

MISSING MEN INVOLVED IN LEGAL SUITS

Mrs. Starbuck of Oakland Says Tenants Fled to Escape Prosecution Attorney for Kendalls Declares That They Had No Fear of Proceedings

Hero, drove Cross to the Kendall place. There were no signs of life at the ranch house, but the visitors thought that the Kendalls might be off after stock or engaged in some other part of their ranch. Cross waited on the place while Grider returned to town. Cross followed at noon.

Other men who had appointments with Kendall went to the place during the week and saw no one there. On Monday, August 1, Justice of the Peace Trosper went to the Kendall place and investigated. He found the horse tied in the stable and food spoiling in the house. He notified the police.

Hoyle returned to Santa Rosa tonight, but Smith will stay here and with a larger posse will search the ranch tomorrow.

Kendalls had a second place in the hills not far from the property they had leased and the search will be carried into that locality. It is known that the family is not living there now, but the place has been determined.

While the baffling mystery of the absent Kendalls is perplexing Casadero every little incident in the lives of the missing family is being recalled. Recently Thomas Kendall had had some words with William Churchman over a plow which Churchman had borrowed.

This incident, the subject of gossip, is not given any consideration by Sheriff Smith in his investigation of the case. Kendall had leased his place from Mrs. Starbuck on three years contract.

Two years have passed and Kendall had just begun to make the place pay, he said. The ranch is on the side hills bordering on Austin creek.

Thomas Kendall and his father were way thought of in this vicinity. The father is about 65 years of age, the son 24 and the wife and mother 50. Since the Kendalls took the Starbuck lease they have had trouble with Mrs. Starbuck. The Japanese wood cutters have been conspicuous in their loyalty to Mrs. Starbuck. One Japanese known as Yama was recently seen in an old cabin belonging to the Kendalls with a dangerous looking knife in his hand.

Kendall had occasion to order off the place some Japanese he thought were spying on his movements.

Assistant District Attorney Hoyle took the statements today of witnesses in the case. Among those whose statements were taken were Mrs. E. D. Trosper, John Cox and F. D. Trosper. Mrs. Trosper, wife of the justice of the peace, is the last person among the witnesses examined, to have seen Mrs. Kendall. She said: "I am sure that Mrs. Kendall and her husband and son did not leave their place voluntarily. Mrs. Kendall had been staying with me and left on Saturday, July 23. She was to have returned on the following Monday, but she did not. I am sure she would have told me if she were going away. The Kendalls would have to pass our place if they went to Casadero, and they did not."

Judge Trosper expressed the same opinion. Both Sheriff Smith and Hoyle expressed their mystification over the case.

"As yet," said the sheriff, "we have nothing upon which to base a statement. The crime has been committed, but it does not look as though the Kendalls would have gone off of their own volition and left things in such shape."

Accused of Crime OAKLAND, Aug. 3.—Mrs. Margaret Starbuck, wife of H. F. Starbuck, an Oakland architect, living at 116 Lake street, owns the ranch. She said: "Mrs. Kendall came with her father and mother from the Blue mountains of Kentucky. I was anxious to secure the services of a good man who could look after the ranch, and I accepted his application upon the highest recommendations.

"I did not mean to place to him. He was merely hired to supervise the work of keeping up the ranch, and under the terms of the contract was to receive a certain percentage of the profit and increase each year. I purchased in the end to colonize the ranch, subdivide it, and build homes which I could offer to people of moderate or no means to help them make a start in life.

"Kendall agreed to the terms, and was to keep a detailed account of the work on the ranch, its receipts, disbursements, increase and profits. When he took charge, his mother and father accompanied him to the place, and the three lived together.

SHOOTING RESULTS "Trouble started soon afterward, and since then I have had no end of difficulty in relation to the property. Kendall became involved in shady cattle deals first, which started a feud between himself and two ranchers nearby, William Hopper and John Collins. During the entanglement, Kendall repeatedly threatened the lives of neighboring ranch owners. His enmity toward Collins was the greatest, and recently resulted in a shooting affair. It is known that Kendall's father barely escaped death.

"Kendall stole hundreds of head of

LAWLOR'S CASE RE-SET FOR AUGUST 29 CALHOUN CASE IS RESET FOR AUGUST 29

The following is the statement made from the bench by Judge Lawlor, in which he denied the motion of Patrick Calhoun to dismiss the indictments against him and the reading of which started the uproar in the court:

On April 25, 1910, an application was made by Patrick Calhoun, Tiley L. Ford, Thorneville Mullally and William M. Abbott to dismiss the indictments against them. The application is before the court at this time for consideration.

When the defendants pleaded not guilty they exercised their statutory right and each demanded severance from each other. The court ordered the defendants, Abraham Ruef and Eugene E. Schmitz, (Section 1098; Penal Code), to be tried together. The trial—three of Tiley L. Ford and one each of Abraham Ruef and Patrick Calhoun.

The motion of Patrick Calhoun was commenced on July 19, 1909 (case No. 1437). Owing to the illness of the judge the trial was suspended on August 16, 1909, and resumed on September 30, 1909. On the following day the trial was continued until November 15, 1909, on motion of the defendant, upon the ground of the pendency of another trial.

On January 8, 1910, Mr. Charles M. Fickett assumed the office of district attorney. On February 7, 1910, the district attorney moved the court to dismiss the remaining charges against these defendants, sections 1098, Penal Code, which motion was by the court ordered denied. (Section 7, article 1, and section 19, article 6, of the constitution; sections 1041, 1042, 1126, 1386, 1386 and 1387, Penal Code.)

On February 14, 1910, the parties announced that they were ready to resume the trial in case No. 1437 against Patrick Calhoun, but the court continued the case for trial until in Vancouver. The only named day the cause was ordered continued for trial until April 25, 1910.

On April 25, 1910, the four defendants interposed a motion to dismiss the remaining indictments against them. This motion was by the court continued until July 29, 1910. On the latter day the causes were continued until this time.

Two things which are responsible for the court's action in respect to the remaining indictments since the trial of the case No. 1437 against them on February 7, 1910. First, the court's apprehensions based on the declaration of James L. Gallagher, attorney toward the remaining indictments, and second, the absence from the state of James L. Gallagher, a material and indispensable witness in the said causes. The second reason will now be considered.

It was the theory of the people in the five trials referred to that Abraham Ruef bribed the defendants in the alleged bribery of the members of the board of supervisors, and that James L. Gallagher, one of its members, in turn represented Abraham Ruef in the transactions. In this way the court is able to determine that the testimony of this witness is material, and now holds, as a matter of law, unless additional testimony is produced, it is indispensable to the establishment of the res gestae.

In the month of January, 1910, the witness had departed from the state. It was not until December, 1909, it became known that the witness had departed from the state. It was not until December, 1909, it became known that the witness had departed from the state. It was not until December, 1909, it became known that the witness had departed from the state.

In this connection it may be proper to point out that practically since issue was joined on these indictments there have been on the calendar for trial, and that during the trials referred to the cases not being tried in this order, to time called and the witnesses admonished by the court to appear on that date, that it has not been ascertained whether in this manner the missing witness has been examined or not.

On the month of January, 1910, the court directed that any person who could give testimony concerning the absence of the witness be subpoenaed. On January 21, 1910, a hearing was had and on several occasions thereafter witnesses have been examined. It is noted from this oral testimony it is difficult to determine the intentions of the witness concerning his departure from and his return to the state. It seems that in the latter part of November, 1909, he left for Europe, accompanied by his wife, Robert F. Gallagher, a brother of the witness, testified in effect that the witness never stated he intended to absent himself as a witness in the graft cases and made no suggestion of that nature. That he, Robert F. Gallagher, gained no such impression from anything he did say, except that that it was a disagreeable situation for him to be witness in a case that their talk proceeded along the line that there was not going to be

any future trial in the graft prosecutions. This brother testified further: "He did state on one occasion something to the effect that Burns had disappeared and that there was not any prosecution; that the incoming district attorney would not certainly be in earnest in the prosecution."

Other witnesses testified to a variety of facts touching the departure of the witness from San Francisco. Dr. Alexander Warner gave testimony to the effect that he had seen the witness on the Atlantic steamer with the witness and his wife, Thomas J. Gallagher, another brother, among other things quoted the words of the witness, "I am going to Europe; that he might settle in an eastern state; that he made the secret of his purpose, and that William J. Burns, special counsel of the former administration in the district attorney's office, knew of the intention of the witness. Nothing definite appears in the oral showing concerning his intentions on the

subject of his return, and so far as that showing is concerned, the point is more or less involved in conjecture. But on July 29, 1910, Frederick J. Berry, the assistant district attorney, assigned to this department of the court, filed an affidavit embodying clippings from the local newspapers, published in this month, which state that the witness was, at the time the articles were written, in Vancouver, B. C. From these clippings it appears that the witness intended to permanently locate in Vancouver. The only tangible evidence from the witness himself, however, is found in his letter to Thomas J. Gallagher, dated June 29, 1910, in which this excerpt appears:

"In reply to your inquiry I can not state definitely that I am in San Francisco, if at all. I may remain here."

My judgment a review of the showing up to this time leads to the inference that the witness left the state in a bargain with the district attorney, and that he was acting guardedly, notwithstanding the testimony of the witness to the effect that he believed the reason to doubt that he had no several persons of his intention to take a trip. When the quoted statement of the witness is read, it is first made I was disposed to assume that the witness left the state principally because he believed the prosecution was at an end, that he made his plans quietly so that the state would not occasion comment.

In other words, that he did not believe there would be any further attempt to prosecute the so called graft cases. It is noted from the entire showing I can not adhere to that theory. I repeat that up to the time he was discovered in Vancouver the showing was uncertain as to whether he really intended to return to California, and, if so, when he would return. It is to be seen that the action of the court would be influenced by this uncertainty. In the absence of the situation called for a definite showing as to the witness' intention to return to California, where, under the treaty conditions, he would be safe from extradition, and it is noted from the reporter of a New York paper in the clippings his own statement that he intended to return to California, it is apparent that his intentions are unequivocal. He is to make his home in Vancouver. But his present intention to return to California is apparently less certain of his intentions. This would tend to make the fact that he is in the state, and that he has returned to California, from the entire showing I do not entertain any serious doubt as to his purpose, and I am inclined to believe that when the necessity for his presence as a witness has passed, he will return to Vancouver, where he will be in serious doubt on the point is to ignore

There being no tangible proof,



JUDGE WILLIAM P. LAWLOR

the inherent probabilities of the situation, and to deny a fair consideration to the known history of this litigation.

Now it must follow that if the witness has left and is remaining away from the state because of an arrangement of some nature affecting the local newspaper, published in this month, which state that the witness was, at the time the articles were written, in Vancouver, B. C. From these clippings it appears that the witness intended to permanently locate in Vancouver. The only tangible evidence from the witness himself, however, is found in his letter to Thomas J. Gallagher, dated June 29, 1910, in which this excerpt appears:

"In reply to your inquiry I can not state definitely that I am in San Francisco, if at all. I may remain here."

My judgment a review of the showing up to this time leads to the inference that the witness left the state in a bargain with the district attorney, and that he was acting guardedly, notwithstanding the testimony of the witness to the effect that he believed the reason to doubt that he had no several persons of his intention to take a trip. When the quoted statement of the witness is read, it is first made I was disposed to assume that the witness left the state principally because he believed the prosecution was at an end, that he made his plans quietly so that the state would not occasion comment.

In other words, that he did not believe there would be any further attempt to prosecute the so called graft cases. It is noted from the entire showing I can not adhere to that theory. I repeat that up to the time he was discovered in Vancouver the showing was uncertain as to whether he really intended to return to California, and, if so, when he would return. It is to be seen that the action of the court would be influenced by this uncertainty. In the absence of the situation called for a definite showing as to the witness' intention to return to California, where, under the treaty conditions, he would be safe from extradition, and it is noted from the reporter of a New York paper in the clippings his own statement that he intended to return to California, it is apparent that his intentions are unequivocal. He is to make his home in Vancouver. But his present intention to return to California is apparently less certain of his intentions. This would tend to make the fact that he is in the state, and that he has returned to California, from the entire showing I do not entertain any serious doubt as to his purpose, and I am inclined to believe that when the necessity for his presence as a witness has passed, he will return to Vancouver, where he will be in serious doubt on the point is to ignore

There being no tangible proof,

therefore, before the court of the complexity of the parties should the pending application be granted at this time? A person accused of crime is entitled to a speedy trial. (Section 13, article 1, Constitution.) This fundamental right has been made the subject of statutory provision. The second subdivision of section 1382 of the Penal Code provides that:

"Unless good cause to the contrary is shown, the court must order the prosecution dismissed if the indictment is not brought to trial within 60 days after the filing thereof."

More than 60 days have run in favor of this application and the question presented at this time is whether the showing touching the absence of James L. Gallagher shall constitute "good cause" within the meaning of the law. This term must be construed and applied according to the peculiar circumstances of each case. It should be interpreted so that the rights of both parties shall be equally recognized. The absence of a material and indispensable witness for the people would, under proper circumstances, constitute a good cause, provided that good faith and diligence are shown in the effort to produce the witness. In re Bergerow (133 California, 349) is a leading authority on this question, and is almost invariably cited in support of applications of this character. It is proper to point out that in the prevailing opinion the court has judiciously eliminated from the pertinence of the authority the absence or illness of a witness for the prosecution.

The conclusion I have reached is that under the law and the surrounding circumstances, including the recent action of the witness, the another reasonable continuance should be granted in order, if possible, that the duty of the court in the premises shall be rendered more clear. At this time the court is not satisfied that the duty of the court should be granted. On the other hand it is realized that a final decision should not much longer be delayed in the determination of this matter the court, while fully recognizing the rights of the defendants, is mindful of the rights of the people and its own sense of responsibility and is anxious to avoid a decision which will serve as a mischievous precedent.

It is to attempt to ignore the inherent probabilities of the situation presented. A material and indispensable witness is absent from the state and the court is called upon to intervene because the district attorney has at practically every turn followed the lead of these defendants. Through the influence of unusual agencies the law has broken down so far as these cases are concerned. The crimes charged are of the most serious nature, because such criminal activity tends to sap the very foundation of government. The statute of limitations in this case, as the events of that midnight deal in which you participated on April 23 amply demonstrate," said A. A. Moore.

"The bailiff will take the counsel into custody," directed the judge. Then Stanley Moore displaced his father in the spotlight. "Does your honor refuse to permit any reply to those remarks you have made?" he asked.

"I adjudge A. A. Moore guilty of contempt of court," said the judge, "and order as punishment that he be confined in the county jail for five days."

"I have here," again interposed the persistent younger Moore, "the bailiff that contains your honor's name and which contains the inspiration for these remarks you have made."

"Take the counsel into custody, Mr. Sheriff," was his honor's reply. The bailiff tapped Stanley Moore on the shoulder and left him away from the lawyers' table and into the inner inclosure of the court, where the young attorney remained during the rest of the proceedings.

District Attorney Fickett was the next participant in the wrangle. He said: "I desire to state my conclusions as to the absence of James L. Gallagher, and I request the court to accord me the right to reply to the aspersions that have been cast upon me from the bench."

Judge Lawlor said that when it becomes necessary for him finally to determine the court's attitude he would give the district attorney full opportunity to address the court.

"Well, I desire to have that right at this time, if your honor please," returned Fickett. "You have from time to time cast reflections upon me and my office for my attitude in this matter. You have now stated that I followed the lead of these defendants. I

COURT REFUSES TO DISMISS CALHOUN

Judge Forced to Leave Bench to Silence Uproar Which Followed Decision

Defendant Addresses Court Despite Efforts of Lawlor to Keep Him Silent

Inducing a witness to leave the state, that was brought out in the trial of Calhoun, on the theory that it tended to show guilty consciousness on the part of the defendant.

"If your honor please," loudly declared Stanley Moore when the judge had concluded reading, "we insist upon our right to reply to some of these insinuations and remarks that your honor has made."

"I will suggest to counsel that he will not reply, and that if he is disposed to reply he will resort to the agencies of which he has availed himself so frequently during the experience this court has had," sharply replied the judge.

"We assign that as the last word of your partisanship," returned Moore, and raising his voice to a shout he proceeded, "We insist on our right to reply here in this forum in which you have made these charges and insinuations. We intend to stand here until we are afforded the opportunity to reply, which is our right and our duty, and which any court with a speck of fairness and impartiality will freely accord us."

"You will take your seat," directed Judge Lawlor, "if you do not I will adjudge you guilty of contempt."

Moore utterly disregarded the warning. "I intend to stand here," he said, "as I have told your honor before, and reply freely and frankly to what your honor has just seen fit to say as a political document, and in the doing of politics from the bench that you stultify in your occupancy."

Then Judge Lawlor did what he has more than once threatened to do to the Calhoun attorney.

"I adjudge you guilty of contempt," he said, "and as a punishment therefor it is hereby ordered that you be confined in the county jail for the period of five days."

Next A. A. Moore, who is the father of Stanley Moore, placed himself in contempt.

"I fully agree, your honor, that you are a partisan, a bitter partisan, and doing dirty politics, and have been before these indictments were ever filed in this court, as the events of that midnight deal in which you participated on April 23 amply demonstrate," said A. A. Moore.

"The bailiff will take the counsel into custody," directed the judge. Then Stanley Moore displaced his father in the spotlight. "Does your honor refuse to permit any reply to those remarks you have made?" he asked.

"I adjudge A. A. Moore guilty of contempt of court," said the judge, "and order as punishment that he be confined in the county jail for five days."

"I have here," again interposed the persistent younger Moore, "the bailiff that contains your honor's name and which contains the inspiration for these remarks you have made."

"Take the counsel into custody, Mr. Sheriff," was his honor's reply. The bailiff tapped Stanley Moore on the shoulder and left him away from the lawyers' table and into the inner inclosure of the court, where the young attorney remained during the rest of the proceedings.

LIFEBOATS WILL BE TESTED AT SEA

Ingersoll Craft Must Go Through Exacting Maneuvers Outside the Heads

Army Officers Will Determine Vessel's Suitability for Marine Emergencies

Tests will be made today of the Ingersoll lifeboats outside the heads under the direction of Major H. P. Young, depot quartermaster. Accompanied by Major Scott and Captain Grant, assistants to the depot quartermaster, and other officers of the army and navy, Major Young will leave this morning in the transport Buford for several hours' experiments with the boats. Among the tests to be made are its suitability for picking up men at sea and for abandoning ship in case of disaster or fire. Landings through the surf will be tried also, provided the sea is rough enough to make it a reasonable test.

Colonel W. A. Shunk, First cavalry, who has been ordered from the Presidio to Walla Walla, will leave in a few days for his new post. Major Joseph A. Gaston will be in command of the cavalry troops at this post.

Major Thomas B. Lamoreux, coast artillery corps, commanding Fort Miller, has been granted two months' sick leave.

The maneuver board, consisting of Major Wright, Captain Bjornstad and Captain Brees, which convened Monday at army headquarters in this city, will leave in a day or two for Atascadero, to carry on its work of formulating problems for the coming maneuvers there.

Lieutenant Edward D. Kremers, medical corps, Fresno, Cal., will leave for temporary duty pending the assignment of a regular medical officer.

TRIES TO TRICK JUDGE—Renace he swore he was taking his left hand from his right, Harry Kalpas, alias Anstiod, a waiter, charged with stealing a revolver from G. L. Conlan, 1245 Polk street, was convicted by Police Judge Conlan yesterday and sentenced to six months in the county jail.

Concord with Ars-Notch Evanston with Buttonhole THE NEW ARROW COLLARS FOR SUMMER. High enough for looks—low enough for comfort and plenty of room for the tie to slide in. 15c. each, 2 for 25c. Closet, Peabody & Company Arrow Collar Co.

LOW ROUND-TRIP RATES TO ALL EASTERN CITIES During the Summer Months, with Stop-over privileges.

CANADIAN PACIFIC RAILWAY Six Hundred Miles of Unsurpassed Scenery through the Canadian Rocky Mountains

Call or Write for Rates and Information E. E. PENN GENERAL AGENT, PASSENGER DEPARTMENT 645 Market Street (Palace Hotel Building) SAN FRANCISCO

brought against him, and to escape which he fled the country, in company with his mother and father. I have had to engage five lawyers in order to oust the man."

Fugitives, Lawyers Say BERKELEY, Aug. 3.—That Tom Kendall, his father, Enoch, and mother, Ura, Kendall, disappeared from their home near Casadero to avoid prosecution on a criminal charge of kidnapping for their own use the property owned by Mrs. Margaret E. Starbuck of Oakland, is the declaration of Attorneys H. W. Brunk, William O. Miner and R. M. F. Soto, who have been retained to have the Kendalls ejected from the 1,000 acre ranch.

According to Brunk the disappearance of the Kendalls cannot be explained in any other way, in view of the fact that two suits, one to eject them from the ranch which they are alleged to occupy unlawfully and the other to prevent them selling property belonging to Mrs. Starbuck, are on the eve of trial in Santa Rosa.

The Kendalls, according to Brunk, were introduced to Mrs. Starbuck about a year ago and shortly afterward occupied the big ranch. "A suit was begun last August to eject the Kendalls from the property of which I know nothing," said Brunk today. "We commenced two suits for Mrs. Starbuck and filed them June 7 of this year to eject the Kendalls from the land and property, the work of Tom Kendall is alleged to have sold and to enjoin him from disposing of other property."

Mrs. Starbuck Defeated [Special Dispatch to The Call] SANTA ROSA, Aug. 3.—Mrs. Margaret Starbuck, who has been in litigation with Mr. and Mrs. Enoch Kendall and their son, Thomas A. Kendall, since they leased her property nearly two years ago, but in it all she has been defeated.

Recently she filed a suit for injunction seeking to restrain the Kendalls from selling the livestock on the place and a second suit was filed in an effort to eject them from the property, Mrs. Starbuck claiming that they held it without a lease. The injunction was denied and the ejectment suit is still pending.

That's It ASK YOUR GROCER FOR Post Toasties A Delicious Food for breakfast or lunch that most everyone likes—distinctly and pleasingly different from the usual "cereal." Post Toasties are ready to serve from the package with cream or milk, win favor with the entire family and happily solve "what to eat" in hot weather. "The Memory Lingers" Postum Cereal Co., Ltd., Battle Creek, Mich.

Advertising Talks Faith, understanding and enthusiasm, necessary as they are in business, can not of themselves bring success. You must create faith in others, impart your understanding to others, imbue others with your enthusiasm before you can sell a dollar's worth of goods. Talk to everybody every day in the paper that everybody reads. Tell the people what you have that is worth their consideration; talk quality and service; put your faith, understanding and enthusiasm in your advertising. You will win the confidence of your public, you will build up a business, you will make friends and followers of your customers. We are increasing the circulation of The Call at the rate of thousands a month, we are making thousands of new friends every day by following the advice we give you, we have what the people want, and we let them know what we have. Mr. Merchant, we want to take you along with us to a bigger success. Through our advertising columns you can reach 150,000 readers now, with an average of 2,000 new readers a month. We can give you advertising copy and illustrations that will make your advertising space more profitable. Phone Kearny 86 and ask our advertising manager about it.

FAIRMONT HOTEL Beginning September 1, 1910. Table d'hote or American Plan dining room will be conducted, in addition to the European plan or a la carte restaurant. HOTEL BELMONT Sunny, modern rooms, thoroughly clean, 35c day and up, \$2.50 per wk. up; private bath, 50c day, for 5c. HOTEL COLONIAL Stockton Street Above Sutter San Francisco American Plan, \$2.00 Day European Plan, 1.50 Day A hotel with every modern convenience. Every room connecting with bath. HOTEL TURPIN Newest and Most Popular Commercial Hotel, 17-19 Powell St. at Market Six stories of solid comfort; 10 first class eating houses within 1 block; Rates, \$1.50 to \$2.00 per day; 25c rooms; not a la carte room house. A. & W. TURPIN, Props. and Mgrs. Former Owners Royal and Hamilton Hotels. TRY OUR Special 40c Luncheon ODEON CAFE MARKET AND EDDY STREETS Music Every Evening Want to Loan Money? USE CALL WANT ADS MUSICIEN-TELEMEN ONLY.