A STAR DAY

Carmen Montez Tries to Explain That Letter

SAYS IT WAS NOT BLACKMAIL

BUT SHE TRIED TO PLAY GRIFFITH FOR $160

Attorney Oliver Feels Called Upon to Justify His Position—Bird's Sureties All Secured

Yesterday was a star day in Department one and the attorneys engaged in the case of R. A. Bird excelled themselves in spatting and wrangling until Judge Smith lost all patience and then there was an explosion. The court scored Deputy District Attorney McComas first, and to that gentleman's modest remonstrance and reminder that he knew how to try a case, retorted that he did not. Mr. Meserve tried to speak his little piece, but in the attempt to rub in the court's remarks to Mr. McComas came to grief himself. He got rapped over the knuckles—metaphorically, of course—and for the remainder of the day a more subdued air distinguished the several legal gentlemen.

During the morning the cross-examination of Mr. Griffith was concluded and after Mr. Hammond, paying teller at the First National bank, and one or two other witnesses had been examined Miss Carmen Montez was put forward by the proseceution. This little lady—and she is very petite of form—was somewhat gorgeously arrayed in a gown of ruddy colored velvet with high Elizabethan collar that formed a background for a Spanish type of face. The court room was packed, for every one was desirous to know just what figure that letter written by Miss Montez to Mr. Griffith and published yesterday in The Herald would cut in the case. But this witness wasn't inclined to tell too much. After a few preliminary questions the examination was continued somewhat as follows:

"How long have you known Mr. Bird?" inquired Mr. McMcComas.

"I can't tell; about five months," was the rather non-committal reply.

"I'll ask you if you saw him on August 19, 1897?"

"I guess I did."

"Whereabouts?"

"At my house, 540½ New High street, in the afternoon."

"How long did he remain?"

"Not very long. I was very busy and did not notice the exact time."

"Did he say to you on that occasion anything about any trouble over a check, with Mr. Griffith?"

"No, sir; not at my house."

"He did somewhere else, did he?"

"He told me at the Canary cottage that Mr. Griffith accused him of forging a check for $200."

"Where is the Canary cottage, and how do you go there?"

"Mr. Bird and I just went for a drive."

"And what did you do?"

"We sat in the public parlor, and then he said that Mr. Griffith accused him of forging a $200 check on the First National bank."

"How did it come up?"

"I don't know, unless he was full."

"What did you say?"

"I didn't say anything. I thought he was either full or crazy."

"Did the defendant tell you that he had drawn $200?"

"No, sir; he did not."

"What did he say, then?"

"Mr. Griffith had sent him to see some man, he said, and he had rung Mr. Griffith up, and was then asked if he had drawn $200 out of the bank, and he replied that he had not."

"What did you say?"

"I told him I was going to see Mr. Griffith about the matter."

"And what did he say?"

"He said I could do what I liked."

"And you did see Mr. Griffith, didn't you?"

"Yes, sir."

"And you then told Mr. Griffith what Bird had told you?"

"I told him part of it, but not until I had heard his part of the story first."

"You questioned Mr. Griffith then?"

"Yes, sir, because I thought Mr. Bird had been drinking and did not know what he was saying."

"Was Mr. Bird at your house when you returned from your interview with Mr. Griffith?"

"Yes, sir; he remained until next evening, about 5 or 6 o'clock."

"Did he tell you any more about the check?"

"No, sir."

"Did you tell him all that transpired at your interview with Mr. Griffith?"

"I told him part. That Mr. Griffith had said he had employed him under very peculiar circumstances, and that he knew that Bird had forged a check on the bank that day."

That ended the direct examination, and then the witness was taken in hand by the defense.

"When, Miss Montez, was the first time you swore that Mr. Bird said that he told Mr. Griffith over the telephone that he had not drawn $200 from the bank?" began Mr. Pendleton.

"At the first trial of the case."

"Why did you not mention it at the preliminary examination?" was the next query.

"Well," answered witness in a dubious tone, "I afterwards talked with the attorneys for the prosecution, Mr. Griffith and Mr. Mallory. They all seemed to think I knew all about it, and I said I didn't. They asked me about the matter and then I testified on the trial."

"Then their suggesting that Bird answered Mr. Griffith over the wire and the thought that they knew more than you about it had nothing to do with your stating the fact?"

"Oh, yes, sir, it had."

"And your memory was fresher at the preliminary examination, was it not, than at the trial?"

"No, sir; we had talked about it after that."

"Oh, they refreshed your memory, did they?"

"Yes, sir."

"While you were at the Canary cottage did you retire from the public parlors during your stay there?"

"No, sir."

"What kind of a place is the cottage?"

"Just an ordinary road house."

"How did you return to town?"

"Mr. Wheedon—one of the proprietors—drove us in."

"And you went that night about 11 o'clock to the Hollenbeck to see Mr. Griffith, did you?"

"Yes, sir; he came out, and I asked him to step into the cab, as I wanted to see him on a matter of business. He stepped in and struck a match and surveyed me. I told him then why I had come; that Bird was at my house, and was drinking, and that as I was running 'a house,' I might get into trouble. He then said yes, that he didn't wonder that Bird wouldn't face him, considering his athletic powers, and that he was satisfied that Bird had forged a check for $200 that day."

"Has Mr. Griffith ever given you any money, Miss Montez?" insinuatingly asked Mr. Pendleton, striking out on a new line.

"I don't see why you should ask that," responded the witness, hesitatingly. Counsel persisted, and Miss Montez inquired of the court whether she was obliged to answer. Meeting with no relief, then the witness answered boldly:

"Yes, he gave me $10."

"How did it come about?"

"I wrote to him asking for $10, and he sent it to me."

"What time was it?"

"I don't remember the date."

"How was it with regard to the first trial?"

"It was after that, while I was living at the Colonial flats."

"How was it sent to you?"

"The messenger boy brought back an unaddressed envelope, and inside I found a $10 greenback."

"Was that the only note that passed between you and Mr. Griffith?"

"No, sir."

"When did you send the next?"

"I wrote, asking for $160, but didn't get it."

"How did it come that you sent to him? Was there any understanding between you?"

"Well, I thought I could get it—that's all I can say."

"You thought, didn't you, that you could pull his leg, isn't that it?"

A howl went up, and the court interposed, while witness said:

"He seemed to be very anxious to convict Mr. Bird, and I thought—well, I thought I could get it."

"Have you talked with any of the prosecution since the last trial?"

"With Mr. McComas."

"Don't you know this gentleman?" inquired counsel, indicating Mr. Oliver.

"Yes, sir, Mr. Oliver used to be my attorney. I sent him once to Mr. Griffith, to tell him that I wished to see him. When he returned he said that he could not talk to Mr. Griffith; that the latter talked ramblingly about Bird and himself, and he could do nothing with him."

"What else did you talk about with Mr. McComas or Mr. Oliver?"

"Mr. Oliver was my attorney, and I don't see why I should tell anything."

"Was there any agreement between yourself and Mr. Oliver that he should get in this case and divide the money he made with you?"

The question was barred out, the trying of attorneys being a side issue and too big a contract for the court to undertake.

Mr. Wheedon, proprietor of the Canary cottage, testified to Bird's having stated on the day he and Carmen Montez were at his place that he was going to shoot himself. Witness remonstrated and said he didn't want any shooting, and thereupon Bird put up the revolver that he had drawn. Witness stated that he didn't think Bird was intoxicated, but he didn't think, judging from his hesitating manner, that the defendant was at that time in his normal condition.

Mr. Griffith, recalled by the prosecution, was examined on one or two points, and then Mr. Oliver, associate counsel for the prosecution, asked of the court, as a matter of personal privilege, that Mr. Griffith be allowed to explain before he left the stand how it came about that he employed him to represent him. In view of the insinuations against his character which had been made during the examination of Miss Montez, he asked that his request be granted as a matter of justice to him as a member of the bar and an officer of the court.

Mr. Pendleton protested against Mr. Griffith's being permitted to enter into any lengthy explanation. Counsel said that if anything had been said or done reflecting upon the integrity of Mr. Oliver that placed him in a false light, he himself would tell the jury just how the matter stood. "We have unfolded certain matters, and we told Mr. Oliver that we would investigate with him and see if we had been imposed upon, and if we found we had we ourselves would explain the matter to the jury."

This was satisfactory so far, but the court allowed Mr. Griffith to state that he had engaged Mr. Oliver shortly after the first trial, and that Mr. Oliver had not solicited him in any way. That settled that matter.

Then Mr. Pendleton tried to extort the admission from Mr. Griffith that he had claimed about town that the First National bank was backing Bird in his trial. The witness conceded that Conrad Scherer, one of Bird's sureties, had told him that he was secured on the bond; that the money was in the bank, and if Bird escaped he wouldn't lose a cent.

The further hearing will be continued today.

THE LIBEL LAW

Why the $10,000 Chronicle Suit Fell Through

The decision of the supreme court in the case of Dr. Joseph C. Hearne, plaintiff and respondent, vs. M. H. De Young and J. F. Blunt, defendants and appellants, in which the trial court is reversed, was received in this city yesterday. The appeal was from a judgment obtained in San Diego against the defendants jointly for $10,000 damages for publication of an alleged libel.

After examining certain of the evidence adduced at the trial the supreme court says that it is well settled that a defendant is not required in an action for slander or libel to justify every word of the alleged defamatory matter; it is sufficient if the substance, the gist, the sting of the libelous charge be justified. Immaterial variances and defects of proof upon immaterial matters go for nothing, and if the gist of the charge is established by the evidence the defendant has made his case.

"The defendant," says the court, "should be held to a strict accountability for all injury inflicted upon the wronged party; at the same time there is no sound reason to support the proposition that a defendant must prove literally the truth of his publication. It may be said that modern authority has adopted a more liberal rule as to this principle than was applied by courts in the ancient past."

During the trial of the case certain witnesses testified as to their understanding of the alleged libelous article, and they stated that it was to the effect that the plaintiff, Dr. Hearne, was charged with being particeps-criminis in the murder of Amos Stillwell, whose family physician he was. This character of evidence the supreme court holds was not admissible. Witnesses for the plaintiff to this proposition stood exactly as the jurors. They were not learned men, knew nothing of the parties or circumstances, save what they gathered from the publication. Their conclusions were based upon a reading of the article, and under such conditions the jurors were as competent to arrive at a correct conclusion as to the meaning of the publication.

"No ambiguities appear upon the face of the article," says the court. "Under such circumstances it is libelous per se, or it is not libelous at all. If by fair inferences and deductions from the article taken as a whole it can be said that murder is charged against plaintiff, then the article is libelous per se. When an article is libelous upon its face, and the party libeled is named upon the face of the article, there is no room for the introduction of evidence of witnesses as to their understanding of its meaning."

In concluding the opinion the supreme court says there were other assignments of errors, but inasmuch as a new trial had to be had, they are passed as not likely to again arise. The opinion was prepared by Justice Garroute, Justices Harrison and Van Fleet concurring.

TO RECOVER DAMAGES

A Big Suit Against the Los Angeles Railway Company

Mrs. Maggie Minear has instituted a suit against the Los Angeles Railway company to recover $10,335, being, it is claimed, damages she has suffered at the hands of the defendant company.

It is set forth in her complaint that while driving along North Main street in her husband's wagon, in the attempt to cross the track the wagon wheels became fastened in the switch and were held there. An oncoming electric car (No. 161), without giving any warning or signal, ran into the wagon, and Mrs. Minear was thrown from the wagon to the street. She suffered both exterior and internal injuries and was laid up for two months. The physician's charges amounted to $250, nurse $30, damage to wagon $25, and in all a claim for $10,335 is made.

THE ASSOCIATION PROGRAM

Educators Meet and Will Draw Up a Plan of Action

The county superintendents of schools met yesterday in the County Teachers' library for the purpose of preparing the program of the Southern California Teachers' association. This association will meet the last three days of March, immediately after the institute work.

The following gentlemen were present yesterday, the counties of San Diego and Santa Barbara not being represented: Superintendent Greeley, Orange county, president of the association; Miss Mogeau, superintendent of schools in San Bernardino county; Superintendent Hyatt of Riverside county, Superintendent Sackett of Ventura county, Superintendent Spurgeon Riley of Los Angeles county, and Superintendent Foshay of Los Angeles city.

THE DIVORCE MILL

A Case Heard With Closed Doors but a Decree Refused

The divorce suit of Mary A. Little against Charles M. Little was heard by Judge Shaw yesterday partially behind closed doors. The charge upon which divorce was claimed was extreme cruelty, among other allegations it being asserted that the husband had called his wife by a variety of vile names. While upon the witness stand he emphatically denied that and stated that his wife was a lady and that he never had any occasion to apply to her such epithets. On the contrary, he had and did love her, and would show fight to any man who spoke disparagingly of her. The decree asked for was refused.

Trouble All Round

Simon Robles has had trouble with his wife Caroline and he yesterday completed a term of ten days in the city jail. On Thursday the summons in a divorce suit instituted by his wife was served upon him, and when he was released from jail yesterday he was rearrested.

It appears that Caroline S. de Robles had sworn to a complaint before Justice Young in which she charged that early in the current month Simon had threatened to kill and murder her and her child. On this charge Simon was arraigned in the township court and his examination set for Wednesday, February 2d.

New Suits Filed

Sarah J. McDonald et al. vs. Joseph W. See, executor of the will of Leah See Morrow—A suit to reform certain deeds in consonance with the intention of deceased.

Far West Oil company vs. Witmer Bros. Co.—A suit to recover $2653.20, with interest and costs, being balance due on the lease of certain lands for oil mining purposes.

T. W. Fawkes, jr., vs. H. B. Fawkes—A suit for restitution of premises and $750, being treble the amount of damages claimed by reason of detention after expiration of the lease, and for damage done by tearing down fixtures of the premises on lot 1, block 87, Providencia and Lott tract, being a tract of about 14 acres.

J. B. Elmore et al. vs. F. W. Braun et al.—A suit to recover $224.50 on certain workman's liens against the building at Main and Republic streets, $200 attorney's fees, and order of sale against the property.

Maggie McNear et al. vs. Los Angeles Railway company—A suit to recover $10,335 as damages.

Estate of John M. Menefee, deceased—Petition of Ida Menefee Thompson for probate of will. The estate is valued at $44,000.

Estate of Kimble P. Cullen, deceased—Petition of Orlan O. and Martha J. Cullen for probate of will. The estate is valued at about $50,000.

C. H. Skinle vs. Second Baptist church—Suit to foreclose a mortgage for 350.

Cable Road Foreclosed

Yesterday in Department six Judge Allen ordered judgment for the plaintiff in the foreclosure suit of William Alvord against the Temple-street Railway company for $92,251.86.

The Temple-street road is so run down and the rolling stock and plant so worn out that the traffic has not paid the expenses of working. The company defaulted in the interest and the deferred but inevitable consequence resulted yesterday.

Court Notes

Carl Bull, a native of Germany, was yesterday admitted to citizenship by Judge Van Dyke.

David R. Woods yesterday filed his petition in insolvency. The liabilities are $1326.25; assets, $224 (exempt).

Judgment was given by Judge Torrance yesterday for plaintiff in the suit of the National Bank of California vs. Dan McFarland for $20,400.41.

Wong Tong and Ng Kim, the two Chinese who came in here as cold storage from Mexico the other day, were yesterday examined by United States Commissioner Van Dyke and ordered deported.

Joe Rogers was examined before the justice of the peace at Downey yesterday on the charge of having robbed one V. M. Hardy of $12.50. The defendant was held to answer in $1000 bail, which he gave.

JOTTINGS

Our Home Brew

Maier & Zobelein's lager, fresh from their brewery, on draught in all the principal saloons; delivered promptly in bottles or kegs. Office and brewery, 440 Aliso street; telephone 91.

Hawley, King & Co., cor. Fifth st. and Broadway, agents genuine Columbus Buggy company buggies and Victor bicycles.

Largest variety Concord business wagons and top delivery wagons. Hawley, King & Co.

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

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

DEATHS

KEFFEL—In this city, Jan. 27, 1898, Friederick Edward Keffel, a native of Braunschweig, Germany, aged 83 years 11 months 10 days.

Funeral Saturday, Jan. 29th, from his late residence, Diamond Hill nursery, Boyle avenue and Stevenson street, at 2 p. m. Friends and acquaintances invited. Interment at Evergreen cemetery.

LEWIS—At his home in this city, Wednesday, January 26, 1898, Samuel J. Lewis, a native of Pennsylvania, aged 55 years.

Funeral from late residence, 1425 West Third street, Sunday, Jan. 30, at 2 oclock p. m. Friends invited to attend. Interment, Evergreen cemetery.

FOSTER—In this city, January 28, 1898, Stephen C. Foster, a native of Maine, aged 83 years.

Funeral from his late residence at San Antonio, at 1 p. m., thence to St. Mary's Catholic church, Boyle Heights, at 2 p. m., where services will be held. Friends and acquaintances invited. Interment, New Calvary cemetery.

FUNERAL NOTICE

Stanton Post, No. 55, G. A. R.—Comrades are requested to meet at the corner of Broadway and First street, Sunday, January 30th, 1 p. m. sharp, for the purpose of attending the funeral of our late comrade, Col. Sam Lewis. All comrades invited.

GEO. COPELAND, Commander.