THAW IN RESTRAINT

His Plea for Freedom From Matteawan Denied

STILL AN INSANE PATIENT

Interesting Analysis of the Law Under Which His Legal Status is Found and Declared—He is a Menace to the Public.

POUGHKEEPSIE, N. Y., May 25.—Harry K. Thaw the slayer of Stanford White, will not be released from the lunatic asylum. This is the decision rendered by Justice Marschauser of the Supreme Court in an opinion filed early this morning in the matter of Thaw's application for release on a writ of harbeas corpus.

Both points brought up by Thaw's attorneys are decided against him. The justice declares that Thaw is now insane and should not be allowed at large and he further declares that the commitment to the lunatic asylum by Justice Dowling after the last trial of the case was entirely legal.

Thaw's lawyers will to-day apply to the court for permission to place Thaw in some other institution than the Matteawan asylum and by stipulation with the district attorney, the prisioner will be kept in the jail here until Justice Morschauser renders a decision. The justice is holding court at White Plains this week and will not be able to hear the application before next week. Justice Morschauser's decision is as follows:

Upon application duly made, a writ of habeas corpus was allowed by which Harry K. Thaw was directed to be produced in court. In the petition, it is alleged that said Thaw is illegally imprisoned and restrained of his liberty by Amos T. Baker, acting superintendent of Matteawan state hospital, a state institution for the insane.

Thaw's detention is attacked upon the grounds:

First—That he is now sane.

Second—That the act and the provisions of which he was committed and detained is unconstitutional and 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 the 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.

The events leading up to the commitment of Thaw, are, in brief as follows:

On June 25, 1906, Thaw shot and killed Standford White. He was indicted for this act in the county of New York and the indictment charged with murder in the first degree. On January 23, 1907, he was brought to trial on the indictment and during the progress of this trial, on application of the District Attorney under Section 658 of the Code of Criminal Procedure, a commission was duly appointed to ascertain whether at the time of the trial said Thaw was in a state of idiocy, lunacy or insanity so as to be incapable of rightly understanding the nature of the charge against him and of conducting his defense in a rational manner. The commission afterward reurned to the court that it was their opinion that at the time of their examination said Thaw was sane and was capable of understanding his own condition and the nature of the charge against him and conducting his defense in a rational manner. This conclusion was reached in accordance with the purpose of the statute. The trial proceeded and resulted in a disagreement of the jury. On the sixth of January 1908, said Thaw was again tried on said indictment and acquitted on the ground of insanity. Thereupon the learned justice presiding at the trial, upon the evidence made an order reciting the verdinct and that the court deemed the discharge of said Thaw at that time to be dangerous to public safety, and directing that said Thaw be detained in safe custdy and be sent to the Matteawan state hospital, there to be kept until discharged by due process of law. The proof and evidence on the part of the respective parties have been ably presented and the matter has been submitted.

Thaw, at the time of his trial for homicide, as a defense, pleaded insanity and presented proof to show his insanity at the time of the killing of White, and by the proof offered on his behalf, the jury was convinced that he was insane and acquitted him upon that ground.

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 Proceedure, which reads as follows:

Section 545—When defendant is acquitted on the ground of insanity the fact to be stated with 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 the fact with their virdict. 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 statute under which he was committed does not provide a method by which his mental condition as then existing could be legally ascertained or any method by which his sanity could be shown. The people contend that Thaw was not deprived of his 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 Standford White and if that defenese was successful and the jury acquitted him of the charge against him on that ground, it became the duty of the court, if it deemed his discharge dangerous to the public peace or safety, to order him to be committed to the state lunatic asylum until such time as he should be legally adjudged sane. He had the right to appear in person and to be represented by counsel and he had the right to introduce evidence of his present sanity.

If upon all the evidence and the verdict of the jury the court should decide his discharge to be dangerous to the public peace and safety and commit the defendant to an insane hospital until sane under the provisions of Sections 454 of the code of Criminal Proceedure and Thaw having had this opportunity of a full hearing, this right to be present in person and by counsel, this right of offering proof in his own behalf as to his present sanity and to be fully heard in his own behalf, there was no violation of article 1 Section 6, of the Constitution of the State of New York, or of Article XIV of the U. S. Constitution. Thaw had the opportunity on the trial to introduce evidence of his mental condition at that time, which he did not do. He should have known that the adjudication of the court would follow a verdict of not guilty by reason of insanity; he was represented by able counsel who urged the jury before which 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 ever been passed upon by any of the courts in this state. It has been in existence and operation for many years and it is the duty of the court to, presume in favor of the validity of the statute until its violation of the constitution 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 aid of itself conclusive.

In construing this statute, it should be borne in mind that the safety and welfare of the community is of more importance than the freedom of the individual.

It is well settled that where there is a right of an appeal no court should declare in the first instance a statute unconstitutional unless its unconstitutionality is plain, and especially when the statute has been long in force and its constitutionality has never been questioned. This may well be the rule when the effect of a declaration of unconstitutionality would be to free from needful restraint a number of persons of unsound mind of whom it has been adjudged by competent courts that their going at large would be dangerous to the public peace or safety.

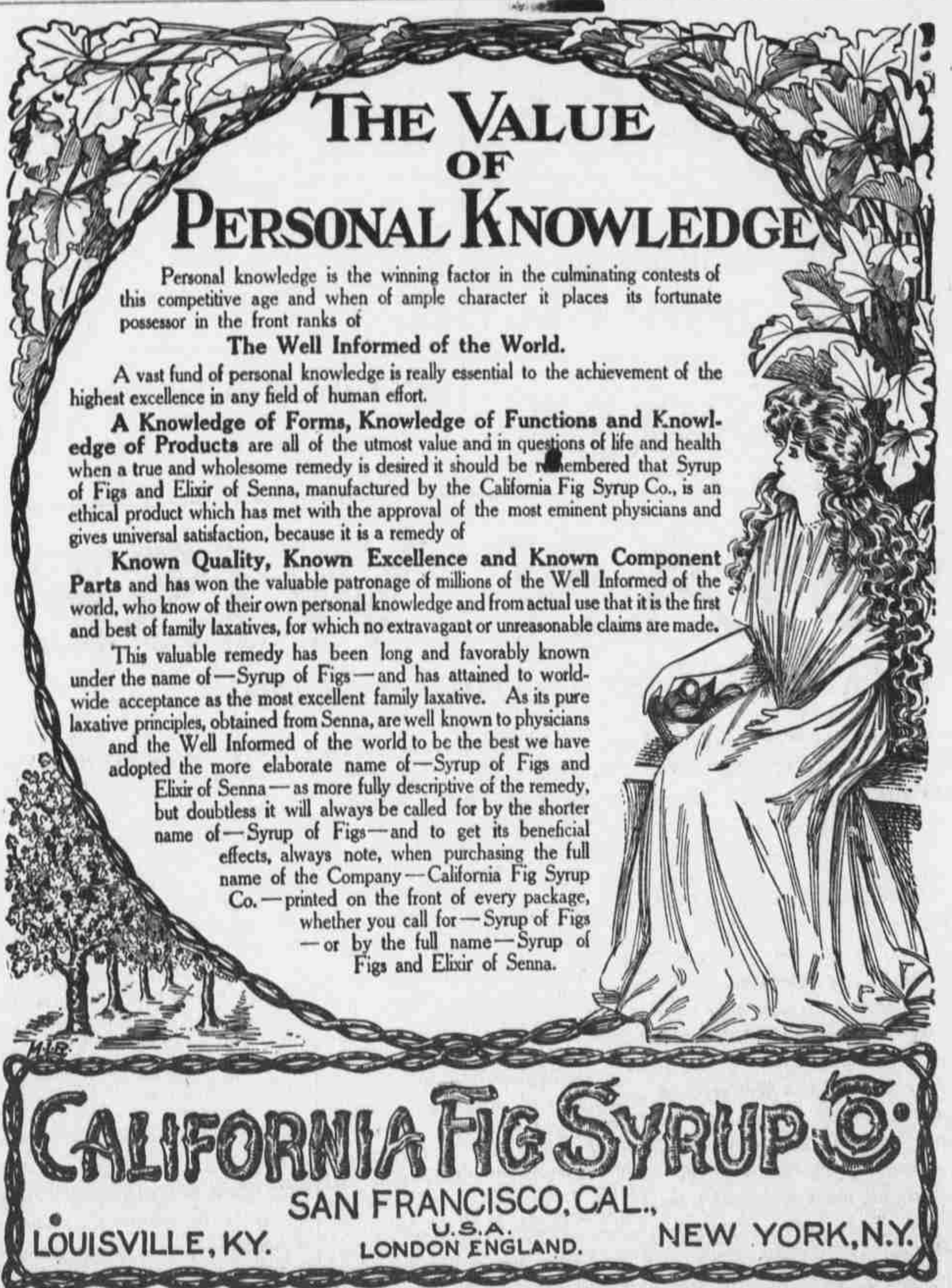
The relator claims that the state does not provide a method by which Thaw can be dischaarged.

Section 99 of the Insanity Law provides "Any inmate, not a convict, held upon an order of court or justice in a criminal proceeding may be discharged therefrom upon the superintendent's certificate of recovery, made to and approved by such court or judge."

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 Standford White.

In view of the existing mental condition of said Thaw, the safety of the public is better ensured by his remaining in custody and under observation until he has recovered or until such time as it shall be reasonably certain that there is no danger of a recurring attack of the delusion or whatever it may be. The writ is dismissed. The order remanding the said Harry K. Thaw can be settled on notice pursuant to stipulation.



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