to get mixed up in any such matter. Surely he is sane and competent now but should wake up later on to find me a member of the committee of his person and estate. He would say to me, 'But, my dear fellow, you could convince him that I hadn't been one of the prime movers to get hold of his estate.'"

DUKE WAS SUITED.

Whitlaw Reid Says Connaught Liked His Visit Here Well Enough.

Whitlaw Reid, American Ambassador to England, who sailed yesterday by the White Star liner Olympic, said there was no truth in the yarn that the Duke of Connaught had not enjoyed his American visit, he had particularly admired the attentions of the reporters and photographers.

"The Duke of Newcastle, who also departed by the Olympic, said that England was losing some of her best families because of the system of taxation introduced by Lloyd George, and he believed the people would not continue to support him. The Duke said also that Ireland did not want home rule and would not do what to do with it if she had it."

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BRANDT WINS; GOVERNOR WAITS

Continued from First Page.

assault indictment be dismissed on the ground that the man had already served five years in prison, which would be ample punishment if guilt existed there. The District Attorney is in sympathy with this procedure and would not interpose technicalities to resist it.

HAND INQUIRY NOT ABANDONED. The Gerard decision can have no effect on the hand inquiry, the District Attorney said, except to nullify in advance any action favorable to Brandt that the Governor might take as the result of Judge Hand's recommendations. The inquiry will proceed, it was said. Judge Hand will have a talk to-day in Albany with Gov. Dix. The Judge said yesterday if the Governor directed him to admit the testimony of Mortimer L. Schiff, Mrs. Schiff and Howard S. Gans that he would follow directions. The responsibility of disregarding the statements of the Attorney-General and the District Attorney that justice might be defeated if persons who likely will be indicted are allowed to testify will then, said Judge Hand rest with the Governor. To-morrow bids fair to be a busy day in Albany with regard to the Brandt case.

SCHIFF'S COUNSEL APPEAL TO DIX. Counsel for Mortimer L. Schiff, Alton B. Parker and De Lancey Nicoll, wrote to the Governor yesterday that they would submit a brief to him to-morrow showing that the argument of the Attorney-General and the District Attorney that immunity would automatically be granted under section 584 of the Penal Law to witnesses who testified in such proceedings as the pardon inquiry was preposterous. Mr. Nicoll insisted also in this letter that the Governor produce Brandt's application for pardon in order that everybody could see the man's real grounds for appealing for clemency, whether Brandt attempted to smirch a woman's reputation in pleading for release or whether he contended that he wasn't guilty of the crime for which he was sentenced. Mr. Nicoll urged also that Mr. Schiff have a chance to tell the whole story and thereby put an end to scandalous innuendo. It is known that the Governor feels that Brandt's application should never be made public. It was said yesterday that his embarrassment may be increased by the attitude of the Schiffs and their counsel. He did not decide yesterday what to do about Mr. Nicoll's request.

If the hand inquiry goes on and is broadened it will be solely at the request of Mr. Schiff's counsel. The Attorney-General, the District Attorney and Mr. Towns are opposed to the whole proceeding except as it deals with court records. The officials will appear, however, to resist admitting Schiff and Gans, and possibly Mrs. Schiff, as witnesses. They are prepared to fight on that point.

ALLEGED CRITERION CLUB SEANCE. There was no Grand Jury session yesterday, but the District Attorney had a talk with J. Henry Rothschild, manager of the Waldorf-Astoria Segar Company, and J. J. Carey, cashier of the Criterion Club, the Jewish social club at 683 Fifth avenue. A Mr. Rothschild was mentioned to the District Attorney as one of a party that met at the club a few nights before Brandt was sentenced. The others mentioned to the District Attorney were Judge Otto A. Rosalsky, Mortimer L. Schiff, former Inspector McLaughlin, and Howard S. Gans. Judge Rosalsky has denied that he was there or that he ever conferred with Schiff interests before Brandt was sentenced. Yesterday Mr. Rothschild said after leaving the District Attorney's office that he was not present at any sort of conference, that he didn't know Gans, and that he had met Judge Rosalsky only once, having been introduced to him by the progress club. Carey said he had no knowledge of any of the men mentioned had ever met at the Criterion Club. The investigation has not been dropped, however.

THE EXPECTED INDICTMENTS. The intimation that there will be two, possibly three, indictments as a result of the conspiracy investigation was strengthened yesterday. The Grand Jury will take up its work to-morrow, when the names of the persons in the Brandt case will be questioned. One of the points to be gone into is who got Brandt's lawyers for him. Another is, Why did Brandt refer apparently to Howard S. Gans, Mr. Schiff's lawyer?

De Lancey Nicoll was asked yesterday to explain what he had in mind when he said before Judge Hand on Tuesday that the source of stories that assailed the probity of a business man and the honor of a woman was known and who said that he believed originated the stories.

"That will come out," said Mr. Nicoll, "but only in a court room. In the proper time and in the proper way the responsibility for this shocking campaign of vilification will be established."

Mirabeau L. Towns, who got out the writ of habeas corpus that brought Brand from Clinton prison to the Tombs, gave out a statement last evening expressing gratification over Justice Gerard's decision.

"As to Brandt," said Mr. Towns, "he is now assured a fair trial. I think it will be some time before I know of any ignorant boy's plea of guilty with a statement showing lack of guilt will call forth from the Judge a sentence to State's prison until the Judge is convinced beyond a doubt that the prisoner is guilty of the crime to which he pleads."

JUSTICE GERARD'S DECISION.

Holds Sentence Illegal Because of Error in Accepting Brandt's Plea.

Justice Gerard in sustaining the writ of habeas corpus says: My decision on this writ does not set the prisoner free. The prisoner may or may not be guilty of the crime charged in the indictment, and my decision simply puts him in the same position as if the service of a sentence of nearly five years that he was in before sentence was imposed upon him.

The writ is sustained and the prisoner remanded to the Tombs subject to an application for bail to await trial under the indictment for burglary in the first degree.

The decision is long. The Justice says he finds no exact precedents to govern him because the same state of facts has arisen only once in this country, in Illinois, when a man guilty of manslaughter only ignorantly pleaded guilty of murder and was sentenced for it. That judgment was reversed on appeal, but Justice Gerard says it does not follow that a writ of habeas corpus will not also lie. Justice Gerard says:

If the records show that the court had jurisdiction to pronounce the sentence, the Judge, on habeas corpus, can go no further. He must remand the prisoner at once to the custody provided by law, but the record must show all this and it must be shown clearly and unmistakably; nothing can be left to inference nor can anything be assumed.

Justice Gerard quotes in full the exami-

nation of Brandt by Judge Rosalsky just before sentence was pronounced and comments: The questions and answers show that Brandt, whatever other crime he committed, did not break to enter within the meaning of the law. He showed that the crime of burglary in the first degree or in any degree was not in fact committed.

It is to be noted here that Brandt has been indicted for the assault alleged to have been committed in the house after he obtained admission to the house, and he may still be tried on that charge, a charge which on March 28, 1907, he was not arraigned to meet.

His answers, however, given on oath disclose what although he intended to plead guilty to something, whatever he pleaded guilty to did not amount to burglary in the first degree.

I hold that when a defendant puts in a formal plea of guilty, that then the Judge proceeds to swear the defendant and learns from him that the acts which he admits doing did not in fact constitute the crime to which he pleads guilty, and that the defendant did not in reality intend to plead guilty to that crime, then the Judge who sits to protect the interests of the State as well as the State is not justified in accepting the plea and imposing sentence, but is without jurisdiction to sentence a prisoner for a crime which it is plain the prisoner does not admit that he committed and to which he does not plead guilty.

The acceptance by the Judge of the plea under these circumstances is an error as against the prisoner, an error based on the error of the prisoner in pleading guilty to a crime which he admits amounting to the crime to which he pleads guilty. To hold otherwise would be to give approval to a procedure which would permit the Judge to receive a plea to a certain crime from a prisoner who is not represented by counsel, although a sentence for that crime, although the facts which show that the prisoner did not intend to plead guilty to that crime and that the crime was not committed. Is there any remedy if such a result is reached in courts?

The cumulative sentence imposed on Tweed on an indictment charging separate misdemeanors identical in character is cited as an instance in which a sentence was set aside in habeas corpus proceedings because the court had no jurisdiction to impose an illegal sentence. Justice Gerard says:

There is and should be a distinction between the commission of a mere error, made possibly on a ruling as to the admission or rejection of evidence by a trial Judge, and the occurrence of what amounts to a legal deception as far as the prisoner is concerned and which is therefore in derogation of his rights. An error such as an error in the nature of a ruling on the admission or rejection of evidence may be reversed on appeal, but an error of the nature of the one made here, after its occurrence, gives the Judge no jurisdiction to sentence the prisoner.

There are no active errors and errors of omission. Hence the trial Judge heard the prisoner plead guilty. The prisoner was not represented by counsel, the prisoner asked for the aid of his counsel, and scarcely is the plea made when the Judge learns from the sworn statement of the prisoner facts which show that the prisoner both did not commit the crime to which he pleaded guilty and that he did not intend to plead guilty to such a crime.

The Judge who sits to represent the prisoner and to see that justice is duly administered cannot, and should not, assent to such proceedings as against the prisoner. If a deception were practised by a prosecutor the judgment would probably be voidable and not void. But where the error of this nature is that of the Judge he is not to be held responsible for the error. It is the happening to sentence the prisoner, and the Judge has said that such a state of facts avoids all judicial acts.

Can any court hold that where a prisoner is sentenced by a Judge who has sat silent to the plea of guilty, and who has learned from the prisoner's own lips that he does not admit the crime or intends to make the plea, that the only remedy of the prisoner is by appeal? As I have said already, if the prisoner is mistaken in his plea and he sees the Judge act in sentencing him he will be confined in his mistake and lured into inaction until his time to appeal has expired. Must he then appeal for mercy to the Executive when he is entitled to justice from the courts?

I think I state that the prisoner committed an error if I did not state that in the sense that he intended designedly to harm or deceive the prisoner. The long sentence given by this Judge may have been induced by some error presented to him, but only in the sense of a matter of law, that the failure of the Judge to take some action to inform the prisoner after questioning him and his receiving and acting on the formal plea of guilty when he should have found from the prisoner's testimony that he never intended to plead guilty to this particular crime, constituted such an error leading to the deception of the prisoner in the technical and legal sense as deprived him of jurisdiction to sentence the prisoner.

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ground than that the prisoner at some time or in some way has assailed the fair name of Mr. Schiff's family.

"If he has done this," says Mr. Carmody, "it is to be deprecated, and the District Attorney of New York county, acting in conjunction with myself, have determined that it will not occur in this proceeding, even at the instigation of counsel for Schiff. There is nothing in the proper records before your Excellency that can be considered upon that subject."

"The minutes of the Grand Jury, which were not before you when this case was first disposed of by you, do not show in my mind, that the crime of burglary was committed. No attempt was made to show that the house was broken into. It is only by stretching every rule in favor of supporting the indictment that it can be held sufficient in this respect. In another respect it is absolutely defective. There is no allegation that when Brandt entered the house there was a human being in the house. If the indictment was defective, then this defendant should not have been convicted." Further the Attorney-General says:

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I do not intend to cast any aspersions upon either the counsel for Schiff or the counsel for the defendant, but to me it is inexplicable that when this fact was shown there was no one to plead the case of this young man before the court. The remarks of his counsel seem to me to aggregate the offence itself and do not comment upon the features of the case that absolutely repelled the charge for which he was indicted. Brandt must have told his counsel that he was not guilty of burglary, and he did not intend to plead guilty to that crime and that the crime was not committed. Is there any remedy if such a result is reached in courts?

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Just Published THE DRUNKARD By Guy Thorne, Author of "When It Was Dark." A powerful novel written by a man of the world for men and women of the world. To the general reader it is a strong story of deep human appeal. To those to whom drunkenness is a painful personal and social problem, it is the scientific and sympathetic help for him possible. Probably the most startling and impressive story in any language concerned with the psychology of intemperance. "WHEN IT WAS DARK" the author proved his power of holding spellbound a vast company of readers. (Critic, 12mo, \$1.50 net, postpaid \$1.67.)

THE SUNDAY SUN FEBRUARY 25th Will contain the following interesting features: "Johnny," an American A charming little story by Ethel Train. The principal character, Ikey, is a Polish lad of the great East Side. Into his life comes a baby brother, and it devolves upon Ikey to act for him in his ignorance he considers the terrors of a hospital and the outcome of his adventures in this respect are entertainingly told. There are pathetic moments in the story, but it ends happily for all concerned.

Lopukhin, The Russian Dreyfus The dramatic story of the former director of the political Police Department of the Russian Empire, ex-Governor of Estland and brother-in-law of Prince Urusov, who is now in exile in Siberia for having exposed the provocateur and terrorist Azeff. The story of Lopukhin's trial and a portion of his letter from Siberia to Herman Bernstein will be given for the first time in THE SUNDAY SUN.

Fossil Finds in Patagonia An Eastern college professor, with several associates, recently visited the barren country at the extreme end of South America. They found there fossil bones of early ancestors of the horse and elephant and the fossil remains of a great forest. Evidence that the deposits in which the fossils were found date back perhaps 2,000,000 years are described in an illustrated article which will be published in THE SUNDAY SUN.

An Emperor as a Cartoonist One of Europe's rulers when a very young man made a journey through his empire. His impressions were recorded in a series of cartoons, which were published in book form about sixty years ago. A copy of this book has just come to light, and some of the cartoons are reproduced in THE SUN next Sunday.

Arsene Lupin in Real Life A dozen clever tricks that remind the reader of old time melodramas have recently been exposed and are no longer likely to be worked with any success. They include the bank note scheme, the lost key exchange, the telegraphic money order, delivering furniture in the wrong flat, shutting up a jeweller in a padded cell, etc. They are all described in THE SUN next Sunday.

Many Other Articles of Timely Importance IN THE SUN NEXT SUNDAY