

Jury that a shipper can be con-ed of accepting a concession from lawful published rate even though awini published rate even though not shown as bearing on the mat-of the intent, that the shipper at time of accepting such concession w what the lawful published rate ually was.

tably was. "Secondly, to the view adopted by the al court that the number of the of-nses is the number of carloads of operty transported, irrespective of hether each carload, the whole or the rt only of a single transaction re-lling in a shipment; and ng in a shipment; and

Third, whether in the imposition of fine named, the trial court abused he discretion vested in the court.

#### ACCEPTANCE OF CONCESSIONS.

We shall take up these subjects in e order stated, the first being whether e shipper can, without error, he conantiplet can, without error, he con-ted of accepting a concession from lawfully published rate, even ugh it is not shown as bearing on matter of intent, that the shipper, the time of meaning and the shipper. The matter of intent, that the shipper, the time of accepting such conces-ons, knew what the lawful published ate actually was-in view of the law hat is embodied in the charge and car-ind out in the subodied certain hat is embodied in the charge and car-led out in the ruing excluding certain profiered testimony including that of ane Edward Bogardus who being in absolute charge of the thaffe affairs of the plaintiff in error during the per-lod covered by the transactions, offered to testify that during that period he did not know anything about an 18-cent rate over the Alton railroad, that the rate over the Alton road was 6 cents and that such rates had been filed with the interstate commerce with the interstate commerce mmission.

### HAD NO RECOLLECTION.

HAD NO RECOLLECTION. "Hollands, who was called by the forestimation of telling between the second state of The application sheet containing this explication sheet containing this ex cent commadity rate had not been field with the interstate commerce commission. Had the court found as a fact that the sheet had been so filed, or submitting that question to the jury had the jury found that that sheet had been so filed, the six cent given to begardus admittedly would have been the lawful published rate.

### A FAMOUS RATE TARIFF.

"The court related that Bogardus The court related that Bornatous was offered as a witness to prove that a tariff describing a rate of 64 cents from Whiting to East St. Louis was lasued by the Chicago & Eastern Illiline, elct. 9, 1895, and filed with the in-

city markets or the small merchant shipping to the country, or the house-holder who ships his furniture were not meant by the interstate commerce law to be guilty of having accepted a concession merely because they took the word of the carrier or his agent as to what the rate was. In this respect the shipper and the carrier stand on different ground. The carrier is required by a separate provision of the law to estab-lish and publish rates and is forbidden

lish and publish rates and is forbidden to charge or collect from the shipper rate greater or less than such a rate greater or less than such es-tablished and published rate. But is the ordinary shipper under any reason-able view of the situation to which the law relates, thus bound-bound at his perfl, under the law intended to pro-mote commerce, to cipher out before he can safely put anything that he has in-to commerce all the confusion reasons

to commerce, all the confusing papers and figures that generally make up a tariff sheet? Plainly not, it seems to In support of this contention, the

# court cites "First Bishop New Criminal Law, section 286."

WORD OF A CARRIER. Though it is true that large ship-

pers like the plaintiff in error do not usually take the word of a carrier as to what the rate is but examine for

hemselves the tariff sheet and have all the knowledge that is necessary to an intelligent examination from which it might easily follow that professions of ignorance on the part of such ship-pers would stand on a different plane from the ordinary shipper, it does not on that account follow that the ultimate question of intent is not the same whether the shipper be a large one or a small one; for the law is the same, viz: That before conviction there must be proof of all the facts upon which the shippers' offense is predicated

predicated. WHAT CONSTITUTES OFFENSE.

"This view of what is essential to

"This view of what is essential to constitute the offense makes it plain that the trial court was in error, as a matter of law in the application to the case of the shipper as a matter of principle that the trial court applied in this case. And this error is made all the plainer, lifting it from what otherwise might be considered a mere technical error to the level of a real substantial error, when the exact na-ture of the so-called tariffs published and filed, relied upon by the govern-ment as the lawful rates, are scrutin-ized; and when the rate that the trial court deciphered out of these papers, is compared with admitted rates on other court deciphered out of these papers, is compared with admitted rates on other roads for the same product, and with the admitted rates on the same road for a like product. The tariff sheet relied upon as the lawful published rate filed with the interstate commerce commission is tariff sheet No. 24 of the Chicago & Sj. Louis Traffic associa-tion and the first thing to be noted is that this tariff sheet makes no refer-ence by name to petroleum or the prod-ucts of petroleum, Of the face of that tariff sheet no 18 cent rate for petroleum of the products of petroleum appears. The lescent rate was only ar-rived at by a proocess of circumiocus Appears. The 18-cent rate was only ar-rived at by a process of circumicou-tion; that is to say on the face of these tariff sheets there was found a printed line governed by Illinois class-ification, except as noted herein; there-by turning to the classification adopted by the railroad and warchouse com-mission of Illinois, Ript. 7, 1836, it was found that petroleum and its products were set down in the fifth class; and

(Continued on page two.)

Geourge, Reid and Hursfield, United Kingdom. There were no American runners in

ago.

There were no American runners in the fourth heat which was won by Hawkins, United Kingdom. In the first heat of the semi-finais 200 meters flat race, Kerr, Canada, beat Hamilton, America, by the barest margin, only a foot, the judges said. Time-22 2-5. Cartmell America won the second

Time-22 2-5. Cartmell America, won the second Huff, America, Cartmell America, won the second heat with Sherman and Huff, America, second and third. Time-22.3-5. The third heat went to Cloughen, Am-erican, in 22.3-5 seconds. Hawkins, United Kingdom, defeat-ed his team mate Roche in the fourth heat by a yard in 22.2-5 seconds. No Americans drawn in this heat.

400 METER HURDLE. The final in the 400 meter hurdle rac was won by J. C. Bacon, Irish-Ameri-can Athletic club. Hayry L. Hillman, New York Athletic club, was second, and Treemer, United Kingdom, was third. The time of the winner was 55 seconds.

The first heat in the semi-final of a 400 metre flat race was won by J. C. Carpenter, Cornell. WRESTLING,

In the first bout in the wrestling match for featherweights up to 133 pounds, Dole, American, defeated Cock-ings, United Kingdom, on points. In the second bout catch-as-catch-can wrestling, Dole threw McKC, United Kingdom

G. S. Dole, Yale university, won the final in the catch-as-catch-can wrest-ling match, defeating Slim, England.

## PRESIDENT'S YACHT

SINKS A LUMBER SCHOONER

Newport, R. I., July 22 .- The presi Newport, R. L., July 22.—The presi-dent's yacht Mayflower, with the presi-dent on board in a dense fog last night, ran into and sank the lumbar-laden schooner Menawa. All on board the schooner, consisting of the captain and five men, were taken on board the May-nower. The pesident's yacht had her bowsprit and one anchor carried away; but the far of the collision was so slight that none of the president's par-ty knew of the accident until they arose this morning.

ty knew of the accident until they arose this morning. The Menawa belonged to C. G. Pen-dieton of Islesboro, Me. The collision occurred at about 1:15 a. m., when the Mayflower was between New London and New Haven. As soon as the Mayflower arrived here the following dispatch was sent: "Newport, R. I. July 22, 1908. "To Hon. William Loeb, Jr., secretary to the president, Oyster Bay, N. Y.: "The president and party arrived Newport 10 o'clock. The Mayflower was in collision with schooner last night

in collision with schooner last night about 1:15 o'clock. No one was injured, Everybody aboard the schoener res-oued. The president was not informed and knew nothing about it until he go this morning. (igned) "J. L. McGREW," up this his (Signed)

The Mayflower's bowsprit had been arried away and one of the anchors vas missing. After President Roeseveli had earried

After President Rossovell had dressed, the crew of the Menawa was presented to the chief magistrate in the cabin of the yacht. The president expressed great concern regarding the accident, his regret of the loss of their vessel, and his gratitude at the rescue without loss of life. The crew of the Menawa will be sent to their homes in Mains at the expense of the government.

and the men under them, he, or they, have done something that was very unwise. I had no knowledge of let-ters having been written in the man-ner indicated until my attention was called its the matter. alled to the matter a day or two



Man Believed to Be Him Is Victim of Accident at Bews.

#### Nevada

A man supposed to be Wilbur Fraser, of Park City, was killed last Sat-

urday afternoon near Bews. New. by being run over by a train which he was attempting to board. His left leg was severed dabove the knee and he receiv-ed injuries about the head, death re-sulting two or three hours after the accident.

shifting two or three hours after the accident. Two other men were with Fraser at the time, and it is believed that they intended to ride the "blind baggage" on a Nevada Northern passenger train out of Bews. As the train started to move Fraser grabbed for the railing on the tank of the tender, but missed the objective point and fell partly under the cars. Seeing the accident the other men ran, but were found later and told who their companion was. Fraser's injuries were attended to at Bews and he was hastened on towards Ely to be placed in the hospital, but died on the way. The bandages slipped, and the man bled to death.

"dips," and are trying to hatch up some scheme to get the colored women

scheme to get the colored women thieves and their parasites out of the city. Every night chief Pitt has plain clothes men detailed to walk the streets and keep a lookout for members of the gang of pickpockets operating in this city. United States army departments of the the gang this city.

The colored women are smooth in their work and are careful not to do anything uplawful if an officer is around. Last night the police rounded up nine women of this character and ordered them to leave the city on pain of prosecution for vagrancy.

### THIEF STEALS RIFLE.

J. M. Thomas, residing at the Eagle block on west Second South street, is mourning the loss of a 22 caliber rifle which was stolen from his room by a sneak thief last night. The room was entered some time before midnight and the rifle stolen. The theft was report-ed to the police and officers are working on the case.

### SHOOTS VALUABLE HORSE.

Shortly before 7 o'clock this morn-ing a valuable horse belonging to J. T. Thorup was shot and killed by Police Officer George Phillips. The horse was on Ninth East and Ninth South street, and became somewhat fractious. The animal reared up and fell backwards, striking fits head on the hard ground. It is beloved that the animal's skull was fractured. Of-neer Phillips was pasing on the ear, and Mp, Thorup requested that he put the horse out of its missery. Phil-lips shot the animal through the head, Mr, Thorup stated that only yesterday he refused \$250 for the animal. Shorily before 7 o'clock this morn-

recommended special commendation of the officers and men. Capt. Granville Sevier, coast artillery corps, command-ed the Seventy-first company on the occasion of this practise.

#### FRANCIS SCOTT KEY.

Memorial Tablet to be Placed on Flagstaff at Ft. McHenry.

New York, July 22 .- Bids will be invited on Monday by the quartermaster's department of the department of the east, for the constructing of two memorial tablets, one of which is of special interest to civilians. This is to be placed on the flagstaff at Fort divorce from the actor.

McHenry, near Baltimore and will commemorate the fact that Francis Scott Key was inspired by a view of the flag flying there to write "The Star Spangled Banner," during the British attack in J814. The tablet, which is to be about five feet long and half as broad, in the shape of a shield, must be, according to the stipulation of the contract, "of the best quality of the contract, "of

Attys, Cheney, Massy & Price, who have been retained to conduct the case for Mrs. Sothern, refuse to discuss the case in any way, while Mr. Sothern politely but firmly dismissed a press representative who tried to secure some light on the matter. The impression gained credence that a conference between Mr. and Mrs. Sothern was held in the Riverside hotel today, but the fact could not be verified, as there was no one who would talk on the matter. It is thought at the conference arrangements were made whereby the suit of Mrs. Sothern will not be contested by her husband. The laws of Nevada require a resi-dence of six months in the state in on der to become legally recognized, and if Mrs. Sothern has lived here for that length of time she has kept the matter

lakes. Dakota and Missouri, will begin their annual shooting contest on Fri day at Fort Sheridan. The contes

will continue until Aug. 15. Twenty-seven of Aug. 15.

# WILL BRING MITCHELL IN.

Last evening a man giving the name of Robert Mitchell, was arrested on the charge of vile and indecent conduct in the office of Atty. Ray Van Cott. It is said that the man committed all sorts of vile acts in the office during the absence of Mr. Van Cott. He put up \$5 for his appearance in Judge Diehl's court this morning, but failed Judge Diehl, howeevr, orderad that a bench syarrant be issued for the money, Jurge Diehl, howeevr, orderad that a bench syarrant be issued for the man's arrest, and instructed that the bond be fixed in the sum of \$25. The man will be taken into custody as soon as i found.

tleworth leaves a wife and six and it is believed that whatever the concensus of opinion of the boards now here may ultimately be, the whole problem of warship designs will be re-ferred back to the war college and the board of construction at Wastington for determination, with President Roosevelt as the final arbiter. It has been said that criticism of the placing children.

ANOTHER IDOL SHATTERED.

#### E. H. Sothern Forms the Latest Addition to the Divorce Brigade.

(Special to the "News.")

Rosevelt as the final arbiter. It has-been said that criticism of the placing of the five turrets on the new battleship North Dakota, recently laid down as a sister ship to the 20,000-ton Delaware, had to do with the calling of today's conference, but this is denied at the war college, where it is said that the president believes the time to be ripe for a general discussion of hattleship. Reno. Nev., July 21 .-- Virginia H. Sothern, wife of E. H. Sothern, the famous romantic actor of the American stage, today solved the mystery of the presence here of herself, as well as that of Mr. Sothern and J. L. Ward, an attorney from New York, by filing in the district court at this place a suit for

A PRESIDENTIAL SALUTE. When the white hulled president's cruiser yacht, the Mayflower, was made out rounding Castle Hill below the city there was a boom of cannon from the station ship Constellation, the begin-ning of a presidential salute from all the naval craft in the harbor. After the Mayflower anchored, the president put oft in a launch and landed at the Mercedes dock, so-called because of tha The complaint is a sealed document, and it can therefore not be learned what charges are peferred against the actor-husband, but it seems to be tacit. ly understood that no defense will be made to the suit, on account, it is alleged, of the undesirable notoriety which might thereby come to certain well known actresses of the Ameri-

by Rear Admiral J. P. Merrill, com-mending the war college, and by the officers of the college staff. A brigade can stage, and also to a New York Attys, Cheney, Massy & Price, who of apprentice seamen from the naval training station with band and bugie.

San Jose, Cal., July 22.--A man who is believed to be H. Jordan of St. Mar-tin's, Guernsey, England, was found dead last night opposite Oak Hill cemetery on the Southern Pacific line. The body was well dressed, and was that of a man about 40 years of age. A receipt found in a pocket indicated that he had sent \$25 a month ago to G. Jordan of Guernsey. England. There was no money or valuables of any kind on the body.

length of time she has kept the matter a complete secret from the people of this place. Mr. Sothern and his attorney, Mr. Mr. Sothern and his attorney, Mr. Ward, have been in Reno about 19 days. Many conjectures regarding his stay here have been made, and it had been given out that he was here on a vacation, plasming to visit a number or coast resorts during the summer and at the same time take up the study of "Gil Blas," which Justin McCarthy has, just completed for him. The filing or the divorce suit, however, clears up the mystery surrounding his presence here, and that of his wife, Mrs. Vir-ginia Sothern. masters appointed: Idaho-Lyman, Fre-mont county, Martha Randall, vice H. B. Simmons, resigned. Wyoming-Painter, Big Horn county, Mary P., Painter, vice John H. Painter, removed

Remains of Elder Burdette P. Burdette Expected in New York, July 28. A cablegram was received at the

A cablegram was received at the President's c. ce this morning from President of W. Penrose of the Europ-ean Mission announcing that the body of Burdette P. Burdette, President of the Koeningberg branch of the Church, will arrive in New York, July 28. The body is in charge of missionary com-rades of the departed delder, who will accompany it to this city. It is ex-pected that the body will arrive here about Aug. 1, at which time arrange-ments for the funeral will be made. Elder Burdette is the son of the generative for the subject of the solution for his departure for his mission. El-der Furdette was drowfred in the Baltio sea July 14. Details, however, have not been received and all attempts of the young man's relatives in this city to learn more concerning the mishap have heen painfully futtle.

president believes the time to be ripe for a general discussion of battleship problems by all officers of the active list of the navy available at this time.

A PRESIDENTIAL SALUTE.

Mercedes dock, so-called because of the fact that the Reina Mercedes of the

Spanish Santiago fleet was mored there when at Newport.

squad was formed at the dock.

FOUND DEAD.

IDAHO-WYO. POSTMASTERS.

(Special to the "News.") Washington, D. C., July 22 .-- Post-

BODY ARRIVES NEXT WEEK.

president was met at the dock

# will continue until Aug. 15. Twenty-seven officers and 142 enlist-ed men will take part in the rifle com-petition. Three gold medals, six sil-ver medals and 18 bronze medals will be awarded to the winners. Two gold medals, four silver medals, and 10 bronze medals will be awarded to the winners of the pistol competi-tion, the preliminaries of which begin to the winners of the pistol competi-tion, the preliminaries of which begin July 31. EVERY SHIP IN NAVY TO HAVE A POSTOFFICE Washington, July 22.-Arrangements are being perfected for the installation

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of a postoffice on every ship in the United States navy, authorization for this action having been made at the last session of Congress. Under the provisions of the enabling act enlisted men on each ship may be appointed as postmaster and assistant postmaster men on each ship may be appointed as postmaster and assistant postmaster, their regular pay to be increased \$500 and \$300 a year respectively. They will be equired to give bond of \$1,000. This committee has been appointed by the postmaster general to formulate regulations for this new branch of the postal service: Baysrd Wyman, chief of the so

ostal service: Bayard Wyman, chief of the Bayard Wyman, chief of the ap-pointment division; A. A. Fisher, clerk, railway mail service; C. L. Cram, law clerk, auditor's office for the postoffice department; E. S. Kimball, superin-tendent of the money order system; C. Howard Buckle, superintendent of the registry system, and William C. Fitch, chief of the stamp division,

the best quality of statuary bronze, without artificial finish." The same conditions are made for the manufac-ture of the other tablet which is to be erected in the national cemetery in Marietta, Ga. The second memorial is to bear the name of Henry Greene Cole, of Ma-rietta, who gave the land for the come-tery to the government. It will be bolted to an upright from standard in the cemetery and will acknowledge the government's debt to Mr. Cole

NINE "DIPS" ORDERED AWAY. The police are still keeping up their SHOOTING AT FORT SHERIDAN. and Chicago, July 22 .- Members of the