

LOS ANGELES HERALD

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Population of Los Angeles, 251,364

This weather suit you?

When experts disagree, as in the Thaw trial, who shall say?

What has become of that Hill street widening plan, incidentally?

Insanity is the defense in the Thaw case—his insanity, not that of the public, by the way.

The experts have taken the Thaw trial in hand, and the prurient public is greatly disappointed.

Blizzard in the east, floods in Oregon, below zero in the west—and summer here. Come on out and enjoy it with us.

What Togo could do to this coast makes interesting reading; almost as fascinating as any other yellow fiction.

The Japanese press is ignoring our war talk. Japan has had a war of late and knows what it means. No more for Japan.

Once more it may be chronicled that the entire east is in the grip of a blizzard, while the usual summer weather prevails here.

Why not exhibit that dead burglar as a horrible warning to more of his ilk, and as a source of inspiration to the entire police force?

Isn't it funny that people will stay in the east and fight snow, ice and blizzards, while out here they can have spring all the year?

Weather Maker Wollaber seems to have come out from under the obsession that he is still making weather for Oregon and Washington.

Why shouldn't Mr. Huntington build an elevated railroad from his terminal station through back alleys? That wouldn't hurt anyone.

You never noticed any bandits robbing coal trains in the old days in Oklahoma. She seems to have reformed since becoming a state.

People don't object so much to the price of gas as they do to its lack of quality and continuity. Let the city council remember this.

Wouldn't it be just as well if Japan doesn't have any bellicose intentions, if her subjects wouldn't invade American territory in full uniform?

It's 32 below in St. Paul, 16 below in Lincoln, Neb., and 9 below in Kansas City. And here it's 70 above. Meditate on that awhile, will you?

The way the Holist papers revel in the muck of the Thaw trial makes one wonder if they are not simply mirroring the real mind of their owner.

That bar at Ascot has received so many death blows, yet continues so persistently in business, that one suspects it has as many lives as a cat.

The Snooze is still knocking Owens river. The Snooze is recommended to read that Spanish classic "Don Quixote," and learn a few things.

A New York man has died from enlargement of his bones. If it were enlargement of the head most of New York would be in cemeteries before this.

The policeman who shot that burglar dead the other night is officially commended for his deed. Will the rest of the burglars—and policemen—kindly take notice?

There is more than one way to skin a cat. If San Pedro and Los Angeles cannot consolidate under the present law one can disincorporate, and then the way will be easy.

Conditions must be pretty bad in Oklahoma when they hold up a train and only rob it of coal. Or are black diamonds worth more now than the white variety back there?

However, the brash assertion of a Kentucky lady that she will dramatize herself with a lot of Los Angeles men as accessories, hasn't caused any hegrira of men about town, that one could notice.

All that Los Angeles asks is a law which will permit cities all over the state to consolidate when they see fit. Los Angeles asks no special law to fit exclusively her own case. Will the legislature please remember this?

A PUBLIC WORK LESSON

The United States government admits its inability to construct a great public work economically without intermediate aid. That admission is suggestive in these days of pressure for experiments in various lines of public utilities, especially in municipal affairs. Following an acknowledged failure in undertaking the job of constructing the Panama canal, the government, with the president in supreme control, has abandoned the task and is handing it over to a corporation. The terms under which the work will be done involve a profit or bonus to the corporation equal to nearly 7 per cent of the cost of construction. Assuming that the completed work will be confined within the minimum estimate of \$160,000,000, the bonus will foot up nearly a round \$10,000,000.

Who did our strenuous president balk at even so stupendous a task in view of the chance to save so large a sum of money? No corporation could have advantages superior to those enjoyed by the government for constructing the canal. Nowhere could a more gritty man than Theodore Roosevelt be found as supreme director of the work.

The president had carte blanche from congress in the act of June 28, 1902. The act provides that he shall "cause to be excavated, constructed and completed," an isthmian canal as specified, and he is "authorized for the purposes aforesaid to employ such persons as he may deem necessary, and to fix their compensation."

The energetic undertaking of the task by the president and his tussle with it until the present time, are familiar matters of history. Throughout the period of his endeavor there was evidence that he exerted himself to the utmost to attain success, evidently buoyed by the thought that it would be one of the highest achievements of his administration to push the work well along before vacating the presidential chair.

But the farther the president got with his task the more thoroughly he became convinced that the work could be accomplished to better advantage by adopting the contract plan, which is almost universal in large enterprises of corporations, companies and individuals. It was with obvious regret that he finally reached the conclusion, but he was convinced beyond question of its desirability.

The president's experience in directing the Panama canal work, on behalf of the government, affords a lesson worthy of studying by all thinkers on the subject of public construction and operation of utilities. There are unquestionable examples of success in such public enterprises, but the record probably will show a larger proportion of failures.

The primary difficulty encountered by the president in his canal digging experience was one that usually is in evidence in all lines of public work. That is, the aptness of public employes, of all grades, to be less arduous in service than they would expect to be if they were employes of a corporation or business firm.

And right there is the ineradicable defect in the theory, plausible but deceptive, of general public construction, ownership and operation of public utilities.

WHERE JAPAN IS WEAK

There are two basic causes that will deter Japan, in any event, from provoking a quarrel with the United States. Either of these causes is sufficient to convince Japanese statesmen that it would be suicidal to resort to the extremity of war.

In the first place, the primary condition which enabled Japan to win in the war with Russia would be directly reversed. Nothing but the remoteness of the Russian army from its base of operations saved Japan from being overwhelmed by the vastly superior strength of Russia. The latter power was obliged to conduct its operations at a point five thousand miles from home, with no means of communication except a wretched single-track railway.

If Russia and Japan had been close neighbors the latter would have been overwhelmed and crushed by numerical weight. In the event of war with the United States the Japanese would be handicapped by the same conditions which crippled Russia. There would be no base for Japan's navy on this side of the ocean, no point at which its warships could be supplied with coal or obtain any docking privileges. The best that a Japanese fleet could hope for, in view of all the circumstances, would be a long-range bombardment of seacoast points, and that would afford no material advantage.

It is idle to discuss the chances of a Japanese military invasion at any point on the coast. It would not be practicable to transport across the ocean an equipped army of sufficient magnitude even to effect a landing. With the splendid transcontinental railway system at the service of our government, the regular army and the national guard forces of the several states could be quickly transported to our seaboard points in numbers sufficient to repel any invading force that Japan could possibly send across the ocean.

The Japanese are no fools. They are not likely to put the nation's foot in the very trap which the Russian bear stepped into. The other basic reason why Japan would not seriously think of provoking war with the United States is the financial exhaustion of the Japanese government consequent upon its debt of one billion dollars resulting from the war with Russia. An attempt of the government to plunge Japan into a star of aggression with the United States, in view of the nation's financial condition, would invite internal revolution. Such a step would impoverish and bankrupt Japan. Any such prospect would arouse European nations which hold the greater part of Japan's bonded indebtedness.

Japan would have everything to lose

and nothing to gain by war with this country, excepting, of course, the opportunity to acquire the Philippine islands. The proximity of Japan to the Philippines would make the islands an easy prey for the Japanese navy. The Hawaiian islands also might be captured by Japan, but they could not be held permanently against the United States.

There is no cause for serious apprehension of war between the United States and Japan. The astute statesmen of the mikado's realm have distinctly in mind that trap into which the big Russian bear foolishly put his foot.

UNEQUALED LAND YIELD

Who would think that the Southern California orange product, which returned \$20,000,000 to the growers last year, all came from an area equal to a tract but little more than eight miles square?

The annual report of the state board of equalization furnishes data showing the approximate acreage of orange culture in the several counties of the state wherein the fruit is grown in commercial quantities. San Bernardino county is far in the lead, with 15,500 acres to its credit. Following come Riverside, with 10,760 acres; Los Angeles, 8760; Orange, 5370; Ventura, 850; San Diego, 600.

The total orange area of the six counties named, as thus given, foots up 42,740 acres. That is equivalent to a little less than sixty-seven square miles. A tract eight miles square would contain sixty-four square miles. Where else on earth can be found an equal area of land that yields to its tillers a revenue of \$20,000,000 a year? And that, be it remembered, does not include the vast sums first deducted for packing, transportation, etc. That eight-mile square tract—not much more than the acreage of an average township—puts at least \$10,000,000 into the pockets of railway and packing companies in addition to the figure that goes to the growers.

There are other counties in the state that produce oranges in considerable quantities, but their output is comparatively small. Against the total of 42,740 acres of orange bearing land in Southern California there is a total of 4450 acres in the northern citrus belt and 1480 acres in the Tulare county section. Nearly two-thirds of the citrus area of the northern belt is credited to Butte county. A considerable part of that area, however, yields but little profit. The Tulare county district is the most promising of any section outside of the southern belt.

It is profitable only to raise and market the highest type of oranges, and comparatively little land, even in Southern California, seems to entirely meet the requirement.

SINCEREST FLATTERY

In September, 1905, The Herald issued a splendid special edition called the "300,000 Population Edition," containing 100 beautifully printed pages and prophesying the speedy increase of Los Angeles to a population of 300,000—a prophecy, by the way, which has come true sooner even than The Herald predicted it would.

But the edition was such a complete success that others since then have endeavored to imitate it, with more or less satisfaction. The latest is the Oakland Herald, with a "300,000 Population Edition," consisting of 110 well-arranged and well-edited pages. As the job was done by former Los Angeles newspaper men, in the Los Angeles style, it proved a great success, both financially and artistically. But why 300,000? We are surprised that the Oakland Herald should stop short of a round million.

The Sacramento Union, more modest and shy than its Oakland neighbor, has just issued a "50,000 Population Edition," composed of forty-eight pages, handsomely printed and well written.

These two newspapers have The Herald's congratulations. They have done well—not quite up to The Herald's mark, of course, but sufficiently near to attract merited attention and approval. "Imitation is the sincerest form of flattery," and The Herald feels quite puffed up over the efforts of its contemporaries to get along toward the head of the procession.

The president says he will appoint a negro to one of the best offices in Ohio to let Foraker give a visible exhibition of his love for the "man and brother." Probably the "Fire Alarm" statesman didn't know this when he declaimed loudly about the dark-skinned race's rights.

The plan of widening Main street should meet with general commendation. Los Angeles' streets were laid out for a small town, and much of this sort of work will have to be done before they are adequate even for the traffic now congesting them.

The school board shows a disposition to stand pat on the requirement that Harriman must pay easements for the Olive Street school site, if he wants to tunnel under it. The school board is not accustomed to be bluffed, even by Harriman.

San Francisco doesn't like its brand of weather, according to the Chronicle. It is gratifying to find one San Francisco paper that is honest enough to admit that its meteorological conditions are atrocious.

It looks as though the odious report of the joint postal commission on second-class mail matter will find its way to the morgue, where it belongs.

Long Beach voted to adopt the proposed freshfishers' charter after all. Well, they must take the consequences.

Wouldn't it be better to let the price of gas alone and improve its quality?

NEW YORK LAW IN THAW CASE

Special Correspondence of The Herald. NEW YORK, Feb. 5.—In view of the importance of the trial of Harry K. Thaw for the killing of Stanford White and the great interest it excites, not only locally but throughout the country, and even abroad, a statement of the law by which the guilt or innocence of the accused must be determined will be of interest not only to lawyers who make no special study of the criminal law, but to laymen as well. A statement of the law on the subject has been procured by The Herald's correspondent from William L. Clark, reviewing editor of the Cyclopedia of Law and Procedure, known and cited as Cyc., and the author of well known works on the criminal law. For the benefit of our readers who may be interested in the case and wish to follow the testimony as it is published from day to day, we here reproduce his statement. He says:

"It would be both improper and unfair to the defendant to express any opinion as to his guilt at this time. Whether he is guilty or innocent must be determined, not on the facts which have been decided by the newspapers, but on the facts as they appear from the evidence which may be given at the trial, and the question will be decided by the jury on this evidence under the court's instructions as to the law. They cannot convict unless they are convinced of the defendant's guilt beyond a reasonable doubt, and a reasonable doubt as to his sanity at the time of the killing will require an acquittal. The jury on this evidence under the court's instructions as to the law. They cannot convict unless they are convinced of the defendant's guilt beyond a reasonable doubt, and a reasonable doubt as to his sanity at the time of the killing will require an acquittal.

"With respect to the law there can be little question. In the first place, it is perfectly clear that the so-called 'unwritten' or 'higher' law, in the sense in which the terms have been used in connection with this case, has no place in the law of New York. The innocence or guilt of one who kills another depends entirely upon the application to the facts of the law established by the statute and judicial decisions of the state. Of course it is possible for a jury to disregard the law as laid down for their guidance in the charge of the court, and this is all there is to the idea involved in this use of the term 'unwritten law'; but in this state juries are not the judges of the law, but of the facts only, and under their oaths they are required to decide according to the law as given them by the court. N. Y. Code Crim. Proc., sec. 419. If the law is harsh as applied to the facts of any particular case, then the remedy is by application for executive clemency. People vs. Silverman, 181 N. Y., 226.

"Independently of statutory provisions, if a sane man intentionally kills another, he is guilty of murder, unless the circumstances are proven to have been such as to justify or excuse his act, or to reduce it, by reason of provocation, to manslaughter; and if a person intentionally fires a pistol at another, an intention to kill is presumed. As it is concisely said in the Cyclopedia of Law and Procedure, malice is implied in every intentional and premeditated homicide, if there are no circumstances serving to mitigate, excuse or justify the act. 21 Cyc., 708. Under the New York statute, assuming that Thaw was sane, his killing of White was murder in the first degree, unless it was justifiable or excusable. If it was committed either (1) from a deliberate and premeditated design to kill, or (2) by an act immediately dangerous to others, and evincing a depraved mind, regardless of human life, although without a premeditated design to effect the death of any individual. N. Y. Penal Code, sec. 183. The killing was murder in the first degree if it was committed with a design to effect death, but without deliberation or premeditation. N. Y. Penal Code, sec. 184. While it is necessary to murder in the first degree, under the statute, that there shall be both deliberation and premeditation, in addition to the intent to kill, all that the law requires is that the killing shall not be the instant result of impulse, and it is sufficient if there is some thought and reflection on the act, and a choice and determination as the result of such mental action. People vs. Hawkins, 109 N. Y., 468; People vs. Barberi, 149 N. Y., 256; 21 Cyc., 726.

"Under the supposed facts and circumstances of the killing it seems clear that there can be no question as to manslaughter. At common law, a homicide is not murder, but manslaughter only, although intentionally committed, if it is committed in the heat of passion caused by adequate provocation; but passion, however great, is not sufficient to reduce the killing to manslaughter if the provocation is not in its nature adequate in the eye of the law, or if there has been time after the provocation was given for the passion of a reasonable man to cool, whether it does in fact cool or not, since the safety of the community requires that persons shall reasonably control their passions. And, although there has been some tendency to leave the question in such cases to the jury, the law has long been settled that mere suspicion, or even actual knowledge, on the part of a husband of past or even continued illicit relations between his wife and another man is not such provocation as will reduce the killing of the man from murder to manslaughter, 21 Cyc., 751-753. A fortiori, suspicion, or even knowledge, on the part of a man that his wife is being pursued or annoyed by another would not be such provocation as to reduce a homicide to manslaughter. Furthermore, under the present statute in New York, a homicide cannot be classed as manslaughter, except when there was no design to effect death; when that purpose is present the crime is murder in one of its degrees, unless it is excusable or justifiable. N. Y. Penal Code, sections 188, 189, 193; People vs. Beckwith, 103 N. Y., 260.

"Nor was the homicide excusable or justifiable either at common law or under the New York statute, for, to be excusable, it must have been committed by accident in doing a lawful act, and to be justifiable it must have been in the lawful defense of Thaw or his wife, when there was 'reasonable ground to apprehend a design on the part of the person slain to commit a felony, or to do some great personal injury,' etc., and when there was 'imminent danger of such design being accomplished.' N. Y. Penal Code, sections 203, 205. See 21 Cyc., 794, 812, 826.

"With respect to the defense of insanity, if Thaw was insane when he killed White, he not only cannot be punished, but he was guilty of no crime, and this is true although he may have been sane before he committed the act and may be sane now. 12 Cyc., 165; 21 Cyc., 663. Whether or not he was insane is of course a question of fact which must be determined by the jury from the evidence; but there are certain tests established by law in this state, as elsewhere, for determination of the question whether, if he was to some extent insane, his insanity was sufficient to exempt him from responsibility.

"In the first place, it is everywhere the settled law, in New York by express statutory provision, that if Thaw, at the time he killed White, was so insane that he did not know the nature and quality of his act, or did not know the act was wrong, he is not responsible, and must be acquitted. N. Y. Penal Code, sections 20, 21; 12 Cyc., 166; 21 Cyc., 663.

"In the second place, it is equally well settled that more moral or emotional insanity, or frenzy produced by anger, jealousy or other like passion, is not such insanity as will exempt from responsibility where the person knew the nature and quality of his act, and that it was wrong; and this is true, it has been held, although he may be unable to control his passion, and even though persons may be determined to do a wrongful act, or to do an act which he was more liable to yield to passion than if he were mentally sound.—12 Cyc., 170; 21 Cyc., 666. Proof of such a condition, however, by excluding the elements of the deliberation and premeditation, if the evidence shows that it did so, but not otherwise, will reduce the homicide to murder in the second degree.—People vs. Barberi, 149 N. Y., 256; 21 Cyc., 732.

"Perhaps there may be such a thing as genuine insanity produced by anger, jealousy or revenge, and if there is, which is a question of fact to be determined from the evidence, then it is a defense to the same extent as insanity produced by any other cause; but it is not insanity as distinguished from 'turbulence of passion produced by a desire for revenge' (People vs. Foy, 138 N. Y., 666, 667), and it must, as is expressly required by section 21 of the Penal Code, have been such as to render the accused incapable of knowing the nature and quality of his act or of knowing that it was wrong. 'The heat of passion and feeling produced by motives of anger, hatred or revenge is not insanity' and affords a ground of exemption from responsibility.—People vs. Foy, 138 N. Y., 666, 667.

"In some states a phase of insanity known as insane irresistible impulse, resulting from mental defect or disease, is recognized as a ground of exemption from responsibility for a crime committed under its influence; it being held in these states that if an insane impulse so overmasters the will of a person as to irresistibly impel him

to the commission of a homicide, he is not responsible, although he may know the nature and quality of his act and that it is wrong.—12 Cyc., 169; 21 Cyc., 665. In other states, however, this doctrine is not recognized, and it has no place in the law of New York. In this state it is expressly provided by statute that a person is not exempt from criminal liability as an insane person 'except upon proof that, at the time of committing the alleged criminal act, he was laboring under such a defect of reason as either (1) not to know the nature and quality of the act he was doing; or (2) not to know that the act was wrong; and further, that a morbid propensity to commit prohibited acts, existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor.—N. Y. Penal Code, sections 21 and 23; and see 12 Cyc., 169; 21 Cyc., 664.

"The Carpenter case (102 N. Y., 238), where the defendant had killed his wife by repeatedly stabbing her with a knife, in the presence of a number of people, in the open street, and in broad daylight, the court of appeals held that the trial court did not err in refusing the defendant's request to charge the jury that 'if some controlling disease was in truth the acting power within him (the prisoner) which he could not resist, or if he had not sufficient use of his reason to control the passion which prompted the act,' he was not responsible. Chief Justice Ruger, writing the opinion of the court, said that 'the principle of this request is not only impliedly condemned by sections 21 and 23 of the Penal Code, but has been held to be untenable by the express decision of this court,' citing the Flanagan case, 52 N. Y., 465, and quoting the following language of Judge Andrews therein, namely: 'Indulgence in evil passions weakens the restraining power of the will and con-

science, and the rule suggested would be the cover for the commission of crime and its justification. The doctrine that a criminal act may be excused upon the action of an irresistible impulse to commit it, when the offender has the ability to discover his legal and moral duty in respect to it, has no place in the law.'

"This view has been adhered to in the later cases, as in People vs. Ferraro, 161 N. Y., 365, 370, and People vs. Silverman, 181 N. Y., 235. In the latter case a conviction of murder in the first degree was sustained, although the evidence showed that the defendant had been eccentric, morose and of bad temper, and had been treated in a sanitarium a little more than a year before the homicide, and although some physicians testified that he was insane. The court, in an opinion by Judge Cullen, held that whatever may be the opinions of medical experts as to the insanity of a person charged with crime, but one test of responsibility is known to the law, namely, that found in section 21 of the Penal Code, above quoted, which is but a statutory declaration of the law as it had long prevailed, and that when the evidence affords no reason for doubt that the defendant knew both the nature and quality of the act done by him, and that the act was wrong, he is justly held by the jury to be responsible for his crime, whatever may have been his eccentricity of conduct or however abnormal his disposition.

"The learned judge suggested that while the defendant's previous malady and infirmities of temper were insufficient to affect his legal responsibility, they might warrant a mitigation of his punishment and his relief from suffering the supreme penalty of the law."

SELF-EVIDENT "The human race is still in its infancy." —Sir Oliver Lodge.

All the world's a nursery. Echoing with childish glee, Human speech is infant prattle; Symbol of the race, a rattle.

Mark the infant Theodore, In rough-riding pinafore, Starch his boss his playmates 'round, They don't let him be bound, Theodore must have his way, Or he will refuse to play, Must always be the boss; When he's not, it makes him cross.

Mark the little Fairbanks child, With his blocks around him piled; He plays "Who's aces king" all day In the slickest sort of way.

There is little Tommy Platt; I can't guess what he is at— Playing with a tin of powder, Pink cheeks and peroxide pool.

Oh, and there is Chauncey D., Playing railroad with his blocks, Chauncey doesn't seem to know How to make his chiu-chu go.

Over there is little Mary Baker Eddy quite contrary, Giving, with solemn air, Treatments to a Teddy bear, Telling him "Who's aces king" all day That the pain is in his mind.

Who can that be over there? See him spit, and hear him swear! Isn't he a hobbledokey? That's the rowdy Cannon boy.

There is little Willie Hearst, In his favorite game immersed, Building headlines with his blocks, Just to give us "toxic" shocks.

"Fatty" Taft—But gracious me! I can't mention I was at a little dinner the other night and suddenly happened to focus the electric lights on my dazler. I was surprised to notice that everybody sat perfectly still for a second and that then they all started in to eat some more. I turned to my next neighbor and said, "What did you all stop eating for?" He looked surprised. "Why," he said, "didn't you notice it? A photographer just took a flashlight picture of us." I turned my diamond around after that. I didn't want to fool 'em again."

its Startling Effect "Pretty funny," I am d pin you have there." "How do you like it? There's nothing finer. I was at a little dinner the other night and suddenly happened to focus the electric lights on my dazler. I was surprised to notice that everybody sat perfectly still for a second and that then they all started in to eat some more. I turned to my next neighbor and said, "What did you all stop eating for?" He looked surprised. "Why," he said, "didn't you notice it? A photographer just took a flashlight picture of us." I turned my diamond around after that. I didn't want to fool 'em again."

Robinson Company Boston Dry Goods Store 235-237-239 SOUTH BROADWAY. Free Embroidery Lessons on Fridays Between 9 and 11 and 2 and 4. (Art Dept., Third Floor). \$7.50 Table Cloths \$5. On sale tomorrow, not today, at. Small lot of 2x2 1/2 yard cloths of excellent quality linen cut from \$7.50 to \$5 each. And some 2 1/2 x 3 yard cloths of even better grade cut from \$10 to \$6. Variety of patterns in this lot, but only one pattern in \$5 sort. No napkins to match any of them—and that's why we are anxious for their speedy clearance. Linen Dept. under Annex skylight.

Fireside Fun FIVE FEROUX. THE REASON. Little Wallace—Pa, why does popeorn Pop? Pa—Because, my son, like men, it doesn't know any better. HANDED IT TO HIM. Mr. Slyboy—Miss Edith, I have called this evening to ur—press my suit and er— Miss Edith Frost—Tuesday is our ironing day. THOSE DEAR GIRLS. Myrtille—I admire Mr. Mas, because he is always saying something that one never hears from anybody else! Muriel—Has he been proposing to you, too? REASON ENOUGH. Philomona—Why do you call him an educated monkey? Virginia—Because he is so proficient in the higher branches. THREE OR FOUR. "I notice that you call your wife 'Sugar.' I've always called my wives 'Sugar.'" "Um! How many lumps have you had?" HINTEN—I've a mind to get married. Henpeck—I've a mind you wouldn't think of such a thing.