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HARRY THAW NOT TO GET OUT ON WRIT OF HABEAS CORPUS

Young Man's Application Denied By Justice Morschauer, Who Holds Prisoner Is Insane and May Never Be In Good Mental Shape Again.

JUSTICE DOWLING'S COMMITMENT IS UPHELD New York Judge, Before Whom Second Murder Case Was Tried, Within the Law When He Sent Harry to Matteawan Asylum.

Poughkeepsie, N. Y., May 25—Justice Morschauer handed down a formal opinion at 7 o'clock this morning dismissing the writ of habeas corpus filed by counsel for Harry K. Thaw to have him liberated from Matteawan state insane asylum.

Text of Decision by Which Application is Denied.

Poughkeepsie, N. Y., May 25—Justice Joseph Morschauer, at 7 o'clock dismissed the writ of habeas corpus brought by Harry Thaw three weeks ago in an effort to gain the relator's freedom from Matteawan state hospital.

Thaw's detention is attacked upon the grounds, first, that he is sane now; second, that the act under the provisions of which he was committed and detained is unconstitutional, and that the court was without jurisdiction to issue the order of commitment and such order was null and void.

The return to the writ alleges that said Thaw is now insane and that the statute providing for the confinement of said Thaw is constitutional and valid, and that the court had jurisdiction to make the order of commitment. The return is traversed by the relator.

"I am satisfied from the evidence adduced before me that the mental condition of Harry K. Thaw has not changed, and I find that he is now insane, and that it is so manifest as to make it unsafe for him to be at large.

"To review the voluminous evidence adduced on the hearing would unnecessarily lengthen this opinion. Thaw was committed pursuant to section 454 of the code of criminal procedure, which reads as follows: '454—When defendant is acquitted on the ground of insanity the fact is to be stated with the verdict. Commitment of defendant to state lunatic asylum.'

"When the defense is insanity of the defendant the jury must be instructed, if they acquit him on that ground, to state that fact with their verdict. The court must, thereupon, if the defendant be in custody, and they deem his discharge dangerous to the public peace or safety, order him to be committed to the state lunatic asylum until he becomes sane.

"The question of the constitutionality of this law is assailed by the relator in that he claims there was no notice given to Thaw of a hearing on the question of insanity; that no hearing was accorded to him; that he has been deprived of his liberty without due process of law, and that the substitute under which he was committed does not provide a method by which his mental condition, as then existing, could be legally shown.

"The people contend that Thaw was not deprived of liberty without due process of law because he knew that, if he chose to prove upon the trial of the indictment that he was insane when he killed Stanford White, and that if that defense was successful and the jury acquitted him of the charge urged the jury before whom he was tried upon a charge of homicide to acquit him because of his insanity.

"I have made careful examination of the authorities and I do not find that this statute has even been passed upon by any of the courts in this state. It has been in existence and operation for many years without question, and it is the duty of the court to presume in favor of the validity of the statute until its violation of the examination is established beyond all reasonable doubt, and upon such a determination the result which may follow from one construction or another is always a potent factor and is sometimes in and of itself conclusive.

"I believe no injustice has been done to Thaw, or will be done to him by depriving him of his liberty until such time as he can be discharged by the method prescribed by law.

"Bearing in mind that the usual punishment for the act which led up to the detention of said Thaw is death or a long term of imprisonment, and that said Thaw escaped the consequences of such act solely by reason of his existing mental condition, I do not deem it proper to allow Thaw his freedom, suffering as he is from some form of insanity, with the possible recurrence of an attack similar to that which the jury believed he was suffering from when he killed Stanford White.

"In view of the existing mental condition of said Thaw, the safety of the public is better insured by his remaining in custody and under observation until he has recovered, or until such time as it shall be reasonably certain there is no danger of a recurring attack of the delusion or whatever it may be."

Thaw Talks Incoherently and Calls Jerome "Hot Air Man." Poughkeepsie, N. Y., May 25—Thaw was told of Justice Morschauer's decision.

POLL TAX \$2 ON HEAD, SAYS COURT TODAY

The poll tax in North Carolina, according to a decision handed down by the supreme court this afternoon, shall not exceed two dollars on the head. The court reversed the decision of the lower court in the case of Railway vs. Commissioners of Mecklenburg county, and the decision of the supreme court is based on the fifth article of the constitution of North Carolina, which declares that the "state and county tax shall never exceed two dollars on the head."

Other opinions filed were: Britt vs. Railroad, from Robinson, affirmed; McLeod vs. Commissioners, from Moore, affirmed; Railroad vs. Commissioners, from Rutherford, reversed; Sykes vs. Insurance company, from Mecklenburg, modified and affirmed, with costs against defendant.

Austin vs. Insurance company, from Mecklenburg, affirmed; Burke vs. Commissioners of Gaston, reversed; Burke vs. Jenkins, from Gaston, reversed; Young vs. Lumber company, from Rutherford, reversed; Railroad vs. Railroad, from Yancey, affirmed; Morrison vs. Morris, from Rutherford, affirmed; Gordon Grate company vs. Morris, from Rutherford, affirmed; Long vs. Watlick, from Rutherford, action dismissed; State vs. Stevens, from Rutherford, affirmed; State vs. Ownbey, from Rutherford, new trial; Bradburn vs. Roberts, from Rutherford, affirmed; Asheville vs. Weaver, from Rutherford, affirmed; Rogers vs. Sinner, from Rutherford, affirmed; Stroud vs. Insurance company, from Rutherford, affirmed; Smith vs. Helms, from Jackson, affirmed; O'Neil vs. McAden, from Graham, affirmed; Gilbey vs. Railroad, from Swain, per curiam, affirmed; Sawyer vs. Lumber company, from Beaufort, per curiam, petition to be heard dismissed.

THREE COMMENCEMENTS ARE BEING HELD TODAY

BRUTAL MURDER IN THE HARBOR

Body of Woman Found Floating Through Hell Gate, Barrel Tied to Leg

HER SKULL FRACTURED

And Police Think She Must Have Been Killed On Canal Boat

(By Leased Wire to The Times.) New York, May 25—A brutal murder that promises to rival the great tragedies of New York came to light today when a Capt. Rockenover, of a Harbor River tugboat, discovered the body of a woman floating in Little Hell Gate, a barrel tied to one leg. The barrel had evidently contained stones for weighting the body, but had dropped through out and the body had come to the surface.

The face of the woman was beaten and mangled almost beyond recognition. The body is that of a woman about 37 years old, five feet, seven inches tall, weighing probably 145 pounds. She had light brown hair and blue eyes. Her body was clothed in a white, felt jacket, with a dark skirt and striped waistcoat. Her skull had been fractured.

After examination the police were of the opinion that the woman had been killed on some canal boat and the body fastened to a barrel filled with rocks, after which the load was dumped into the harbor. Detectives are working on the case.

BODY OF PETER DALY COMES EAST FOR BURIAL

(By Leased Wire to The Times.) New York, May 25—The body of Peter E. Daly, the comedian, who died in Chicago last Saturday after a sickness of two days, arrived in New York today. Two hundred persons, actors and actresses, together with a number of his friends, met the body at the Grand Central. Funeral services will be held Wednesday and interment will be at Woodlawn cemetery.

GEN. MILES IS DEAD

But It's Evan, Not Nelson, Miles This Time

(By Leased Wire to The Times.) San Francisco, Cal., May 25—Brigadier General Evan Miles (retired) is dead at his home here, aged 71. Gen. Miles served with distinction during the war of the rebellion and through a number of Indian campaigns in the west. He was also in Cuba.

Dr. Bell Says Wright Boys Have Solved The Problem

(By Leased Wire to The Times.) Washington, May 25—"The accidents to the Morrell and Knabenschue dirigible balloons and to my own flying-machine, while deplorable, especially the accident in California in which so many persons were injured, will do much toward the advancement of the science of aerial navigation," said Dr. Alexander Graham Bell. "Accidents have happened to aerial navigators in the past and will continue to happen to them in the future, but it is by these mistakes we are able to advance.

PRINCE AND ANNA NOT MARRIED IN HOBOKEN

(By Leased Wire to The Times.) New York, May 25—Prince Hebe de Sagan and Mme. Anna Gould were not married by Justice of the Peace William Budenbender, of Hoboken, as has been alleged, according to the positive statement of the justice today.

CITY LABORERS CAN'T DRINK WHILE ON DUTY

(By Leased Wire to The Times.) Milwaukee, Wis., May 25—City laborers in the future will not be permitted to frequent saloons during working hours, nor will they be permitted to take beer upon the work except during the noon hour.

Garter For Lisbon Monarch

(By Cable to The Times.) Lisbon, May 25—It is stated on good authority here that King Edward of England will confer the order of the garter on King Manuel. The information is said to come from the British foreign office, where every effort was made to keep it secret.

FEELING IN TWIN CITIES IS HARD

Prohibitionists Demanded Court Records and Then Didn't Use Them

GOV. GLENN SENT FOR

But Wouldn't Come to Speak and His Failure Causes Comment

(Special to The Times.) Winston-Salem, May 25.—The fact that the prohibitionists were forced to withhold the local control of whiskey from the people of Winston-Salem because the recorder's court could not be compared in their favor with dry towns, is interpreted as an admission of the weakness of their cause.

A request was sent to Gov. Glenn yesterday, and his failure to do so is being freely commented upon. As no prohibition speaker has discussed the control of the liquor traffic, circulars from the anti are being distributed on the streets containing this information.

Things are at fever heat, the latest circular issued by the high (Continued on Page Seven.)

SUNDAY GOLF PLAYER HIT BY THE FATAL FLUID

(By Leased Wire to The Times.) St. Louis, Mo., May 25.—Joseph J. Howard, the millionaire president of the W. P. Howard Construction Company, was struck by lightning and killed yesterday afternoon in a storm on the Glen Echo golf links near Normandy. Edward Booksteler, 12 years old, a caddy, was stunned by the shock.

Howard was standing under an oak tree a hundred feet from the clubhouse, seeking shelter from the heavy rain, when the fatal flash hit.

SCORE OF FIREMEN HAVE CLOSE CALL IN BOSTON

(By Leased Wire to The Times.) Boston, Mass., May 25.—A score or more firemen narrowly escaped death early today when the roof of the warehouse of E. M. Graham, of Ewer street, South Boston, collapsed, hurling several into the street and burning others in its falling mass.

London Bar Silver

(By Cable to The Times.) London, May 25—Bar silver, 24 9-16.

Texas Rivers Rising Hourly; Many Persons Are Drowned

(By Leased Wire to The Times.) Fort Worth, Tex., May 25.—Seven persons are known to be dead, 5,000 are homeless, and a dozen or more are apt to have been killed in Fort Worth and North Fort Worth as the result of the greatest rise in the history of the Trinity river, which, beginning at 7:30 Saturday evening, reached a climax at 5 o'clock yesterday afternoon. Five of the deaths occurred yesterday and two last night.

The paralysis of the railroad service is almost total. The interurban has discontinued service between Fort Worth and Dallas. The Rock Island made no attempt to operate trains, neither did the Fort Worth & Denver. The Frisco detained; in fact, not a road escaped more or less damage.

Many persons are missing, and the authorities believe this is only the beginning of a long list of deaths in the flood. Not until the water has receded will it be possible to tell the exact loss in life and property.

North Texas Hard Hit

(By Leased Wire to The Times.) Dallas, Tex., May 25.—The most violent storm of the year broke over North Texas late Saturday night. It was exceptionally severe at Fort Worth, Dallas, Wichita Falls, Denton and Abilene.

A Welch, a saloon-keeper, at Fort Worth, whose place was inundated, was drowned in trying to escape. A 15-year-old boy working for Welch was drowned with him. Four men were seen to be swept into Marine creek, in the suburbs of Fort Worth, and drowned. The property loss at Fort Worth and vicinity exceeds \$100,000.

Wade Owens and Ernest Staettler

Canadian River Makes Trouble

(By Leased Wire to The Times.) Denison, Tex., May 25.—The Canadian river is rising rapidly and serious trouble is anticipated. A message from Red River reported the unprecedented rise of 21 feet and eight inches. All the lands are under water and enormous damage has been done to crops.

The Washita river is out of its banks and miles wide at many points. Austin is in the path of the worst of the storm, and for hours the streets were impassable, electric light and telephone connections were disabled, and many houses were unroofed.

POOR NEW YORKERS GET PROPERTY OVER IN ERIN

(By Leased Wire to The Times.) New York, May 25.—By the discovery of his father's marriage license, Robert James Kelly, a peddler, thinks he has established a claim to a \$4,000,000 estate in Drogheda, Ireland. With him there are four brothers—William, a truckman about the Pennsylvania Thirty-seventh street depot; Charles who is manager of "The Hermitage" on Seventh avenue, and Alexander.

The property consists of linen mill, a big linen factory; Drogheda, a part of Ulster Lane, containing about 80 small houses; and the police barracks, or station house of the city. Besides these there is the property of a relative who died intestate.

New York Bar Silver

(By Leased Wire to The Times.) New York, May 25—Commercial bar silver, 53 1/2c., advance, 1/4c. Mexican dollars, 75c., unchanged.

Federal Jobs in South

(By Leased Wire to The Times.) Washington, May 25.—The following nominations were announced today:

To be surveyor of customs for the port of Memphis, Joseph T. Spence, of Tennessee; to be receiver of public moneys at Montgomery, Ala., John A. Steele; to be register of the land office at Montgomery, Ala., Nathan H. Alexander.