SIGNAL VICTORY FOR THE PEOPLE

Two San Jose Councilmen Opposed to Jobbery.

Prevent the Payment of Illegal Claims Against the City.

Krieg and Dittus Carry the Day in the Preliminary Skirmish.

Special Dispatch to THE CALL.

SAN JOSE, Dec. 6.—It has been announced by Mayor Koch and is a generelly accepted fact that there are now outstanding claims against the city aggregating between $80,000 and $90,000. The preliminary skirmish over the payment of these was fought out to-night at the meeting of the Common Council, at which all the members were present, and the victory lay with the people, through the efforts of Councilmen Krieg and Dittus.

Nolting and Dittus constitute the Claims Committee. According to the rules of the Council, all bills before being considered by the Council must have the approval of the Claims Committee. When the meeting was called to order to-night Dittus' desk was littered with bundles of bills that had already received the signature of Nolting, who had placed them before Dittus for the latter's approval. But there they lay all through the session, and there is small likelihood that they will be any nearer to the city treasury next week.

Shortly after the session was called to order the veto of the Mayor on the now celebrated Wehner claim for $650 was read.

The important issue was raised when the bills for the payment of a new patrol wagon and for coal were under consideration.

Councilman Krieg called attention to the fact that in many cases bills against the city were assigned before they were legitimate claims. The assignment was made, he said, before the bills had received the approval of the proper committee and before approved by the Claims Committee. In some instances, he declared, duplicate claims were thus assigned. He offered a motion that the City Clerk be authorized to notify the public, through the official organ, that claims not approved in the regular way had no value.

This did not meet with the approval of the Mayor, who declared that the Council was not responsible for such bills. Krieg spoke for his motion, saying that his purpose was to ascertain who was ordering good for the city without authority. He added that he thought an expert ought to be engaged to go over every bill to ascertain whether it was legitimate or not.

Mayor Koch tried to hurry matters through by criticizing the dilatory methods of the Councilmen.

"I will state, gentlemen," he said, "that it is the duty of the Claims Committee to come here and examine the bills during the week and not at the meeting of the Council."

Nolting claimed that he had been over the bills and signed them.

Krieg submitted his resolution in writing, as follows:

I move that the City Clerk be authorized to notify the public through the official organ that all claims against the city of San Jose be filed with the City Clerk on or before Friday, December 10, 1897, for approval.

The motion was lost by a tie vote, Fay and Nolting voting against it, and Krieg and Dittus for it.

Nolting moved that all bills be laid over until next Monday. Krieg remarked that he wanted to see every bill, except those for regular salaries, before it was passed. He moved for a reconsideration of the coal and patrol-wagon bills, but his motion was lost sight of in the discussion that followed.

At this point Nolting presented the claim of Wehner for $650 for extra work on the main outlet sewer. He explained that the original bill had been cut up into seven separate claims. He declared that the claim was just, that Wehner was an honest man, and that the Council ought to order the bill paid. He moved that the claim be allowed. No explanation was vouchsafed as to why the claim was any more legal now than it was when the first and second bills for the same work had not been allowed. Dittus moved to lay the bill over. The motion was defeated, as was also the original motion.

W. B. Hardy, the attorney for the contractors of the Julian-street sewer, asked to be given a hearing on the claim of his clients against the city. The matter was made a special order for 7:30 P. M. Monday next.

After the adjournment of the Council, George B. Dittus, a member of the Claims Committee, explained his attitude relative to the pending claims against the city.

"Some of the merchants of this town," he said, "are acquainted with the way bills against the city are paid, but there are many who do not know that a bill should not be assigned until it is approved by the person ordering the goods or services, by the two members of the Claims Committee and by the committee representing the fund from which such a bill is to be paid.

"I have run across many unauthorized bills on city blanks for work or material supplied the city, which have been assigned. A man of good business knowledge would not cash a bill of that kind. Those bills are likely to come in at any time, and we have no means of knowing whether they are duplicates of bills already paid or not, nor even whether they were legitimately contracted.

"Only last July the Chief of the Fire Department contracted a bill for $260 for fireworks and for the decorations of the apparatus under his charge. He has no right to expend a single cent out of the city treasury without the proper authorization. I will wager that there are $3000 worth of bills contracted in ordering goods and supplies for the city without authority from the Council or from any member of the board."

Here Krieg, who was present, interrupted to say:

"They talk about the indebtedness of the city of San Jose. It is safe to say that that indebtedness can be reduced $30,000 from the $92,000 if it is confined strictly to such as has been incurred according to the rules of the Council—and that is where the fight is going to be."

HEIKES DEFEATS GRIMM.

Some Sensational Shooting in Their Match at Chicago.

CHICAGO, Dec. 6.—Rolla Heikes of Dayton, Ohio, challenger, defeated Charles Grimm of Clear Lake, Iowa, to-day for the cast-iron medal by a score of 91 to 87. A strong wind from the southwest swept the field and blew cutting snow into the faces of the two experts. While both showed clever kills which drew applause Heikes was the cleaner. He seemed to center better and used the second barrels chiefly for a safety. Grimm, on the other hand, failed to hit cleanly on the first many times and dropped some difficult birds on his second in a sensational manner. Of the nine birds lost by Heikes four fell dead out of bounds.

CROOT KNOCKED OUT BY BARRY

Coup de Grace Given in the Twentieth Round.

Only Forty Seconds of the Stipulated Limit Remained.

Chicago Lad Makes a Great Showing Before the National Sporting Club.

Special Dispatch to THE CALL.

LONDON, Dec. 6.—The battle between Jimmy Barry of Chicago and Walter Croot of Newcastle, England, for the bantam-weight championship of the world, which was postponed from November 15 last, owing to the sudden death of John Fleming, manager of the National Sporting Club, came off to-night. The National Sporting Club was crowded. Barry scaled at 104 pounds and Croot at 104, the betting favoring the former.

During the first ten rounds Barry did most of the scoring in a thoroughly scientific struggle. Then Croot made a determined stand and at the eighteenth round had almost equalized matters. When the nineteenth round opened Barry immediately forced the work at a great pace and finished much stronger than his opponent. In the twentieth round Barry put in some excellent drives, and, with a crushing right-hander on Croot's jaw, knocked him out, when only forty seconds remained of the stipulated limit. Barry had just sufficient in hand to have secured a verdict had the contest reached its full length, but the decisive manner in which he finished his rival stamped him as a dangerous hitter.

Croot remained unconscious so long that medical assistance was called. It was found that he had sustained a severe concussion, though this is not expected to prove fatal. He has been removed to an apartment in the club.

WALLER STILL LEADS.

Progress of the Six-Day Bicycle Race at Madison-Square Garden.

NEW YORK, Dec. 7.—At 1 o'clock this morning the crowd which thronged the Madison-square Garden all night had thinned out, and very few people were present to watch the seventeen remaining riders in the six-day championship race pedal their way around the course. Those riding at 1 o'clock were: Waller, Stephane, Rieverre, Schinneer, Miller, Moore, Pierce, Rice, Reading, Golden, Elkes, Enterman, Barnaby, King, McLeod, Smith and Beacon. The other riders who have not retired permanently from the race were asleep. The score at 1 A. M. was:

	Miles.	Laps.
Waller	487	4
Stephane	472	3
Rieverre	469	7
Schinneer	465	2
Miller	463	7
Moore	451	3
Pierce	445	4
Rice	447	8
Reading	442	0
Golden	429	2
Elkes	425	0
Hicks	395	7
Enterman	394	3
Ashinger	393	3
Hale	383	3
Barnaby	342	3
King	342	3
Gannon	340	8
McLeod	339	2
Smith	364	3
Julius	310	5
Maurice	287	6
Beacon	280	4
Gray	277	7
Johnson	270	1
Blakeslee	260	1

Winners at New Orleans.

NEW ORLEANS, Dec. 6.—Six and a half furlongs, selling, Cherry Leaf won, Dockstader second, Plug third. Time, 1:49.

Five furlongs, Lillian Russell won, Dunster second, Motine third. Time, 1:14.

One mile and twenty yards, selling, Bust Up won, Billy McKenzie second, Scribe third. Time, 2:06¾.

Six furlongs, Van Brunt won, Partner second, Floridas third. Time, 1:29.

Six furlongs, selling, Carlotta C won, Glenmoyne second, Stanza third. Time, 1:29.

SANTA CLAUS IS IN TOWN

The Old Fellow Has Made His Headquarters at Raphael's Big Store.

Three Beautiful and Realistic Scenes Which Attract Young and Old Children.

Santa Claus has come to town. Not the pictured Santa Claus of the books and newspapers, but a real, live Santa Claus, with his whiskers, bushy hair and fur clothing. And he shakes hands with the children and talks to them just as the ideal Santa Claus should do.

If you think this is not true, all you have to do is to go to the second floor of the immense clothing-store of Raphael's, at 9, 11, 13 and 15 Kearny street. The old fellow is sitting on the top of a chimney waiting patiently for the little ones down below to go to sleep. While he waits he passes the time in giving out to all who go to see him the beautiful picture cards which have been provided, telling of the many advantages obtained by trading with the live firm at whose store he will make his headquarters until after December 25.

To the left of Santa Claus in his storeroom, where are piled up in great confusion loads of toys of all descriptions and of such character that the Yellow Kid extends to the old fellow the "glad hand" in appreciation of what he is doing for the little folks.

To the right of Santa Claus is a bedroom scene with a crib containing two little girls, who are lying with wide-open eyes watching for Santa Claus to make his appearance. Papa is sitting by the fireplace waiting for the babies to go to sleep, while mamma stands in her nightrobe at the head of the bed trying to make the children close their eyes, and undoubtedly telling them that if they do not go to sleep Santa Claus will never come down the chimney.

The scenes are very realistic and attractive and the large crowd that thronged the floor all yesterday afternoon was evidence that such displays are appreciated by the people.

Olympia.

The Olympia is increasing in popularity and the big music hall is crowded every evening. Miss Helen Gordon, the Australian soprano, and Max Daniels, tenor, were well received, and the Boston Ladies' Military Band changed their selections.

DEMISE OF AN ABLE ENGINEER

Major Andrew S. Bender Dies at the Crocker Old People's Home.

Paralyzed in the Spine and Sightless, He Lay in Bed for Years.

He Was Actively Concerned in Many Enterprises Connected With the Inland Commerce of the Country.

Andrew S. Bender, who died at the Crocker Old People's Home early Sunday morning, was a civil engineer who was identified with important enterprises promoted for the development of the inland commerce of the United States.

He was born in Boston in 1820. He graduated from the Boston Latin School, and subsequently took a thorough course in studies of engineering and architecture. After some experience in railroad work in New England he became a division superintendent of the Chesapeake and Ohio canal. He was also an engineer of the work of building the Cumberland division of the Baltimore and Ohio Railroad, and attended the celebration of the completion of the road to the Ohio River at Wheeling in 1852.

Major Bender came to California to serve as assistant engineer at the Mare Island Navy-yard. Later on he was engaged as an engineer in the building of the Western Pacific Railroad. He held for six years the office of Deputy Surveyor-General of California. He was very well known in Sacramento and always entertained a great liking for the people of that city. He lived there when life was full of sunshine and good cheer.

A man of refined tastes and superior literary attainments he found charming and congenial associates in a coterie composed of Newton Booth, Lucius H. Foote, Albert Hart, Lauren E. Crane, Mrs. Dunn, Mrs. Glover and Mrs. McNeil.

At the solicitation of King Kalakaua Major Bender went to Honolulu, accepting the appointment of Chief Engineer of Public Works of the Hawaiian kingdom. His duties there were agreeable and his impressions of the islands delightful.

About four years ago Major Bender was knocked down on the street by a horse attached to a street railroad car. He was taken from the corner of Market and Geary streets to the Bohemian Club. The doctors found that his spine was injured. The railroad people manifested the deepest interest in the welfare of the patient and were kind enough to give the crippled man $500 to pay for his loss of time.

Under the guise of friendship, the railroad agent to whom the case was assigned obtained from Major Bender his memoranda of the accident and a list of the witnesses of the occurrence. The major never again saw his list of witnesses. It dawned on his mind that he was crippled for life and would never be able to walk again. Damages could not be obtained from the railroad company, as the good Samaritan employed by the corporation to look after the patient had smuggled the sick man's papers. As the spinal trouble grew worse the eyesight of the patient began to fail. Three years ago arrangements were made to give the major a room and care for life in the Crocker Old People's Home. He had there every comfort that could be bestowed. Kind friends visited him, read to him and told him what was going on in the world outside. Month by month his afflictions increased. A year or so later he became stone blind. Thus paralyzed and sightless, he lay in bed for more than a year, until death came as a happy release.

Major Bender was one of the founders of the Bohemian Club, and during the first decade of the club's life contributed to many of its literary functions. He was a man of varied accomplishments, who had intimately known many men and women eminent in music, art and literature.

His sense of ironical humor did not desert him in his distress. One day he told some of his friends of the Bohemian Club who were visiting him of a marvelous stroke of good fortune that had come to a man in a room on the floor above him. When asked to explain the nature of the good fortune, the major replied: "Why, he died last night."

Funeral services were observed at the home yesterday afternoon. The remarks of Rev. Mr. McKelvey, chaplain of the institution, were tender and beautiful tributes to the uncomplaining spirit which Major Bender evinced in all the trials of his declining years. H. M. Bosworth, organist, rendered acceptable music. General Houghton, Raphael Weill, Henry Marshall, Sidney M. Smith, Mr. Walker, Colin M. Smith, Theodore Payne, Warren Payne, Clinton Palmer and others escorted the remains to the undertaker's. The body will be buried in the Stockton cemetery alongside the graves of his wife and son.

One-fourth of the land surface of the globe is occupied by English-speaking people.

FLORENCE GETS THE MILLIONS

The Final Decision of the Famous Blythe Litigation.

Judge Morrow Declares That Florence Blythe-Hinckley Is the Heiress.

The Question Involved Was That of Her Right to Inherit Property in America.

Once more a decision has been handed down in the famous Blythe case, and it looks as though the long litigation is really ended and Florence can sit down to a peaceable enjoyment of the millions—or at least to what is left of them after the legal fees have been paid.

Judge Morrow yesterday granted the motion to set aside the decision of the Supreme Court of July 3, and then handed down a lengthy opinion reversing the decision. His opinion, boiled down, is as follows:

The contention brought was that the State court had no right to award the estate of Thomas H. Blythe to a non-resident alien, who is ineligible to become a naturalized citizen of the United States; that under a settled rule of property in existence in this State at the death of Thomas W. Blythe and descendant caste, the complainants were his heirs-at-law, and the title to the real estate rested in them contestate on the death of Blythe, and no court could afterward divest that title and vest it in another; that this court is not precluded by the decision of the State Supreme Court made in 1892 in the case of Blythe vs. Ayres.

The claim that the Superior Court of the State had no jurisdiction to award the estate of Thomas H. Blythe to the defendant, because at his death she was a non-resident alien and ineligible to become a naturalized citizen, appears to involve a Federal question, for the reason that the ineligibility of a non-resident alien to hold property in the United States is a matter of treaty regulation between the Federal Government and foreign powers, and the States are forbidden to enter into any treaty stipulations. This naturally leaves the question of inheritance to be determined by the State law and State courts. The novel doctrine that in the absence of treaty regulations upon the subject the right of an alien to inherit does not exist, and the courts of the State otherwise competent to pass upon this question are without jurisdiction, cannot be entertained at this period of our judicial history. Some consideration must be given to the fact that heretofore this whole question of inheritance has by judicial acquiescence been left to the jurisdiction of the States and become a general rule of property right.

The other propositions contended for by the complainants are, for the same reason, deemed insufficient to take this case out of the general rule that, after a court of the State, with full jurisdiction over property in its possession, has finally determined all rights to that property, a court of the United States will not entertain jurisdiction to annul such decree and disturb rights once definitely determined.

But there is still another reason why this action cannot be maintained. It appears from the bill of complaint that when the original bill was filed neither party was in possession of the land in controversy, but that it was in the hands of a public administrator. It follows that while the possession of the administrator continued, no decree for the possession of the real property in his custody could have entered in favor of the complainants.

But it appears that the next day after the filing of the original bill the defendant, Florence, secured possession of the property, and she has ever since continued in possession of the same. She was, therefore, in possession when the second amended and supplemental bill was filed, and a suit of ejectment would have afforded a plain, adequate and complete remedy. As the view here taken of this feature of the case disposes of the motion to dismiss the bill it will not be necessary to consider the question of parties and diverse citizenship.

The bill of complaint will be dismissed.

This disposes of what was considered the last play of the lawyers for the Thomas Blythe Company and leaves the fortune with Florence unless the irrepressible attorneys have still another move left.

THE LATE ANDREW S. BENDER.

[From an old photograph in the Bohemian Club album.]

At the Orpheum.

Manager Walter never disappoints his audiences at the Orpheum, but the bill for this week is above the average. The best of the old performers have been retained and five new acts are on. The European sensation, Czita, the gypsy violinist, fulfilled every expectation, and she held her audience in rapt attention with her skillful mastery of the bow. There is something weird and at times almost uncanny in her playing that sends questionable sensations along the listener's spine.

The Picchiani sisters are wonderful acrobats. Their contortions border on the marvelous, and they undoubtedly excel anything yet seen in their line in this city.

Paulinetti and Piquo are character gymnasts and do excellent work and clever acting.

The eccentric dancing of the De Filippis was as well received as on their former visit, while the tumbling of Olschansky and Loring was up to their old standard.

LeRoy, Stanley and Jackson and O. K. Sato made some changes in their turns, which were interesting.

The Chutes.

The programme at the Chutes Theater is loaded with variety and some of the turns are very clever. Professor Anderson has a number of new illusions, Maud Hurlburt has a well-cultivated soprano voice and Walton and Gardon do a unique musical act.

NEW BILLS OF OLD PIECES

Louis James' "Othello" Production Marked by Good Sense.

"La Boheme" Successfully Opens the Baldwin's Italian Season.

Tivoli Opera — Alcazar Comedy — Bush Street Coons—Variety and Melodrama.

Instead of furnishing fun for the flippant last night, Louis James went back into himself several seasons and recovered much of the Othello by which his best reputation is remembered. I went to the Columbia expecting something decidedly more than what I got. That is, I doubted that if in a single night Mr. James could come down to small earth and little people, and I was most willingly surprised by the frequent success with which he did. After last night's experience it is not extravagant to say that if Mr. James could be weaned from the one-night stand and the gushing country critic, he would have his past to look forward to.

Last night's impersonation was very reminiscent of the original Louis James. For most of the time Othello was tense and telling, of strong personality and sufficient sanity, and the reasons for his not being so all the time were only the remnants of those silly ones of Mr. James that have been fostered during the last two years.

The most hopeful signal in Mr. James' performance was that it improved act by act. He started badly, with his voice in the lowest abdominal key and the inflections so evenly observed that you might have danced to them. His address to the most potent, grave and reverend signiors was altogether lacking in lightness and spontaneity.

It was as heavy as these good gentlemen looked. It had neither sparkle nor spontaneity and surely nothing of the bridegroom's happy pomp. But as the play progressed and Mr. James felt the glow of the part he forgot the banal elocution and the gallery phrasing, and his mannerisms and vocal peculiarities were buried in the stress of the scenes.

It is true he did not sound the big note of sympathy as it might have been sounded, but he made Othello's torture frightfully vivid, and toward the last he played with really magnificent brutishness.

It is to the credit of Mr. James that he was not the entire performance; that, so far as it could be accomplished by his not too talented little company, the play was presented with good taste and good sense. I have no sympathy with the persons who would rather read Shakespeare to themselves while another Booth is being born than get what is to be had from an intelligent if not an inspired performance at the hands of second-rate actors. So far as I am concerned it requires only sane reading and not too much acting to make as good entertainment of the plays of Shakespeare as may be made in similar circumstances of the plays of any clumsy modern play-writer. In last night's performance everybody seemed to try for the whole, and the whole was quite decently realized.

What impressed me most in the individual work was the Iago of Barry Johnstone. It was in no sense a model Iago, for the finales of all the big speeches were flagrantly shouted, but in other places it had softness and humor and an easy colloquial air that was delightfully different.

Mr. Johnstone appears to be a young man and last week he was a very bad actor, but if he will keep his ears shut to a great deal of what goes on around them there is no reason why he should not do something original and valuable one of these days.

ASHTON STEVENS.

Baldwin.

Last night at the Baldwin Theater the Italian Opera Company commenced a fortnight's supplementary season with a performance of Puccini's "La Boheme," the opera that was the triumph of the recent engagement of this same organization at the California. The attendance was fairly large and largely enthusiastic, the performance in every point up to the best previous record, and in the matter of mise-en-scene even something above it, for the Baldwin's stage has advantages over the California.

Last night, as in the earlier production, the four principal parts were interpreted by Montanari, Agostini, Vicini and Cioni, who all seem to find the happiest expression of their art in this beautiful, unostentatious work. And, as before, the subsidiary singers, the chorus and Vallini and his orchestra were also at their best.

It is gratifying to see that the Italian company is not going to repeat any of the managerial mistakes that marred the season at the California; only the more modern operas are announced for this season.

"La Boheme" is the bill for the week, with the exception of Thursday and Saturday nights, which will be devoted to "Otello."

At the Alcazar.

Frederick Paulding's conception of the character of Leopold Bunyon in "The Nominee" shows that he has lost none of the originality which has always marked his acting in other plays. As he did in his rendition of Romeo, he departed from traditional lines and found much in the part that other actors have missed. The company at the Alcazar is undoubtedly strengthened by the accession of Mr. Paulding, who will soon develop into a favorite.

Wright Huntington as Jack Medford did the sportive young man in his usual airy manner and the complications that usually arise from double plays were carried to their conclusions with a keen perception of the humorous idea prevalent that the end of a comedy should be a general straightening out of tangles.

Juliet Crosby played the role of the adventuress to perfection, while the other members of the company of favorites were in parts for which they are particularly adapted. The old English comedy transformed to American setting is one that is appreciated by all who know anything of the peculiar workings of politics.

At the Tivoli.

Prettily staged and tunefully sung, "Rip Van Winkle" opened at the Tivoli last night to a fair audience. Naturally, the attention centered on Edward Stevens, whose portrayal of comedy roles heretofore has given little opportunity for judging his capacity so far as his tones are concerned. As Rip Van Winkle he not only has the opportunity, but takes advantage of it, and shows that he is endowed with a rich and melodious voice. While Stevens' conception of Rip as a young man is away from beaten paths, and must be conceded an improvement over the generally accepted, he loses much in the portrayal of the same character after his long sleep.

Thomas Leary makes a most acceptable Nick Vedder, and his dry humor was particularly pleasing. Master Jack Robertson and Little Claire Fox, in their singing and dancing, elicited as much applause as any of their seniors, and both give promise of brilliant futures.

When John Raffael made his appearance he was greeted most heartily by the audience, which tendered him a warm welcome after his long absence from the stage during the run of the "Geisha Girl." Raffael's singing last night indicated that his rest was beneficial to his voice, and he has seldom sung better. Tillie Salinger and Florence Wolcott received double encores several times, and as Tivoli audiences are generally critical their reception was an evidence of merit.

Some of the changes in the staging from that of two years ago rather detracted from the performance, this being especially noticeable in the mountain scene. The performance was smooth and the action strong, and the opera will undoubtedly be sung to full houses during the short period set for it.

Bush Street.

It seemed rather like old times at the Bush-street Theater last night, for "South Before the War" is nothing more or less than an old-time minstrel show with a few modern improvements thrown in. These improvements consist of the cinamatograph and the colored actresses, who, by the way, add very materially to the show, some of them being pretty, some sweet-voiced and all lively dancers. The men of the troupe too are good dancers. The programme has among other charms two funny sketches, three quartets, a human frog and a real coon cakewalk. The management announce that the matinees on Wednesday, Saturday and Sunday will be "ladies' bargain days"—whatever that may mean.

Grand Opera-House.

"Old Glory," the piece in which Corbett starred for some time in the East, was the attraction at Morosco's last night. The play is intensely patriotic, which, of course, delighted the gallery, who gave vent to their enthusiasm in wild outbursts of applause. The Chilanian dialect adopted by some of the company, however, did not meet with the same cordial reception. It was voted spurious.

As usual the stage settings were a strong feature. The scene in the Plaza, Valparaiso, with its low rambling adobe houses, surrounded by towering mountains, formed one of the prettiest pictures ever set at this house.

Pascoe appeared as Robert Adams, a brave young clerk. The rest of the cast was in good hands.

Before a Chinaman can quit Australia he is compelled to register and leave his photograph.

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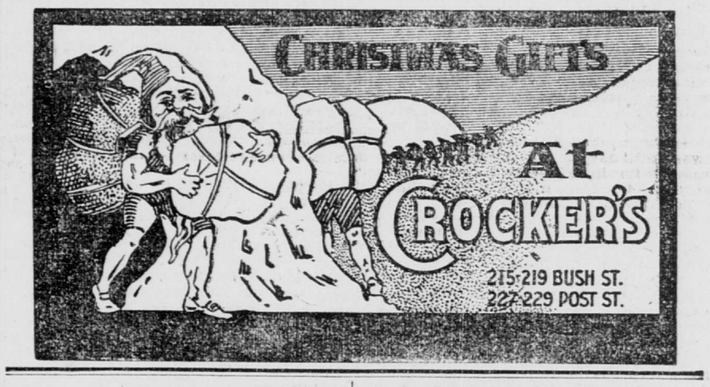

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