LOS ANGELES HERALD

DAILY AND WEEKLY.

THE OFFICIAL CITY PAPER.

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ANNOUNCEMENTS.

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The Herald

TUESDAY, MAY 30, 1893.

AN INDEX TO YESTERDAY.

BY TELEGRAPH—The Briggs trial begun ....World's fair turnstiles out of order.. A temporary injunction against Sunday closing of the exposition grounds....Infanta Eulalia taken up the Hudson....Progress of the Davis funeral train through the south ....The blind chaplain not responsible for the death of his son....News from Nicaragua ....Continued outflow of gold....Bank failures....Slavin knocked out by Jim Hall.

LOCAL—A blanket complaint in the case of C. H. Clement....Judge Ross gives an opinion regarding the rights of cities to regulate water rates....Judge Wade....The Bryson block assessment case....Meyer Grunley loses his case in the supreme court against the Bituminous Rock company....Officer Shannon saves a man's life...The police courts ....Council proceedings....Cases in the courts....Young Weber safely married ... Labor notes....Memorial day services...The Athletic club's programme for today's contests... Chamber of commerce matters.... Death of Prudent Beaudry.

NEIGHBORING TOWNS—Capistrano notes ....News from Phœnix, A. T....Plans for tomorrow at Santa Monica....Pomona matters ....Santa Ana news....Proceedings of the city council at Pasadena....A disgraceful personal encounter at San Bernardino.

POINTERS FOR TODAY.

G. A. R. PARADE—Starts from Sixth and Spring streets at 1:30.

SIMPSON TABERNACLE—Memorial day services at close of parade.

PARK THEATER—Ward company in Buffalo Bill.

ATHLETIC PARK—Athletic Club field day contests, 2:30 p. m.

IT was the venerable old Tony Weller who advised his son Samivel to "bevare of vidders." The old gentleman must have had in mind some such an energetic and handsome young widow as pumped a certain Longonetti full of holes in Texas the other day. The male Texan has always been known to be good on the trigger, but it was not supposed that the feminine members of that noble commonwealth were equally good. The desire to insult women will probably diminish very perceptibly under this vigorous style of repression.

ONE of the lawyers for the Chinese Six companies has been permitted to trumpet to the country, through an associated press dispatch, the sensational assertion that the Chinese government has already notified the secretary of state that it will meet the enforcement of the Geary law with a cessation of all relations, commercial and otherwise, with this country. All the truth there is in this bluff one can put in his eye. The Chinese government is not insensible enough to its own interests to cut off commercial relations with the United States. The balance of trade between the two countries is tremendously in favor of the Celestial empire. Its teas and silks sold to this country are only offset by a few shipments of flour and a lively exportation of Connecticut cheap clocks. We have not the figures before us, but $100,000,000 would not more than cover the advantage China has over us in this respect. Then, when we take into consideration the fact that about two-thirds of the earnings of the Chinese in this country are sent to China, we can readily conceive that John Chinaman is not such a dullard in business affairs as to close all commercial relations with us for the sake of preventing the coolies in the United States from registering.

TRIUMPH OF THE WORKINGMEN.

The Sunday closing fight is still on with great vigor, with the advocates of the opening of Jackson park on that day largely in the lead. It would be a great wrong many wise men, including many bishops of different denominations, think, to prevent hundreds of thousands of workingmen from the enjoyment and instruction involved in a continuous study of the great exposition. Since it has been opened the enormous attendance shows how great a convenience it is to hundreds of thousands. On the first day of the Sunday opening fully 200,000 visitors showed their appreciation of the new departure. All that seems to oppose it is the extreme religious sentiment of a number of highly respectable persons who carry religion to the extent of a fad. The advocates of Sunday opening have won their first battle in the courts, and it may be safely assumed that there has been a great change of sentiment on the whole matter. The decorum and evident benefits of the Sunday openings are beginning to be recognized in many quarters that were at first adverse to it. In the first place, in addition to the positive and downright instruction involved in the opportunity afforded multitudes by the Sunday opening, there is no doubt but that in this manner myriads of persons, who must have amusement of some kind on Sunday, will be kept from seeking it in less innocent ways. It is hard to conceive of anything more calculated to refine the mind and lead it to elevated thoughts and decorous action than the frequent contemplation of the highest achievements of art and science. In the grand ensemble of the exposition religion will by no means be neglected. All the great conceptions of religious minds will be represented; and, altogether, the effect cannot fail to be most salutary. There is no reason why the most fanatical views of the Sunday should be forced into prominence in the United States. This is above all things a cosmopolitan nation. It was determined from the start that there should be no doctrinal bias given to our institutions. Jew and Gentile are on a precisely similar footing. When it was proposed to insert in the constitution a recognition of Almighty God the proposition was negatived not because most of the members of the convention that framed that instrument did not believe in a Supreme Being, but because they were determined to keep church and state separate. Nearly every year since some pious gentlemen send in petitions to congress asking for an amendment to the constitution which shall hold forth the United States to the world as a Christian nation. They have never been able to impress their views on our lawmakers, and it is very doubtful whether they will succeed in closing Jackson park on Sunday. Religion is really revered in the United States, but its fanatical aspects are disappearing.

THE BANBURY CASE AND JUDGE VAN DYKE.

Judge Van Dyke yesterday delivered a very interesting opinion in the case of The County of Los Angeles vs. Jabez Banbury. It will be remembered that this ex-county treasurer, who had the gall to bring a libel suit against the HERALD for $20,000 because it defeated him for office by telling of his misdeeds, when an action was brought against him to recover the money which he had appropriated to his own use, set up the statute of limitations as to all these sums except those of too recent a date to be barred by the statute of limitations. This was a confession by the old fox that he knew that he had violated the law and was in great danger of being made to disgorge his ill-gotten plunder. The fact that Judge Van Dyke, a jurist of great note, substantially endorses the attitude of the HERALD is one of great significance.

The court took the view, expressed orally, that the claims were illegal; that the supervisors had no authority whatever to allow them, or the auditor to issue the warrants.

But he also said that the only action that could be maintained on the pleadings was for money had and received; in which case all claims in which more than two years had elapsed from the time payment was due would be barred by the statute of limitations.

Consequently these claims to be collected should have been set out in the first count of the complaint specifically, by District Attorney McLachlan, so as to enable the court to determine which were barred and which not.

The court, therefore, overruled the demurrer as far as the second count was concerned, which involves $952.38, and sustained the demurrer as to the first count, with leave to the plaintiff to amend, setting out the claims in detail. The decision was made solely on the ground of the statute of limitations, the court holding in both cases that the claims were illegal and unauthorized.

In the amended complaint an effort will be made to remedy the defects of of the original, if possible, so as to make the entire amount collectable under a new construction of the statute of limitions.

Of course this means that the HERALD has won its fight. The idea that a man like Banbury, who had deliberately appropriated money that did not belong to him, and who violated a statute that involved the commission of perjury, should be able to turn round and collect damages from an honest journal shows the amount of cheek a peculator and malversator can develop on occasions. The HERALD, before it gets through with this whited sepulcher, is determined to make him understand that the people are not fools. He ought really to be made to grace the cells of a penitentiary.

DECORATION DAY.

The touching and beautiful ceremonies of Decoration day will be observed all over the land today, and the graves of the veterans who have gone before their comrades into the land of the leal will be redolent with the floral tributes of a grateful people. The 30th of May has become by common consent a day devoted to the memory of the brave men who, in the hour of the nation's peril, bared their breasts to the tempest of iron hail, and endured the hardships and dangers of a strife more stupendous and deadly than any the world had ever before witnessed, in order to preserve the integrity of the nation. Whilst the services of the men who entered into the terrible struggle were beyond price, yet it is pleasant to think that in this conspicuous instance the adage that republics are ungrateful has not been verified. The dead soldiers are remembered every year by the touching ceremonies that will take place today, and the living are the recipients of the government's bounty and its paternal care. This is as it should be. It is an inspiration to the youth of the nation pregnant with patriotic aspirations. It assures them that whatever sacrifices they may be called upon to make for the land of their birth, a grateful people will not permit the memory of their patriotic acts to fade into oblivion. Indeed, a country that forgets those who have fought and died that she might live is unworthy of a place among the nations of the earth. The poet, the painter and the orator have all joined to perpetuate the deeds of valor performed on a thousand fields of carnage, and whilst the gallantry of our soldiers is embalmed in undying verse, and emblazoned on enduring canvas, the touching annual spectacle of a whole people decorating their graves, conveys even a higher and nobler sense of recognition than pen or pencil or lofty eloquence are capable of portraying. It makes the whole people kin to the silent dead upon whose tombs they come to lay their floral offerings.

James Russell Lowell, when the wounds of war were fresh, expressed in finer lines than have since been written the high sense of love we owe to the men who laid down their lives for their country at the call of duty. In his Commemoration Ode, recited at Harvard in 1865, he said:

Many loved Truth, and lavished life's best oil
Amid the dust of books to find her,
Content at last, for guerdon of their toil,
With the cast mantle she hath left behind her.
Many in sad faith sought for her,
Many with crossed hands sighed for her:
But these, our brothers, fought for her,
At life's dear peril wrought for her,
So loved her that they died for her,
Tasting the raptured fleetness
Of her divine completeness:
Their higher instinct knew
Those love her best who to themselves are true,
And what they dare to dream of, dare to do:
They followed her and found her
Where all may hope to find,
Not in the ashes of the burnt-out mind,
But beautiful, with danger's sweetness round her,
Where faith made whole with deed
Breathes its awakening breath
Into the lifeless creed,
They saw her plumed and mailed,
With sweet, stern face unveiled,
And all-repaying eyes, look proud on them in death.

The ceremonies today will be of the most touching character, and every "God's acre" in our city will be visited by the surviving veterans and crowds of civilians to pay a just tribute to the memory of the men who braved the battle and the breeze to perpetuate the union.

LOS ANGELES THEATER.—The last subscription concert of the Philharmonic orchestra last night with a fashionable and critical audience, who enjoyed a rare musical feast. The programme was one of best that had been offered by the Philharmonic society, and it was given in a most masterly manner by the orchestra. The opening number, the overture to Ruy Blas, was given with vigor and color, and was most heartily received. Beethoven's first symphony was given in full, and the members of the orchestra grasped the exacting requirements of this great work in a thoroughly artistic manner; the first and third movements were especially good, being given with wonderful finish and brilliancy.

Mr. Joseph Rubo's solos, the Battle Song from The Hugenots and the High Priest aria from The Magic Flute, were sung in a masterly manner and were enthusiastically encored. He sang Schubert's Wanderer and Caro Mio Ben for his encores.

The violin concerto of De Beroit was played by Mr. Lowinski most superbly and was rapturously encored.

One of the gems of the evening was The Eel King as orchestrated by Director Stamm. It was a beautiful number, and made a striking impression on the audience.

The overture to Der Freischutz fitting. ly and delightfully closed the rich musical feast.

The Philharmonic orchestra has made wonderful musical progress, and Mr. Stamm deserves the thanks of all lovers of music for his successful effort to establish such a superb orchestra in Los Angeles. That gentlemen had plenty of work on last night's programme, having not only orchestrated Mr. Rubo's four songs, but also the Eel King and De Beriot's ninth concerto, which was certainly most magnificently orchestrated. The many friends of the Philharmonic society are gratified with the season's work, and will give them all the encouragement essential to make the next season even more successful.

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GRAND OPERA HOUSE.—Tomorrow night Maude Granger will be seen in the Fringe of Society. This play a few years ago made an enormous success when produced under the direction of the author, Alexander Dumas, at the Odeon theater, in Paris. Few plays have been more written about or discussed.

A Famous Medicine.

Chamberlain's Cough Remedy has become famous for its cures of throat and lung diseases. It is intended especially for coughs, colds, croup and whooping coughs, and is the most effectual remedy known for these diseases. Mr. C. B. Main of Union City, Pa., says: "I have a great sale on Chamberlain's Cough Remedy. I warrant every bottle and have never heard of one failing to give entire satisfaction." 50 cent bottles for sale by C. F. Heinzeman, 222 N. Main.

The Great Maccabee Picnic

At Santa Monica cañon today. Field sports, baseball, Douglass's Military band; dancing in the pavilion; fishing on the wharf. Avoid the rush by taking the first train. Trains leave Southern Pacific company's Arcade depot 8, 9:20, 9:30, 10:10, 10:20 a. m. and 1:10 p.m. Round trip, 50 cents.

Going Fast.

The unsold lots in the Wolfskill tract at auction prices. Only a few left; make yourself rich. The sale will close in a few days, when we will add 25 per cent to the auction price. Los Angeles Land Bureau, 207 S. Broadway.

Wolfskill Tract.

The unsold lots are going fast at auction prices. Do not miss this grand opportunity. Call at once and make your selection. Los Angeles Land Bureau, 207 S. Broadway.

Houses Built—Improvements Made.

The Adams Street Homestead subscription is closed. Six lots for sale at $285—$10 monthly, no interest. Call on Southern California Land Co, 230 North Main street. Free carriages to this beautiful tract. One lot makes three auction lots.

JABEZ'S ILLEGAL CHARGES.

Judge Van Dyke Stamps Them As Unauthorized.

The Ex-County Treasurer Tries to Hide Behind Time Limitation.

A Decision Rendered Which Settles the Status of Mr. Banbury as Regards the Charges He Made Against the County.

Judge Walter Van Dyke made a ruling yesterday upon a demurrer, in the case of the County of Los Angeles vs. Jabez Banbury, ex-treasurer of the county, which will show that defunct official where he is at.

By the ruling the court directly says that the ex-treasurer put his hands illegally in the county treasury.

Unfortunately the law seems to sustain Jabez in his plea of the statute of limitations as a bar against the collection of a portion of the money he illegally obtained from the county, and the court was obliged to sustain the demurrer as to these claims, which are over two years old.

This is the suit, to refresh the recollection of Mr. Banbury, in which, while county treasurer, he charged the county several thousand dollars for expressage and exchange on moneys sent to Sacramento, which expressage and exchange he never paid, but pocketed the money just the same.

The suit was brought during the closing days of ex-District Attorney McLachlan's term of office, in an endeavor to make Mr. Banbury disgorge.

The complaint was so drawn as to embrace two counts. In the first the payment to the defendant by the board of supervisors of illegal claims aggregating $3254.04 is alleged. The claims were for the repayment to him of money alleged by him to have been paid for express charges and exchange on state money sent to Sacramento in settlement by him as county treasurer with the state between the first Monday in January, 1889, and the first Monday in January, 1891.

The second count embraces claims aggregating $952.38 for similar charges between the first Monday in January, 1891, and December 30, 1892, the date of the filing of the complaint.

The complaint alleges that Mr. Banbury never paid out the sums mentioned, and that if he did he was unauthorized to do so by the board of supervisors.

The arguments on the demurrer yesterday were made by District Attorney W. A. Ryan for the county, and W. T. Williams for the defendant, and occupied a portion of the forenoon and a greater part of the afternoon. They were very thorough on both sides.

The defendant demurred to the complaint first on the ground that it did not state facts sufficient to constitute a cause of action, and second that the claims in the first count are barred by the statute of limitations, more than two years having elapsed since their payment.

The principal points relied on by the defendant's counsel was that the allowance of their claims by the board of supervisors was an adjudication of the matter, and had the same force and effect as a judgment. That the supervisors had the authority to allow the claims and consequently jurisdiction over them, and that their action could not be attacked collaterally.

Mr. Williams contended that even if the defendant had committed perjury in swearing before the supervisors to these claims, that he had paid the money; still, on the authority of the case of Pico vs. Cohn, 91st Cal., page 129, even then the court would not vacate their allowance by the board for such fraud. That the only fraud for which a judgment would be vacated is fraud intrinsic and collateral to the case, and not perjured testimony in the case.

Counsel also raised the question of the statute of limitations and argued that this was an action for money had and received, and therefore, under the provisions of section 338, code of civil procedure, all claims more than two years old were barred.

Mr. Ryan, for the county, took the position that these claims were not and are not legally chargeable against the county; that therefore the supervisors had no jurisdiction to make the allowance, and in consequence they created no liability against the county, and the warrants were absolutely void, so that an action can be maintained to recover the money without first setting aside the acts of the supervisors.

Further, he contended that even if the supervisors had jurisdiction to allow the claims, their judgment having passed into execution and been paid, became "functus officii" or a dead writ. Consequently no proceedings to set aside their allowances were necessary.

He argued that the warrants, having been obtained fraudulently, and the facts not having been discovered until within six months prior to the bringing of the suit, the action was not barred by limitation until three years after the discovery of the fraud; that the defendant, having acquired the moneys illegally, as a county official, held them in trust and in consequence the action is not barred.

At the conclusion of the arguments, the court stated orally that he took the view that the claims were illegal, and the supervisors had no authority whatever to allow them or the county auditor to issue the warrants.

But he also held that the only action that could be maintained on the pleadings was for money had and received, in which case all claims in which more than two years have elapsed from the time of payment would be barred by the statute of limitations.

Consequently the claims should have been set out in the first count specifically by District Attorney McLachlin, in whose term the suit was brought, so that the court would be able to determine which were barred and which were not.

The court therefore overruled the demurrer as far as the second count was concerned, which involves the $952.38 before mentioned, and sustained the demurrer as to the first count, with leave to the plaintiff to amend by setting out the claims in detail.

This decision was made solely on the ground of the statute of limitations, the court holding in both counts that the claims were illegal and unauthorized.

In the amended complaint an effort will be made by the plaintiff to remedy the defects of the original complaint, so as to bring the whole amount within the necessary limit, and recover judgment for it all if possible.

CHAMBER OF COMMERCE.

Proceedings Yesterday of the World's Fair Committee.

The Los Angeles county world's fair committee met at the chamber of commerce rooms yesterday evening.

Mr. Charles Forrester, the chairman, reported that the county world's fair funds were in a satisfactory condition, and that all demands incidental to the shipment of fruit and other expenses also would be readily met.

A number of bills were audited and acted upon.

It was reported that, judging from present indications, some of the counties would be unable to meet their assessments on the publication of the new book descriptive of Southern California that will be soon issued. The committee resolved to proceed and collect from the counties that could pay, and those which were delinquent would not be mentioned in the book.

Mr. Forrester was given an unlimited leave of absence to go to Chicago. He was also authorized to confer with Mr. Frank Wiggins as regards the future shipments of oranges to replenish the citrus exhibits. Other matters will also be adjusted.

A meeting of the members of the chamber of commerce and the public generally is called for next Wednesday afternoon at 3 o'clock at the chamber of commerce for the purpose of discussing the best means of proceeding with the holding of the irrigation congress here next October.

A FLAG RAISING.

The San Pedro School the Scene of a Pleasant Affair.

Today at the San Pedro school was a gala one. It was the occasion of the raising of a flag. An interesting and appropriate entertainment was arranged by the principal, Miss Fidelia Anderson, which was much appreciated by the children and their friends who were present. Mrs. M. Hughes, F. W. Stein, James Ashman and J. C. Platt of the board of education, were present. Mr. Stein made an address which will be long remembered by those who heard it, and will no doubt in future bear patriotic fruit. One of the prettiest parts of the entertainment was the presentation of floral offerings to the members of the Grand Army of the Republic. These offerings were received from the youthful donors with grateful thanks by the G. A. R. men.

C. E. Pennell and J. B. Duke

Desire to announce to the public that they will open the old Turf Exchange at 115½ South Spring street, on Thursday, June 1st, 1893, when the great racing events at Morris Park will be noted. All admirers of horse flesh and the public in general are respectfully invited to attend. Good odds will be given on all of the events, and a full description given on every race.

This Is a Holiday,

But to accommodate many that are unable to leave their duties on other days, we will keep "open house" and be prepared to show you every attention in regard to the famous Wolfskill tract lots on which we have a contract and as yet remain unsold. Call and see us, for that costs nothing! Easton, Eldridge & Co., Los Angeles Land Bureau, 207 South Broadway.

Denny and Overton.

CHICAGO, May 29.—Barney Allen of Australia, backer of Martin Denny, has cabled an acceptance of the challenge of Billy Overton of England, to fight any 130-pound man in the world.

Deals with Nature.

In extracting fruit flavors, Dr. Price deals directly with nature and leaves the use of artificial extracts to those who have not the chemical knowledge to extract from the true fruit, and who care not what they sell so long as they can make money.

DR. PRICE'S DELICIOUS Flavoring Extracts

are conceded to have no peers in the market.

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For you to think of buying your shoes elsewhere than at the undersigned's. Finding it impossible to close out our entire stock of fine Shoes at our former low prices, and being determined to close them out if possible, we have decided to lower our prices still further to figures so that it will pay you to come and buy. We have no old shopworn or shoddy goods we want to get rid of, but everything the latest style and best quality. Our Prince Albert, Juliet and Blucher Oxfords must be seen to be appreciated. Now, for example, notice the saving you make in a pair of

SHOES! SHOES!

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Ladies' Turned Oxfords from $1 to $3.85.....former prices $2 to 5 00
Misses' Shoes from $1.25 to $2.25.....former prices $2 to 3 00
Infants' Shoes from 25c to $1.50.....former prices 75c to 2.00
Men's Shoes from $1.75 to $5.50.....former prices $2 to 7.00

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SPANISH NERVINE The great nerve and brain restorer is sold with a written guarantee to cure all nervous diseases, such as Weak Memory, Loss of Brain Power, Fits and Neuralgia, Hysteria, Dizziness, Convulsions, Wakefulness, Lost Manhood, Nervousness, Lassitude and all drains or loss of power of the generative organs in either sex Involuntary Losses, or Self Abuse caused by Over Exertion, Youthful Indiscretions or the excessive use of Tobacco, Opium or stimulants which ultimately lead to Insanity. With every $5.00 order we give a written guarantee to cure, or refund the money. $1 a package or 6 for $5. Spanish Medicine Co., Madrid, Spain. Address U. S. Agents, Detroit, Mich. Circular Free. Mention paper.

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And Stage Line.

This resort is situated in Bear Valley, 40 miles from San Bernardino; altitude 6700 feet. Is reached by stage line from San Bernardino. Stage leaves New St. Charles Hotel on Tuesdays at 5 a.m. from May 16th to June 15th; Tuesdays and Fridays after above date. A fine four-seated spring stage has been built expressly for this route, and will be driven by careful and sober drivers.

Largest trout caught in the state at this resort. Boats, saddle horses and burros for hire at the hotel. First trip up on May 16th. The earlier you come the better fishing you will have.

Board and lodging $10 and $12 per week, $2 per day. Round-trip tickets $7. For full particulars inquire of C. S. R. R. ticket office, Los Angeles, and New St. Charles Hotel, San Bernardino.

Groceries, provisions and fishing tackle for sale at store adjoining hotel.

5-7 tf ASUS KNIGHT, JR., Prop'r.

IF YOU HAVE DEFECTIVE EYES

And value them, consult us. No case of defective vision where glasses are required is too complicated for us. The correct adjustment of frames is quite as important as the perfect fitting of lenses, and the scientific fitting and making of glasses and frames is our only business (specialty). Have satisfied others, will satisfy you. We use electric power, and are the only house here that grinds glasses to order. Established 1882.

S. G. MARSHUTZ, Leading Scientific Optician (specialist), 167 North Spring st, opp. old courthouse. Don't forget the number.

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Auction Sale!

POSITIVE AND PEREMPTORY, on Premises, Cor. of Aliso and Alameda sts., No. 242, on

Saturday, June 3, 1893,

At 11 O'clock A. M., of

Sixty (60) Head of the Best of J. B. Haggin's Graded Percheron Clydesdales and Canadians,

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WM. COLON, Owner.

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