

THREE JURORS RELEASED

END OF CHANGES IS NOT YET

Rumors Current, in Connection With Thaw Case, That Further Chapters May Be Added to What Has Already Become Unprecedented Record in Criminal Procedure in New York City—Many Confidences of Attorney Looking to Further Release, But Thaw Counsel Blocks Efforts of Most Apparent Character Evident—New Jurors Seemed to Replace Those Released.

New York, Jan. 31.—Sensations were frequent in the Thaw murder trial today and before the two sessions of court had ended three sworn jurors had been released from further service in the case, making five in all summarily excused from the trial panel during the last three days. In the case of two of the released jurors no explanation was made in court. The third was allowed to go upon a physician's certificate that his life would be imperilled by the close confinement of jury service. Three satisfactory talesmen were found to replace the excused jurors, so that when the rapidly shifting situation underwent a survey at the close of the day there were again 11 men in the jury box, the same number that had been seated at the close of yesterday's session. Rumors were current to-night that the end of the jury changes is not yet reached, but that further chapters may be added to what has already become an unprecedented record in criminal procedure in New York City.

JEROME'S EFFORTS BLOCKED. There were several conferences of attorneys here to-night at which District Attorney Jerome is said to have vigorously urged the release of still another juror now in the panel. Thaw's counsel, however, are said to have blocked every effort of the prosecuting officer. The delay in the trial is said to be due to the disagreement, which first developed in Justice Fitzgerald's chambers half an hour before the afternoon session began, was resumed in open court at the judge's desk voice yesterday, and continued in bitter feeling among the attorneys. Hereafter the relations of the district attorney and his assistant with Thaw's counsel have been of the friendliest nature. This afternoon there was friction of the most apparent character.

ONE NEW WITNESS. A detective from the office of District Attorney Jerome brought to this city today a new witness in the Thaw case, who is said to have seen the shooting of White in the Madison square park garden. District Attorney Jerome announced that he had been unanimously agreed to receive Jurors David S. Walker and Louis Haas from further service. Mr. Walker, who is a partner in John Brisson Walker & Co., and Mr. Haas was number nine on the jury roll. Both are young men and unmarried. Neither could offer an explanation for the court's action in excusing their discharge.

DISTRICT ATTORNEY ANGRY. It was taken for granted that the release of these two jurors had ended the day's surprises, but during the luncheon recess rumors of a further reduction in the personnel of the jury were put in circulation, and these were given credence. It was learned that another earnest conversation of counsel with Justice Fitzgerald was in progress. The name of the juror under consideration was again discussed about the court building, and it was stated that there was a juror whom Thaw and his counsel had been particularly pleased to have on the trial panel and that the lawyers for the defense would fight to the last to prevent the discharge of him. Thaw's attorneys had been none too willing to allow Messrs. Walker and Haas to be replaced and it was only after a long argument by the district attorney that they consented to the discharge of the two. The afternoon conference evidently was one of some warmth, for when District Attorney Jerome appeared in the court room he was visibly flushed and walked with the determined stride of a thoroughly angry man. He dispatched his assistant, Mr. Garvan, on an important errand and sat down pulling viciously at his stubby mustache while the clerk began to call the names of the jurors. When no announcement was made of further discharges from the jury panel it was taken for granted that Mr. Hartridge and the others of Thaw's counsel had won the battle with the district attorney. The animosities of the first talesmen, called after the conference, were carried on under circumstances that indicated feeling existed on both sides, and once a lady, nearly 40 years of age, whom neither side appeared to want, came very near to taking the oath because Mr. Jerome refused to carry on the examination when counsel for the defense declined to give immediate answers to the questions of the juror's withdrawal. Thaw's attorneys also declined to examine the talesman, and all challenges for cause had been withdrawn when Mr. Jerome at the last moment interposed a peremptory challenge for one people.

FRUITLESS CONFERENCE. Mr. Garvan returned to court after an absence of 40 minutes and Mr. Jerome called another conference, which was held this time at the judge's desk. There was consultation and an indication of lively argument, but again to no avail, and the regular proceedings were resumed.

Toward the end of the afternoon session the master came from the district attorney's office, there was a whispered conversation with Justice Fitzgerald and the attorneys and it was announced that on account of ill health juror number 11, Henry L. Kleinberger, a silk merchant, would be relieved from further service. This action was a complete surprise, and evidently had no connection with the earlier conference. Mr. Kleinberger's physician had informed the district attorney's office of the danger of his patient's health and it was agreed that he should be excused.

Two of the three new jurors added to the panel were secured at the morning session. They are Oscar A. Fink, a salesman, 46 years of age, who replaced Mr. Walker as No. 4, and Wilbur S. Steele, a manufacturer, 49 years of age, who replaced Mr. Haas as No. 9. The juror replaced Mr. Kleinberger as No. 11, is Jos. B. Bolton, 57 years of age, a clerk. All three are married men, and the juror who replaced Mr. Fink is John J. Dennis, No. 16, 35.

RAYNOR'S CAUSTIC REVIEW

THE PRESIDENT'S USURPATION

HE, EXCESSIVE FRACTIONS NOT CONFERRED ON HIM BY CONSTITUTION—Senator Alludes to Recent Speech of Root Describing Enlargement of Federal Power at Expense of States—President Evidently Made Own Santo Domingo Treaty and It Has Been Practically Carried Into Effect Without Consulting Senate—Intrusion on Right of Courts Cannot be Tolerated—Lodge Makes Brief Reply.

Washington, Jan. 31.—Senator Rayner's address on the expansion of executive prerogatives, Senator Lodge's brief reply, and an extended discussion of the administration of the public land laws by Senator Heyburn constituted today's proceedings in the Senate.

Dismissing any intention of "assailing" President Roosevelt, and professing for him profound personal esteem, Senator Rayner addressed the Senate at considerable length in critical review of what he termed the President's usurpation of governmental functions not conferred on him by the constitution.

He first alluded to the recent speech of Secretary Root, in which was described the gradual enlargement of Federal power at the expense of the States. "I regard this doctrine," said Mr. Rayner, "thus announced, adhered to and emphasized, as the most dangerous and insidious attack on the institutions of the country."

He stated that because the doctrines were being constantly illustrated in the administration of the government "they must be taken, as they were intended to be taken, as manifesting the purpose of the present administration to carry this new doctrine of constitutional construction into execution whenever the opportunity or emergency arises for its exercise."

"The first instance of 'conflict between the executive and legislative functions,'" Mr. Rayner said, "was the Santo Domingo affair, in which he said the President has evidently made his own treaty without consulting whether the treaty was right, he said, 'the charge that I make is that he has accomplished this in violation of the constitution. The treaty has been practically carried into effect without consulting the Senate.'"

Mr. Rayner turned his attention to the judiciary, announcing his belief that this branch of the government ought to be entirely free from executive interference. "It is therefore my judgment," he added, "that the criticism by the President of Judge Hampton with reference to his decision in the case known as the 'meat packers' case, in the Illinois court, was uncalled for and an invasion of his judicial prerogatives."

"We cannot tolerate such intrusion on the rights of the courts," continued Mr. Rayner. "The courts are not responsible to any President of the United States for their judgments. A judge would have been perfectly justified if he had declined to submit in silence to a rebuke of the Executive. He could well with dignity and calm defiance have proclaimed from the bench 'I am a sovereign here; you have no greater right of interference with me than I have a right to denounce an act of yours as usurpation.'"

INLAND WATERWAY BILL

SIMMONS PUSHES IT IN SENATE

MEASURE INTRODUCED INTO THE UPPER HOUSE BY THE NORTH CAROLINA SENATOR—Carries an Appropriation of \$700,000 and Provides for Connecting Albemarle, Pamlico and Other Sounds With Beaufort Inlet—The Project in Line With Mr. Small's Efforts Which Received No Recognition From the House, But Which Mr. Simmons Will Endeavor to Have Passed by the Senate—Mr. Small's Argument to the Baltimore Merchants and Manufacturers.

Senator Simmons has introduced a bill appropriating \$700,000 for connecting the Albemarle, Pamlico and other sounds and rivers with Beaufort Inlet. The engineers who made the surveys under the provisions which Senator Simmons had incorporated under the last river and harbor bill, estimate that this can be done by the expenditure of the amount mentioned. Of course this is a part of the much-discussed inland waterway, advocated by Mr. Small, and which received no recognition from the House committee.

Senator Simmons is entertaining a lively hope that something will be done for the project when the river and harbor bill reaches the Senate.

Mr. Small recently discussed this subject of waterways before the board of trade of Baltimore, a body that has always manifested great interest in any project long considered on the coast. Mr. Small first called attention to the congestion of business incident to the lack of railroad facilities, and said:

"What, then, is the obvious and wise way to avoid ourselves of the streams and waterways are now navigable, and to improve those which are not. It means opening up our interior waterways. It means that we should embark in a wisely conceived scheme of internal improvements, such as our fathers contemplated before the era of railroad construction began, and thus in a most natural and efficient manner relieve this congestion of traffic and afford ample convenience for its movement."

WATER TRANSPORTATION IS CHEAPER. "It is a truism to state that transport by water is the cheapest known mode of transportation. The present bill prepared by the editor of Poor's Railroad Manual shows that the average receipts per ton per mile on the railroads of the country for 1904 was eight mills. For the same year the cost of movement of a ton of freight through the Sault Ste. Marie canal was eight-tenths of a mill, or somewhat only of the average rate by rail."

It is stated at the War Department that no reports have been received from any source indicating that the Japanese in Hawaii have organized secret military organizations and are drilling with the view to acquiring control of the island.

Regarding the appeal of the War Department to Congress for an appropriation to improve the coast of Hawaii, it is stated that the appeal has any connection whatever with the relations between Japan and the United States, but was simply dictated by a desire "to put the House in a position to act on the plans formed at least a year ago by the military and naval officers charged with the duty of defending the country."

Local Weather Bureau Issues Statement Aggravating Approaching Flood Situation—This, Even, Will Be Below Record.

THE CALIFORNIA CONFERENCE

Delegation Hoped That This and Other Meetings Will Be Solution of Japanese Difficulty Perfectly Satisfactory to People of California.

Washington, Jan. 31.—Representative Hayes today made the following additional statement concerning the conference held at the White House yesterday between the President and members of his Cabinet with the California delegation:

"The California delegation is pleased with the situation with reference to Japan as developed at the conference. We feel very hopeful that the result of this conference and of others will be a solution of the Japanese difficulty that will be perfectly satisfactory to the people of California."

Speaking for himself, Mr. Hayes said: "I have no fear of any diplomatic crisis with Japan nor of any serious trouble of any kind with that nation."

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New Orleans, Jan. 31.—The approaching flood situation here was aggravated today by the announcement of the local weather bureau that a stage of 20 feet will be reached at New Orleans, owing to rains of the past two days over the Mississippi valley. The gauge today read 18.2, with the water which has reached the top of a low section of the levee in the down town district at Canal street beginning to wash the sand bags, which have been piled up here. Even if 20 feet is reached here the water will be a foot under previous records.

To Cruise in Gulf and the West Indies. Washington, Jan. 31.—The naval yacht Mayflower left the Washington Navy Yard today, bound for New Orleans, where she will take on board Assistant Secretary Newberry and party for a cruise in the Gulf of Mexico and the West Indies, during which the Assistant Secretary will make an official inspection of the naval stations at Pensacola, Key West and San Juan, P. R. The party will start from New Orleans the latter part of next week.

President to Speak at McKinley Memorial Dedication. Washington, Jan. 31.—President Roosevelt will preside at the dedication of the McKinley memorial monument at Canton, O., the last week in September. The exact date has not been fixed. The President made this promise today to three members of the board of trustees of the monument association who called upon him and asked him to deliver the oration. They were Vice President Fairbanks, Associate Justice Day, of the Supreme Court, and Postmaster General Cortis.

HOMICIDE IN RAILROAD CAMP

James Burleson, Wealthy Saw Mill Operator, Shoots Man Named Thomas in Lattin's Shanty, Camp No. 6, South & Western—Both Wound Men.

Special to The Observer. Asheville, Jan. 31.—Information was brought here today by former Sheriff Reed of the killing near Camp No. 6, on the South & Western, late yesterday afternoon of a man named Thomas, a native of Yancey county. Thomas was killed by James Burleson, also a native of Yancey county, but now a wealthy lumberman and saw mill operator in McDowell county. According to the information that reached here, the killing of Thomas was premeditated. It is said that Thomas was in the employ of Burleson, and that some jealousy existed between the two men. Yesterday afternoon, between 4 and 5 o'clock, Burleson, it is alleged, entered the shanty occupied by Thomas and, without further ado, drew his pistol and shot Thomas dead.

Jesse Burleson owns and operates a large saw mill in McDowell county, between Marion and Spruce Pine. He has been engaged in supplying cross-ties used in the construction of the South & Western Railroad in that section. He is said to be wealthy, and owns large tracts of timber lands in both McDowell and Mitchell counties.

KILLING IN MCDOWELL. Jesse Burleson Makes Apparently Unprovoked Assault on Matt Thomas, Shooting Him to Death—Possibly Special to The Observer. Marion, Jan. 31.—News has just reached Marion of what appears to be the most unprovoked killing in the history of McDowell county. Jesse Burleson, who runs a large saw mill in North Cole town, some 20 miles from Marion, was drunk yesterday afternoon, and after the hands had all quit work he armed himself with a long pistol and walked into a shanty where one of his men, Matt Thomas, of Mitchell county, was and opened fire on him, killing him instantly.

Details of the tragedy are meagre. It seems that there was but one eyewitness that being a woman who was cooking at the camp. The assault was unprovoked and Burleson's friends think him temporarily insane.

Sheriff Mashburn has sent a posse into the mountain to search for the slayer, but at a late hour to-night nothing has been heard as to their success. Burleson and Thomas are both natives of Mitchell county, and came of good families.

GASTON ENTERPRISES. Gaston Metal & Roofing Company and Banner Harness Company Effect Organization. Special to The Observer. Gastonia, Jan. 31.—The stockholders of the Gaston Metal & Roofing Company met in the office of J. A. Spencer, contractor, Wednesday night and perfected the organization by electing G. A. Gray president, J. L. Robinson, vice president and S. S. Morris secretary and treasurer.

These, together with F. L. Smyre and J. A. Spencer, compose the board of directors. The capital stock of the company at present is \$5,300, but will probably be increased. The charter authorizes a capital stock of \$100,000. The new corporation will begin business some time next month and will occupy the building now occupied by J. A. Spencer.

The Banner Harness Company, Inc., was organized yesterday under the charter granted by the secretary of State Mr. L. C. Arrowood is president, Mr. C. G. Holler, general manager and Mr. J. D. Monogue, secretary and treasurer. The corporation begins business with a paid-in capital stock of \$4,000, while the charter gives permission of increasing to \$25,000. In addition to the manufacturing of all kinds of harness, the company will deal in wagons and buggies.

"CANNOT RESIST THE IMPULSE" Toledo, O., Man, Who Pleads Guilty to Bigamy, Says He Feels Affected by Which Causes Brain Pressure—He is Sentenced to Six Years in Penitentiary. Toledo, O., Jan. 31.—"I have a spinal affection, which causes a brain pressure, which impels me to marry women. I cannot resist the impulse," so Albert Holden, alleged minister, who pleaded guilty to the charge of bigamy, told Judge Barber today.

BIG GAS CO. SUIT ENDS

THE RECEIVER ACCEPTS \$1,500,000

Action Brought by G. W. Pepper, Receiver for Bay State Gas Co., of Delaware, Against H. H. Rogers, of New York, to Recover Profits of Between \$3,000,000 and \$4,000,000 on Account of Sale of Boston Companies—Compromise Includes Abandonment of Claims Against Rogers and in Consideration of 30,000 Shares of Stock in Buffalo Gas Company Held by Bay State Gas Company.

Boston, Mass., Jan. 31.—A compromise settlement of the suit of George Wharton Pepper, the receiver of the Bay State Gas Company, of Delaware, against Henry H. Rogers, of New York, to recover profits of between \$3,000,000 and \$4,000,000 on account of the sale of the several Boston gas companies, was announced in the United States Circuit Court this afternoon. An agreement reached by both parties was submitted to Justice Putnam, who, although he had stated that so far as he was concerned "there would be no trouble," declined to give his formal assent to the settlement until an amended and satisfactory petition was presented at a hearing set for to-morrow morning.

Under the terms of the compromise agreement, which was submitted to the court to-day, Receiver Pepper accepts an offer of \$1,500,000 from Rogers, in consideration of the United States Gas Improvement Company, Philadelphia, including abandonment of the claims of the Bay State Gas Company against Mr. Rogers and in consideration also of stock in the Buffalo Gas Company now held by the Bay State Gas Company. The total amount amounts to about 30,000 shares. Mr. Morgan acts for Mr. Rogers in the settlement.

The aim of Receiver Pepper was to secure profits alleged to have accrued to Rogers through the sale of stock in the various Boston gas companies to interests representing the New England Gas and Coke Company, while Mr. Rogers was serving as trustee of the Bay State Gas Company. It was claimed that by virtue of this trusteeship he was enabled to make vast profits which Receiver Pepper contended rightfully belongs to the Bay State Company.

FORM BUILDING AND LOAN. Mr. Wittkowsky Tells the King's Mountain Folks About It and They Organize an Association on the Spot—Board of Trade Created. Special to The Observer. Gastonia, Jan. 31.—For some time past the citizens of King's Mountain have been agitating the question of a building and loan association. Monday night Mr. Sam Wittkowsky, of Charlotte, came to Gastonia as a large and enthusiastic audience, which resulted in the organization of an association for King's Mountain. After an address on the subject by Mr. Wittkowsky, Rev. J. M. Forbis also addressed the gathering. A canvass of the building and loan association fact that as many as 500 shares would be taken. It was agreed that a board of 12 directors would be elected by ballot and these directors should meet at an early date and elect officers of the association.

After the ballot was taken it was found that the following gentlemen had been elected: C. A. Dilling, F. L. Carpenter, H. B. Hunter, N. F. Watterton, I. B. Goforth, J. M. Patterson, W. C. Bradford, W. A. Ridenhour, J. C. Patrick and F. L. Floyd. According to agreement the directors met Tuesday night and elected the officers as follows: President, J. M. Patterson; vice president, W. A. Ridenhour; second vice president, C. A. Dilling; secretary and treasurer, F. L. Carpenter. The committees were then appointed by the following officers: board of directors, W. A. Ridenhour; first vice president, C. G. Fulton; second vice president, W. P. Fuller; secretary and treasurer, F. M. Williams; board of governors, P. E. Baker, C. D. Dilling, H. N. Moore, R. L. Manney, G. W. Keenan, and J. L. Plonk. The board of trade has 50 members and the meetings will be held the first Thursday night in each month in the K. of P. Hall.

COMMISSION TO LITTLE ROCK. Third Case Heard at Macon, Ga., Closed All Involved Discrimination in Freight Rates by Railroads. Macon, Ga., Jan. 31.—Since Monday last the Interstate commission have heard three cases in Macon, the last one being closed at noon today. This case was brought by electric chauts of Moultrie, Ga., against railroads, and charged that high rates were being charged on delivery of goods from Western markets. The sessions of the commission in Macon were presided over by J. Washburn against the railroad. The case was brought around the movement of cotton from a compress at Union Springs, Ala. The commissioners left for Little Rock to-night.

Quips and Cranks Dedicated to Mr. G. W. Watta. Davidson, Jan. 31.—The forthcoming volume of Quips and Cranks, the college annual, is dedicated to Mr. George W. Watta, of Durham, who has shown himself such a warm and generous friend of the institution. The engraving work is to be done by the Electric City Engraving Co., of Durham, and the book is to be issued from the Queen City Publishing Company. The material is being rapidly put into final form and the sketches, drawings and photographs are being shipped to their several destinations. It is safe to assume that the editor-in-chief, T. C. W. Watta, will not let the volume slip from his hands until it is in form to be a credit to himself and his many co-adultors.

Rev. William Black left this morning for Covington, Tenn., where he is to assist the pastor in a protracted meeting of a week or more.

BLACKBURN TO PRACTICE LAW IN GREENSBORO

Special to The Observer.

Greensboro, Jan. 31.—It is said here that when Congressman Blackburn's term expires he will return to Greensboro to practice law. He is at present in the State since his usual visit here in December, when he came in connection with the Glenn Haskett-Blackburn libel affair.

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