

TRUST CLAUSE

Peter F. Dunne Batters Down Arguments Raised to Sustain Sugar King's Testament

Attorney for Contestants Makes Closing Assault on Provisions of Noted Document

Peter F. Dunne, attorney for John D. Spreckels and Adolph Spreckels, reached the heart of his argument yesterday in his closing attack on the trust clause of Claus Spreckels' will, battering down mercilessly the bulwarks raised by Attorneys O. K. and Charles Cushing in their effort of last week to sustain the document. Dunne was direct and pointed in his assault, striking one after another the arguments advanced in behalf of the proponents and literally tearing them to pieces. He depended most on the power of his own logical analysis of the provisions of the mooted document, yet every point he made and every phase of his argument was adequately substantiated with copious citations of authorities.

An added interest was attached to the case yesterday afternoon by the presence in the courtroom of Mrs. Emma Ferris, daughter of the late Claus Spreckels, who reached San Francisco Wednesday night direct from London. Mrs. Ferris' interests are bound up with those of Rudolph and Gus Spreckels, as she was named with them in the will as one of the devisees under the trust which her father attempted to create. She entered the courtroom with her brother, Rudolph Spreckels, and was an interested listener during the entire afternoon session.

Dunne concluded his comparison and analysis of the technical words of the trust clause of the will during the morning session of court. He declared that the presence of both the words "devisee" and "legacies" in the will indicated the intention of the testator that his property should be taken by devise after the trust provisions were carried out. He pointed out, also, that it was the intention of the testator that the interest given Mrs. Ferris should consist of the revenue from personally alone, and that sufficient personally existed in the property to allow of this and still leave half a million dollars worth of real property out of the necessity of any sale of real property.

Dunne summed up this portion of his argument with the assertion that the will itself proved that no equitable construction of property was necessary or intended by the testator and that no sacrifice of property was to be considered. He scoffed at Cushing's "slen-der and attenuated doubts" in referring to the latter's contention that all doubts should be resolved in favor of testacy, declaring that the theory of the law is that a doubt in reference to the construction of property should not be resolved in favor of conversion, but as opposed to it. He termed the Fair case the "lion in Cushing's path, not to be heard by the doctrine of equitable conversion or the doctrine of merger and evaporation."

"The doctrine of merger received the same sort of consideration at Dunne's hands as he had given the subject of conversion. It could have no application to an unlawful trust to convey, and he said that any attempt to apply it was nothing more than a legal fiction. He pointed out that the trust described in the will was not a passive but a very active trust, under which the trustees would be forced to perform several duties, including a dividing of the trust property into equal parts."

"ACTIVE" TRUST ALLEGED "I do not suggest that there would be fraternal disunion between Gus and Rudolph in their division of property, because I make no references in this case that are not entirely respectful to Gus and Rudolph," he declared, "but Mr. Cushing evidently considered the possibility of such a thing and that was the reason he put in this will. This is a very active, and not a passive trust."

Dunne attacked Cushing's arguments concerning a trust to convey as being based absolutely on the doctrine of merger. He pointed out that although a trust to convey was condemned and made unlawful under the California statutes, that it was not held true in England and under the laws of many other states. He then called attention to the fact that the authorities which Cushing had relied upon in support of his claims had been drawn largely if not entirely from the jurisdictions in which a trust to convey could be legally established. Under such jurisdictions and under the English doctrine, he showed that a trust to convey vested an immediate equitable estate in the beneficiary and an immediate legal estate in the trustee, the former continuing to exist until displaced by the trust to convey. In such cases, he affirmed, the will itself was the direct immediate conveyance of the equitable estate to the beneficiary.

In sharp contrast to this doctrine was the law of California, as shown by Dunne. He pointed out that the illegality of the trust to convey had been positively settled in the McCurdy, Fair and other cases, and that in the Fair case the argument that the trust to convey was a mere incident had been repudiated by the supreme court. He showed that the present case was not only a parallel of the Fair case in this particular, but went even further in the direction for a conveyance. The will amounted, he said, not only to a trust to convey, but specifically pointed out the time for this conveyance after a division of the estate had been made by the trustees. Cushing's attacks on the doctrine of the Fair case he denounced as "mere verbal efforts to escape the facts; a mere feeble plea piped into in this courtroom."

FAIR CASE IS CITED Dunne answered Cushing's claim that doubts should be settled in favor of testacy with a quotation from the Fair case decision, to the effect that "the rights of devisees are no more sacred and have no more claim upon protection than have the rights of heirs." He also called attention to the ruling that an estate created by will could not be made valid by construction if the will was shown to be illegal. He showed that the words "divide" and "partition," between which Cushing drew a fine distinction, were considered practically synonymous by most eminent authorities. Some amusement was caused during

Peter F. Dunne, Who Attacked Document



Dunne's afternoon argument by a reference made to the L'Honnemieu case. Judge Coffey called attention to the fact that in his notes of a previous day the official court stenographer had transcribed this name into the Honny Dew case. Dunne answered with the suggestion that the reporter might have had a well known brand of Scotch whisky in mind at the time he transcribed the note, but Attorney Samuel Shortridge objected.

MAN HELD FOR MURDER IS OUT ON BAIL

Released After Thorough Consideration of Evidence

William A. Stein, who killed his brother in law, Edward Livermore, September 3, was released from jail by Superior Judge Canabiss yesterday when a \$10,000 ball bond was furnished by friends.

Stein is booked for murder, and the preliminary examination in the pending preliminary examination in the police court, the coroner's jury returned a verdict of manslaughter in the Livermore inquest. It was the belief that the evidence will not warrant the charge of a higher crime than that caused Judge Canabiss to grant the motion for bail. The judge says he went into the evidence thoroughly before making the order.

GRAY BROTHERS ACCUSED OF STEALING A STREET

Wordy War Over Blasting Before Supervisors

"The Gray Brothers are robbers. They have been stealing the street," said P. J. Healy at yesterday's session of the supervisors' fire committee.

"You are a liar," said Harry Gray, speaking for himself and his brother. "Gentlemen, we don't want any more of this," said Chairman Brockrick, and both Gray and Healy subsided.

LAWYER WHO VANISHED IS NOW LEGALLY DEAD

Widow of Charles H. Moore Gets \$5,000 Insurance Money

In 18 years the mystery that cloaks the fate of Charles H. Moore, once a prominent attorney in this city and member of the firm of Cobb & Moore, has not been lifted, and yesterday he was declared legally dead by Judge Graham. His widow, Mrs. Alvina Moore, was appointed administratrix of his estate. This consists chiefly of an insurance policy for \$5,000 in the Mutual benefit life company, which amount will be paid the widow.

Moore was living with his wife in 1888 at their home at the corner of Hyde and O'Farrell streets, when one morning he started for work, but failed to appear at the office. Nothing was heard of him until 1891, when he wrote his wife from Paris that he was in a hospital suffering from a mortal disease, and asking for \$200. Mrs. Moore told the court in her testimony yesterday that she did not send her husband the money he asked because she did not have it.

AGED DEAF MUTE DIES THROUGH LACK OF SPEECH

Unable to Call for Help Before Overcome by Gas

On the records of the morgue there was written yesterday afternoon the story of an aged woman who died because the fate that had robbed her of speech created circumstances in which only speech could have saved her life. She was found dead in bed in a lodging house at 475 Third street, with gas escaping from the jet. Her identity is unknown.

MCCARTHY CAMP SENDS NOTES TO CROCKER CAMP

Slogan of "Wide Open" Town Starts Marked Secession From Labor Nominee

Republicans Unite to Defeat All Efforts of Machine to Thwart People's Will

By GEORGE A. VAN SMITH With the long deferred campaign of the republican and democratic parties well under way, something like a definite situation is being evolved from the political chaos which has reigned from the beginning of the fight for the control of the republican county committee.

With the republican and democratic campaign organizations working under comparatively high pressure, the campaign has already progressed sufficiently to dispel the fear that the people of San Francisco were not giving serious thought to the results of the battle of the ballots which will be decided November 2.

Two weeks ago, aside from the vigorous and comprehensive fight being made for P. H. McCarthy and the district attorneyship fight, which has no partisan boundaries, the municipal campaign of 1909 was a paper affair, with the burials of McCarthy and his supporters demanding virtually all of the general public's attention and causing no little apprehension.

REACTION SETS IN That a reaction has set in none familiar with the situation can assure us. That it is a reaction resulting from apprehension of more than one variety is beyond question. That McCarthy has lost some support through fear of the consequences of the election and his anticipated policies is a fact that can be substantiated by the most perfunctory investigation.

The greatest losses to be charged to the McCarthy account, however, are not the negative losses, but the positive, in that they are the result of a tightening of the lines outside the McCarthy camp rather than a secession from the ranks of his supporters. That there have been winners and losers in the "get behind a winner spirit" is beginning to get in its work is becoming more and more apparent.

The negative losses suffered by McCarthy, which are the result of a tightening of the lines outside the McCarthy camp rather than a secession from the ranks of his supporters, are the result of a tightening of the lines outside the McCarthy camp rather than a secession from the ranks of his supporters.

CRYSTALLIZES CROCKER VOTE

The great register shows that 53,000 out of the 61,000 qualified electors, or virtually 80 per cent of electors, have come to the aid of the republicans. Assuming that the averages of experience are maintained in 1909, the whole vote polled in November will approximate 60,000.

REPUBLICAN AWAKENING

The strongest indication of the republican awakening is the disappearance of the undecided man. The band wagon spirit has something to do with the change to Crocker, but a realization of republican responsibility, both to San Francisco and to the republican party in the state, has played a larger part in the attitude of the undecided man who has been undecided a week ago and who are doing earnest consistent work for the republican candidate for mayor today.

The square toed indorsement of Crocker by Byron Mauzy and the leadership of the independent republicans who supported Mauzy for the nomination, shattered some of the brightest dreams of republican, democratic and union labor adherents of the machine who copied and independent republican bolt to Leland that would insure the election of McCarthy. Naturally enough, many of the independent leaders preferred not to accept the responsibility of a Crocker campaign, and the men who swung the knife on Henry Crocker have endeavored to create disaffection at their expense, with an entirely unexpected result.

An important factor in McCarthy's positive losses is the direct result of the reaction of the "wide open" town idea, to which, naturally enough, the great majority of retail and wholesale liquor men, and the men who sell the harrassed wine men, are more easily opposed than are the prohibitionists and local optionists, who see subsequent triumph flowing from a "wide open" San Francisco.

SLOGAN SPIES OPTIMISTS

McCarthy's "Paris of America" slogan aroused a much keener interest outside of San Francisco than it did in this city, when it was first flung to the public. The effect of that outside interest is being felt in the independent republicans, and the men who want reasonable regulation of their business are awaking to the fact that the talk about a wide open San Francisco has renewed the troubles of the liquor men, and more especially of the wine men, on the side of San Francisco. Anticipation of the "wide open" town has stirred the local optionists to new vigor and they are building hopes of successes at the polls next year on their belief that San Francisco is going to play into their hands. The wine interests, although sadly harrassed, want no "horrible examples" in San Francisco to furnish campfire material for the election of a local option legislature from the country districts or to increase the local option or dry district sentiment in southern California.

Points From Crocker's Speeches

THE man in the outlying districts of the city who pays his taxes like any other citizen of San Francisco deserves equal consideration in the matter of roads and public utilities. I do not believe in having wooden schoolhouses. The city should see that its children are educated in fireproof buildings. I am strongly in favor of Hetch Hetchy. I will do my best to remove educational matters out of politics. The future of our children is too precious to be swayed and disrupted by political upheavals every two years. A man in good health is not much interested in hospitals; but it is the duty of every American citizen to see that suitable hospitals are provided for his brethren not so fortunate as himself. The city has been conducted along too stringent lines recently. If elected I will endeavor to bring back some of those amusements we had in the past and try to have a liberal and sane enforcement of the laws.

CROCKER'S PLEDGES PLEASE THE PUBLIC

Republican Candidate for Mayor Declares City Must Have Hetch Hetchy

Without any effort at oratorical effect or linguistic pyrotechnics William Crocker, republican candidate for mayor, outlined his policies at two meetings last night, declaring that he stood for a business administration of city affairs. The addresses, plain, unvarnished statements of fact, made a greater impression on his audiences than did the fanciful flights of the regular spellbinders sandwiched in between the music and remarks of the chairman. One of the meetings was held at Masonic hall, South San Francisco, and the other in Duboce hall, in Duboce avenue.

WOMEN'S HENRY CLUB MEETING WELL ATTENDED

William J. Burns Tells of Graft Prosecution Experiences The regular weekly meeting of the California Women's Henry club in the assembly hall of the Pacific building was largely attended yesterday afternoon.

William J. Burns talked at length on his experiences in this city, touching particularly on the change in attitude of certain businessmen when the prosecution began to reach their associates. Burns spoke also of his connection with land fraud cases for the government.

HENEY SPEAKS TONIGHT IN PUCKETT'S HALL

Tomorrow Evening He Makes Addresses at Two Meetings

Francis J. Heney will speak tonight in Puckett's hall in Church street near Market. Tomorrow night he will speak at the democratic meeting in Richmond hall. He will also appear at the Heney meeting in Y. M. H. A. hall in Page street near Stanyan.

At the latter meeting T. C. Kierulff will preside. Hiram W. Johnson, Matt I. Sullivan, Max Kuhl, Walter MacArthur, G. D. Ferrell and James D. Phelan will also speak.

COFFEY ASKS DAMAGES FROM JUDGE DUNNE

Convicted Supervisor Thinks He Should Have \$500

The district court of appeal issued a writ of mandate yesterday ordering Judge Dunne to sign the charge against the jury in the case of Michael Coffey, the convicted supervisor. Attorney Carroll Cook, representing Coffey, had requested Judge Dunne to sign the charge against the jury preliminary to the appeal to the higher court. Judge Dunne held that his formal signature was not necessary. Cook then took the matter to the district court and the order was accordingly issued.

WORK DOUBLES AT THE EMERGENCY HOSPITALS

A comparison between the number of patients received and treated in the emergency hospitals of San Francisco during September, 1909, and September, 1908, shows that the work of the hospitals has increased 50 per cent in one year. If this ratio continues during the next year the present facilities will probably be inadequate in September, 1910.

Local Brevities

MILLWRIGHT SUCUMBES TO GAS—James Russell, a millwright, who was accidentally overcome by gas Wednesday at 662 Milna street, died yesterday at the central emergency hospital.

Personal Brevities

L. L. Cory of Fresno is at the Granada. John H. Silling of England is at the Savoy. R. Levy of Santa Rosa is at the Dorchester. W. H. Ames of Watsonville is at the Holland. Charles Jollett of New York is at the Baltimore. G. G. Gentry of Denver is staying at the Fairmont. Charles E. Hathaway of Chicago is at the St. Francis. Walter Chuck of New York is registered at the Argonaut. S. M. Haskins of Los Angeles is registered at the St. Francis. J. M. McLaughlin, an attorney of Oroville, is at the St. Francis. Mr. and Mrs. C. M. Carlos of Seattle are guests at the Mann. H. E. Randall of St. Helena, Cal., is staying at the Union Square. Mr. and Mrs. W. H. Long of Chicago are guests at the Stewart. W. B. Clapp of the United States geological survey is at the Mann. G. J. Janney, a mining man of Redding, is registered at the Stewart. Mr. and Mrs. J. E. Prather of Fresno are staying at the St. Francis. Mr. and Mrs. John W. Ferris of Kingswood, Eng., have apartments at the Fairmont. Mr. and Mrs. Stewart Edward White of Santa Barbara are guests at the St. Francis. Charles Powell, an attorney of Fairmont, W. Va., is at the Fairmont with Mrs. Powell. M. de Gomez, consul general of France to Canada, is at the Fairmont, registered from Montreal.

HENEY-FICKERT TO HAVE A RECOUNT

Court Holds That Sufficient Showing Has Been Made for Overhauling the Ballots

The Heney-Fickert controversy over the democratic nomination for district attorney at the primary election will be settled in court by a recount of the ballots which will probably be taken up next Tuesday. Judge Murasky yesterday overruled the demurrer to Fickert's affidavit and complaint. The argument centered around sections 27 and 28 of the primary election law. Matt I. Sullivan for Heney attacked the complaint on several grounds. He contended that the court lacked jurisdiction because the pleading was invalid in that it had not shown a cause of action against Heney and that Heney had not been brought into court by the order provided by the direct primary law.

QUESTION OF JURISDICTION

Regarding the question of the jurisdiction of the court he said that the two sections of the act were from their sense and reading intended to provide summary proceedings. "The intention of the legislators," he said, "was to have such questions settled without delay, because of the limited time between the primary election and the election proper. It could not have been their intent to leave room for appeal and thus bring about a stay of proceedings."

ATTACKS THE PLEADINGS

His second point, that of the validity of the pleading, was based on the fact that it was not in form of affidavits as required by section 28, but an affirmation of information and belief. His last contention regarding the non-appearance of Heney in court was grounded on section 28, which he declared specifically called for such an order.

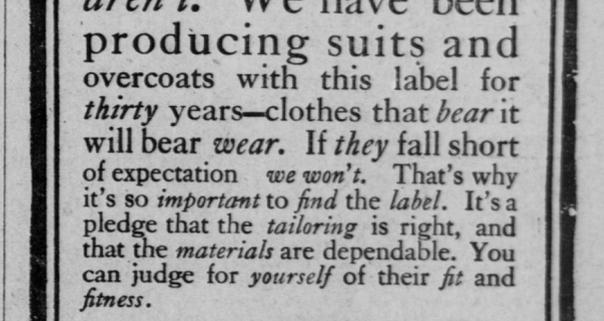
ADVOCATES GOOD ROADS

"You who are here in the outlying districts of the city," he said, "have just as much right to good roads as the citizen in the more favored localities; you have as much right to have good light and as good water and street service. If I am elected I promise you that I will do my best to remedy the inconvenience, and wrongs which you have to suffer now. You have just as much right to a square deal in these matters any other tax payer."

HOLDS COMPLAINT SUFFICIENT

Judge Murasky, in stating his decision, gave no extended opinion in regard to his finding, briefly declaring that the complaint contained sufficient allegations for a contest. The court inferentially sustained the chief objection raised by President Cator of the election commission by dismissing the case against the registrar and election commissioners on Cator's motion. The case was set for hearing next Tuesday.

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Free Excursion to East San Mateo NEXT SUNDAY, OCT. 10 We invite you to come in and get a map and FREE TICKETS to attend our next AUCTION SALE. Since April we have sold over \$250,000 of lots. Ninth Avenue will be paved to the water front, where we have our dredger working night and day. Water shipments mean more trade, cheaper living and advances in real estate. This property is 30 minutes from San Francisco with a 10 cent fare. TERMS: \$1 DOWN AND \$1 A WEEK Interest at 6 per cent with discounts of 2 1/2 per cent for one-tenth cash, 5 per cent for one-fifth cash and 10 per cent for full cash. Come down and spend the day with us. We will have a FREE CLAM BAKE We will also give away \$500 in presents to visitors whether you buy or not. Train leaves Third and Townsend at 11 a. m. But you must get your free tickets. East San Mateo Land Co. W. H. QBEAR, President. 1009 Monastock Building. Douglas 3488.