

IS CALLED UP

Ah Louie's Case Put on the Calendar

NUGGET OF VARYING VALUE

SOUTHERN PACIFIC MUST REFUND ON CONTRACTS

A Knotty Point in Cases of Probate. The Jewels of Mrs. Emma Tolfree. "Poker" Davis in Trouble

The jurisdictional suit of Ah Louie against Justice Madison J. Owens was called up in department two yesterday by Horace Appel, attorney for the plaintiff.

The article that appeared in these columns about this curious case in the issue of Sunday caused much comment, and interest is being manifested as to the final outcome. Meantime, however, Judge Clark ordered the case to be put on the calendar for next Monday, to be then reset.

As illustrative of the tangle in which the city courts are likely to be involved, in the event of the plaintiff's obtaining a judgment, it was contended yesterday by certain of the attorneys engaged in discussing the merits of the case that a state of chaos would result.

So soon as official declaration was made of the census taken of the population of Los Angeles city, then and there the city had passed out of its previous class and the jurisdiction of the city justices disappeared. From that time on, it is urged, they have usurped their office, and they, with all other attaches of the city courts, have been drawing salaries to which they are not entitled and which they can be made to refund. But that is the least important phase of the matter. Inasmuch as the justices were exercising authority without warrant of law every judgment and sentence rendered is illegal, void and without effect. Criminals under sentence in the city jail, fines inflicted after being paid and deposited in the city treasury, as well as judgments rendered in civil cases, will all be made nugatory, and a regular carnival of legal discord will ensue if the heathen Chinese proves in open court that, at least in the city justice business, the Caucasian is in very truth played out. Prisoners would have to be released, either voluntarily on the part of the authorities or just as speedily, perhaps, by the habeas corpus route; civil suits would have to be reheard, and for the money lost and time expended by litigants somebody would have to foot the bill.

All of this is not pleasant to contemplate either by the city justices, who are most closely concerned, or by the public who are likely to suffer by reason of the imbroglio. Then, too, if by an odd chance the judges of the superior court, sitting in banc, should hold that the census taken by legislative direction did not decide the city's classification, there is still another point that will be raised that is depended upon to give the quietus to the city courts. For a long time, and in many quarters, in an unofficial way, it had been rumored that certain portions of the "Whitney act" are clearly unconstitutional. This applies particularly to the creating of city courts, for in this respect that law is not based on the classification of cities as required by the constitution.

ON LAND CONTRACTS

The Southern Pacific Must Refund Where Title Is Defective

In the two suits of Emil Deutch and Henry Elms against the Southern Pacific company, Judge Allen yesterday ordered findings and judgment in each of the cases for the amount prayed for.

Both of the actions were brought to recover moneys paid in pursuance of contracts by which the railroad company agreed to sell certain land to the plaintiff, the payments to be made at stipulated dates. The land was claimed by the company to be part of a grant to it by congress, for which patent had not been issued, and due diligence to procure patents was promised in order that title to the property could be made. The company disclaimed any guaranty of title, however, but stipulated that, failing to obtain a patent, any payments made upon the lands would be refunded.

The plaintiffs contended that it had been determined that patents should not issue to the lands, and for this reason demanded a return of \$882.20 in the case of Deutch, and \$710.40 in the case of Elms, the moneys they had paid to the railroad company. The defendant company, on the other hand, denied that the matter had been determined, and averred that a suit is pending in the supreme court of the United States, brought by the United States against plaintiffs and defendant to quiet title to the lands in question. Furthermore, the statute of limitations was invoked.

Judge Allen has held that with regard to granting a patent to the land, the matter was determined, and adversely to defendants, by the supreme court of the United States in 1932. As the railroad company had no right in the lands, and had no interest in them, as determined by the court, it would be an idle procedure to tender possession of a thing to which it was not entitled. "The payment of the balance of the purchase money under these contracts," says the court, "would have given the plaintiffs no additional rights, except to have increased the amount which defendant could hold without interest, to be the subject of future litigation." The question involved in the statute of limitations was also decided adversely to the defendant.

A KNOTTY POINT

Money for Someone but Uncertainty As to Whom

In 1895 the legislature passed an act which in operation bore rather hardly upon the heirs to an estate. This new law made it necessary that in the case of estates being dealt with in the probate court the clerk should be paid, in addition to the ordinary clerk's fees, \$1 for every \$1000 of the estate's value in excess of \$3000. This in the case of val-

uable estates amounted to a very nice little sum.

In the case of Louis Fatjo and Mariana Fatjo Roco, executors, against Henry A. Pfister, at San Jose, the validity of this additional charge was contested. A demand had been made for \$240, which was not paid, but a writ of mandate was sued out to compel the administration of the estate minus the additional charges. The case came up before the supreme court and it was there held that the law passed in 1895 was unconstitutional in that it violated several sections of the constitution, and was an attempt to levy a property tax under guise of regulating court fees.

This is all very satisfactory, but in the interim fees have been paid, estates administered upon, executors discharged and estates distributed. By a reversal of the law there are amounts now in the county treasury that ought to be refunded, but to whom—that is the question. Where an estate has not been closed it is thought that the court may direct the clerk of the court to return any fees of the kind alluded to back to the estate from which it was paid; but where an estate has been closed the case is somewhat different. The executor may lay claim to a return of the excess fees, and upon being paid may follow by the heirs to the estate who may also lay claim to this refund money. At present it is a trifle obscure how such cases will be dealt with. Meantime several claims for a return of these fees have been filed with the board of supervisors, including, among others, a claim of \$269 paid in the estate of John Wilson.

A WIFE'S JEWELS

Annexed to the Husband's Estate and Now Ordered Refunded

Every one knew of J. Herbert Tolfree, who conducted the eating houses on the Southern Pacific system in Southern California. Not to know him was to confess oneself ignorant. It was with surprise and grief that his friends learned in January last that he had committed suicide, just about six months after his wife had made away with herself in a similar rash manner.

By the death of these two people a little legal entanglement resulted that was straightened out yesterday by Judge Clark. After the death of his wife Tolfree took her jewelry, some of which was very valuable and valued at from \$3000 to \$4000, and placed it in his deposit vault at the Farmers and Merchants' bank. When he died it was found that he was practically insolvent and Administrator Plateau took possession of the jewelry discovered in the deposit vault on behalf of the estate. Meantime, however, friends and relatives of Mrs. Emma Tolfree had been writing and making inquiries as to the whereabouts of certain valuable diamonds. This led to Public Administrator Kelsey taking out letters in the estate of the wife. Upon his making a claim for the jewelry, Administrator Plateau refused to make surrender of the only valuable property he had been able to lay his hands on. To settle the matter a friendly suit was brought by Kelsey against Plateau to recover the property and in an opinion handed down yesterday Judge Clark gave judgment for the plaintiff.

OF VARIABLE VALUE

A Nugget Pin That Figures in the Hoffman Case

William Hoffman, who, with one Gilbert Young, was concerned in breaking into the Eagle stables, on Broadway, on August 27th, and after maltreating Tom Latter, one of the employees who was acting as watchman, robbed him of certain valuables, was brought to trial yesterday before Judge Smith and a jury. The evidence went to show that the watchman was robbed of three \$5 gold pieces, \$1.25 in silver and a gold nugget pin valued at \$6, but which Latter, after the robbery, was willing to buy back for \$10, and which he swore yesterday was worth only \$4.

Young, who is a co-defendant, in giving his testimony yesterday, denied having been in any way implicated in the robbery. He stated that he had gone to his room on Broadway, adjacent to the stables where he worked, and was roused out by Hoffman, who had money to burn, and wanted him to come down and have a good time. Young refused on the plea that he had no money to spend, and then Hoffman loaned him a dollar, and both together went about town, drinking. Under the cross-examination of Attorney J. D. Fredericks, counsel for the defense, Young enlarged upon his story in such a manner as to make it appear that he was a much interested individual—that is, if his story is to be believed.

"POKER" DAVIS AGAIN

William Feathers Relieved of \$250 at a Little Game

E. C. Davis—known to the ungodly as "the devil's past boards"—"Poker" Davis—with Jim Burk and John Feathers, are again in trouble.

Yesterday the leader of the trio was arraigned in the township court before Justice Young on the complaint of one of his latest victims, who objected to being fleeced, William Feathers of San Fernando, who was relieved of \$250 as he alleges, by "tricks and devices by use of cards, the exact kind and description being unknown to him, but as a matter of fact Mr. Feathers' little had changed hands over a quiet little game of poker.

Davis did not appear much disturbed at the turn affairs had taken, and, indeed, mildly chaffed Assistant District Attorney Williams by saying that it probably was not him that was wanted at all, but another fellow like him with whiskers. He asked the court to allow him sufficient time to get his evidence together, and was content that his examination should be set for Saturday morning. His bond was fixed at \$1000 and J. Thomas and J. H. Anderson, proprietors of the Elntrecht saloon, went upon the bond as sureties.

A LUCKY DEFENDANT

Who Escapes the State's Prison by the Mistake of One Letter

About a week ago Attorneys Chappel and Sylvester had the information in the case of Earl Riddle, charged with grand larceny in having stolen a bicycle from a shop at Whittier on September 25th, set aside on a rather odd contention.

The complaint upon which Riddle was originally examined at Whittier before Justice Owen set forth that the bicycle, alleged to have been stolen, was "of the value of 'silty-five dollars or thereabouts," and counsel contended that the meaning of such language was so obscure as to be incom-

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comprehensible. The information was knocked out all right, and Riddle was remanded for another preliminary examination.

Yesterday he was again brought up at Whittier before Justice Owen, and after listening to the representations of the defendant's attorney, R. Newel Chappel, the court permitted Riddle to plead guilty to the minor charge of petit larceny and sentenced him to thirty days in jail. Inasmuch as Riddle has a rather had record, if his attorneys had not been shrewd enough to have the information in the superior court set aside it is very probable that for the grand larceny, with a previous record, he would have got a sentence of six or eight years in the state's penitentiary.

BAIL NOT REDUCED

And Blackman Will Have to Remain in Jail

Attorney F. Finlayson appeared in department one yesterday morning and moved the court that the bail of W. R. Blackman, charged with embezzlement, be reduced from \$5000.

Counsel, in arguing on his motion, made the point that at the preliminary examination the evidence only went to show that there was only a shortage of \$1753 on the books of the Los Angeles Electric company. The court was obdurate and stated that even if the amount of shortage was as stated, instead of \$10,000, as charged in the complaint, the sum of \$5000 was a reasonable bond. The motion was denied.

New Suits

W. H. Kelly vs. Porphyry Paving company—A suit to recover \$111.65 for labor performed at defendant's quarry in Sepulveda canyon and for board supplied at request of defendant, \$100 for attorney's fees, etc.

The estate of Herman Victorson, deceased—The petition of Lizzie Victorson, the widow, for letters of administration. The estate is valued at \$3010.

Court Notes

John Woodruff, charged with grand larceny, yesterday pleaded not guilty in Department one and had his case set for January 3rd.

An order was yesterday made in the district court by Judge Wellborn on the summoning of a United States grand jury. Fifty names were ordered drawn, and the order was made returnable on November 19th.

COURT CALENDAR

Cases to Be Called in the Departments Today

- DEPARTMENT ONE—Judge Smith. Nothing set. DEPARTMENT TWO—Judge Clark. (2899) Estate of J. A. Lane; probate of will. (N. P. 1932) Chas. A. Steele. (5049) Agnes Mary Bennet et al. minors; petition for order to invest money for wards. (1433) Estate of L. Freeman; petition to sell real estate. (3022) Estate of M. O. Smith; petition to sell real estate. (6830) Estate of H. Chambers; final account and distribution. (2244) Estate of J. A. Bell; probate of will. (4755) Estate of D. R. Benitez; final account and distribution. (1293) Estate of M. Mason; distribution. (1414) Estate of J. Wilson; annual account. (2949) Estate of J. Lobinger; final account and distribution. (2270) Estate of J. A. Delude; probate of will. (2272) Estate of J. O. Hoff; probate of will. (2153) Estate of M. C. Dunkelberg; final decree. (2255) Estate of M. C. McKenzie; letters. (2229) Estate of J. A. Lane; confirmation of sale of real estate. (192) Estate of P. Beaudry; confirmation of sale of real estate. DEPARTMENT THREE—Judge York. (2839) Babeock vs. Los Angeles Traction company. (2941) In re application of African M. E. church; petition for dissolution. DEPARTMENT FOUR—Judge Van Dyke. (2856) Lassell vs. Campbell. DEPARTMENT FIVE—Judge Shaw. (2729) German-American Savings bank vs. Redondo Railway company. DEPARTMENT SIX—Judge Allen. (2887) Ross vs. Turner. TOWNSHIP COURT—Justice Young. (2887) Conrad vs. Barnwell; supplemental proceedings; 4 p. m. Mitchell vs. City of Los Angeles; trial; 9:30 a. m. Wylie vs. Seymour; trial; 10:30 a. m.

To Be Called Tomorrow

- DEPARTMENT ONE—Judge Smith. (2145) Chas. Harrison; assault to murder; trial. DEPARTMENT TWO—Judge Clark. Nothing set. DEPARTMENT THREE—Judge York. Nothing set. DEPARTMENT FOUR—Judge Van Dyke. (2759) Scott vs. Winch. (2759) Golden Cross M. & M. Co. vs. Spiers et al. DEPARTMENT FIVE—Judge Shaw. (2729) Healy vs. Redondo Railway company. DEPARTMENT SIX—Judge Allen. (2787) Eads vs. Kissler. TOWNSHIP COURT—Justice Young. Golley vs. Cummings et al; trial; 9:30 a. m. People vs. Thrasher; misdemeanor; 1:30 p. m. Labbarh vs. Parker; trial; 1:30 p. m. Davison vs. Crosswell; demurrer; 1:30 p. m.

Academy of Sciences

Prof. J. J. Montgomery will lecture before the Southern California Academy of Sciences this evening, his subject being "The Mechanics Involved in a Bird's Wing in Soaring, and Their Relations to Aerodynamics."

The astronomical section of the academy will visit Mount Lowe observatory next Saturday night, to study the surface of the moon through the mammoth telescope, and to observe the Leonide meteoric shower.

The directors of the academy will visit the high school laboratory this afternoon in response to an invitation from Professor Fosbury to inspect the new biological apparatus.

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Our entire stock of Johnston & Murphy's Men's Fine Hand Made Shoes at less than cost, to close out the line. \$7.00, \$6.00 and \$5.00 Shoes

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Monday, November 15th, our Toy Department will open for business. \$5000 worth of the latest Toys will be sold at half-price as an advertisement.

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BACK FROM MEXICO

Mercantile Representative Not Enthusiastic Over Trade Prospects

The representative of the Los Angeles houses, Mr. Sattley, who went down to Mexico on the steamer Albion some few weeks since in the interest of trade between this city and Mexican points, returned Sunday night.

He reports the arrival of the steamer Albion at Ensenada and that all on board are well. It was undecided whether the Albion would come to San Pedro, so Mr. Sattley came from Ensenada to San Diego on a sailing schooner and by rail to Los Angeles. He reports an interesting trip, but says it will take considerable time and very careful work to get a strong foothold, besides the most favorable conditions must exist regarding transportation facilities.

East Side News

The funeral services of Carl R. Dively were largely attended yesterday afternoon at Divine chapel on Lacey street. Rev. R. Dodd conducting the services. Many beautiful floral offerings were contributed. The remains were interred at Evergreen cemetery.

Mr. and Mrs. F. D. Learned of 1219 Pasadena avenue entertained a number of relatives at dinner last Saturday evening in honor of Miss L. V. Learned's birthday anniversary. The rooms were decorated with smilax, chrysanthemums and roses.

Mrs. E. J. Guirado has been quite ill for several weeks at her home on Hawkins street.

R. Dows is at home for a few weeks from his mine at Piru.

Mrs. Geddings and daughter of San Francisco are the guests of Mrs. L. E. Vetter of 135 Downey avenue.

Mrs. Ella Robertson of Grandin street was called very suddenly to Oakland yesterday by the illness of her son.

Miss Ada Miles is at home again after a pleasant visit in Pomona with friends.

Salvation Army Officers Here

The Salvation Army officers, Lieutenant-Colonel William Evans of Philadelphia, and Colonel E. I. Higgins of New York, arrived yesterday. A large and enthusiastic welcome meeting was held in the evening at the barracks, on South Spring street. Colonel Evans comes to the coast to succeed Colonel Kappel as chief divisional officer of this section, which includes Utah, Arizona, California and the Sandwich Islands.

Today from 10 to 12 an officers' council will be held, after which Colonel Evans leaves to visit the army at Santa Ana and San Diego before proceeding north. Colonel Higgins will leave Los Angeles for Chicago today.

Marriage Licenses

The following licenses issued yesterday from the office of the County Clerk: John J. Mattos, a native of the Azores islands, aged 51 years, and Mrs. Fannie Merrifield, a native of Missouri, aged 39 years, both residents of Cerritos. Charles Wilson, a native of England,

aged 36 years, and Sophie Jacobs, a native of Minnesota, aged 18 years, both residents of Los Angeles.

Sylvester Bracken, a native of Illinois, aged 38 years, and a resident of Chicago, Ill., and Jessie Allen, a native of Pennsylvania, aged 28 years, and a resident of Pasadena.

George Boyes, a native of Scotland, aged 27 years, and Mary A. Weigle, a native of Michigan, aged 23 years, both residents of Pomona.

Ernest Jesch, a native of Germany, aged 27 years, and Ida Rapp, a native of Connecticut, aged 23 years, both residents of Los Angeles.

Walter Theodore Neitz, a native of Oregon, aged 18 years, and Emma Barnes, a native of Pennsylvania, aged 17 years, both residents of Los Angeles.

Sayer-Walters

Among the weddings which occurred last week was a very pleasant early morning marriage, November 2, at the residence of Mr. and Mrs. J. M. Walters, 544 South Hope street. The contracting parties were the Hon. Dada Dayton Sayer, of Chickasha, Indian territory, and Miss Florence Rosalthe Walters, a native of Parkersburg, W. Va. The Rev. John Gray of St. Paul's Episcopal church officiated. The newly-wedded couple departed via the Santa Fe for their new home at Chickasha.

Useful Books

"What wonderful guides and counselors books are." "Yes; especially bank books."—Detroit Free Press.

Free Holiday Gift Until Dec. 25th

With each \$50 sale, enamelled stick pin. With each \$1.00 sale, silver hat pin. With each \$2.50 sale, silver toilet article. With each \$5.00 sale, silver sou'w' spoon. S. D. Bailey, jeweler and optician, 301 South Broadway.

All prices of wall paper greatly reduced.

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JOTTINGS

Our Home Brew. Mayor S. Zobel's lager, fresh from their brewery, on draught in all the principal saloons; delivered promptly in bottles or kegs. Office and brewery, 440 Aliso street; telephone 91.

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Agents Victor, Keating, World and March bicycles. Hawley, King & Co.

Everything on wheels. Hawley, King & Co., cor. Fifth street and Broadway.

DEATHS

KEARNS—In this city, November 6, 1937. George A. Kearns, a native of England, aged 22 years.

Funeral from parlors of Kregelo & Bresse, Broadway and Sixth street, tomorrow at 10 a. m. Friends invited.

MILLIAN—In this city, November 7, 1937. Frank McMillan, aged 65 years.

Funeral from parlors of Kregelo & Bresse, Broadway and Sixth street, Wednesday at 2 p. m. Friends invited.

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