

Mr. Casey has come back to town. The streetcar service does not wholly please him. Cuss and laugh with him in the article you'll find in  
The Sunday Call

# THE CALL



For The Call's Index of News of the Day See Page 2, Column 4

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## District Court of Appeal Opens Prison Gates for Schmitz and Ruef Arch Boodlers Declared to Have Been Illegally Convicted

The three members of the district court of appeal who rendered a decision yesterday declaring the conviction of arch grafters illegal, the superior judge before whom Schmitz was convicted and the two boodlers who may benefit by the decision. Upper row, left to right—Justice Samuel B. Hall, Justice Frank H. Kerrigan, Presiding Justice Cooper and Superior Judge Frank H. Dunne. In the lower row are portraits of Eugene E. Schmitz and Abe Ruef.



### FISK TO FACE A MORE RIGID INVESTIGATION

Hitchcock May Be Called Upon to Explain Burial of Serious Charges

Incompetence and Violation of Civil Service Rules Are Among Allegations

Employes of Postoffice Given Plenty of Time to Conduct Large Businesses

Postmaster Arthur Fisk will be called upon to answer charges involving neglect of duty, incompetence both on the part of himself and of favorite subordinates; the use of his official position for the benefit of the Southern Pacific political bureau; violation of civil service regulations, employment of postoffice employes in precinct politics and an explanation of the private commercial enterprises of favorite postoffice employes.

Neither the burial of charges by First Assistant Postmaster General Frank Hitchcock, wittingly or unwittingly assisted by John A. Holmes, private secretary to Postmaster General Meyer, nor yet an investigation of the charges alleged to have been made by Assistant Superintendent of Salary and Allowance Hall will serve to keep a mass of unsavory accusations against the San Francisco postmaster from President Roosevelt.

Charges of incompetence and neglect of duty made by Major General Greely in the summer of 1905, and charges preferred in May, 1907, have been hidden, thanks to Fisk's political friends in Washington, from Postmaster General Meyer and President Roosevelt. Hitchcock had announced that his friend Fisk had made a "splendid official" and Fisk's reappearance under false colors was about to be completed, when the character of the charges made against Fisk months ago was brought to the president's attention through the efforts of Congressmen Kahn and Hayes. The president has ordered Fisk's nomination withheld. A genuine investigation is to be made and as a result of that investigation First Assistant Postmaster General Hitchcock, Assistant Superintendent of Salary and Allowance Harry Hall and Private Secretary Holmes may be compelled to join Fisk in making explanations, if in nothing more.

#### FISK MUST EXPLAIN

"Inoffensive nepotism," which according to Hitchcock was the basis of the charges made by the unidentified and "insubordinate" clerk, will be the least of the explanations Fisk will be called upon to make. The appointment of his law partner, Hull McCloughry, as deputy postmaster; his brother in law, Ike Wertheimer, as cashier, and one of his uncles as an extra laborer, whose labors consist of assisting J. J. Gallagher in guarding the postmaster's door, while other extra men do actual labor in the divisions, will all pass muster. The same may be true of another uncle, named Gale, appointed as a laborer or messenger in the registry division, where he discharged the duties theoretically imposed on him by snoozing in the office chairs. On several occasions, overcome by his exertions on behalf of a soulless government, he had to be carried out of sight of patrons of the office by clerks employed in the division.

The results of Fisk's friendship for several subordinates may not be so easily explained as the "harmless" nepotism referred to by Hitchcock. A postoffice inspector may be curious about the private commercial enterprises carried on by favorite employes in the San Francisco postoffice. The case of Roger Reynolds, superintendent of the general service branch, might attract attention.

#### JUST SUITS REYNOLDS

The post of superintendent of the general service branch is peculiar to the San Francisco office. It is an adjunct of the executive branch of the postoffice and was created apparently to give Fisk's friend, Reynolds, a good job that would fit in nicely with his private business, which from its magnitude should naturally enough claim the major portion of Reynolds' time and attention.

### Judge Dunne Says Irony of the Court's Opinion Is Apparent

By Frank H. Dunne

Judge of the superior court before whom Schmitz was convicted.

It is greatly to be regretted, in the cause of fairness, honesty and justice, that this case was heard on appeal before a court whose members are closely related to some of the defendants in the graft cases against whom the same grand jury which indicted Eugene E. Schmitz has returned indictments charging bribery. Under such conditions I do not think that this court was in the proper frame of mind to hear and consider this case impartially and strictly on its merits.

I believe the evidence and the law in this case fully justified the judgment and verdict of the jury, and, furthermore, I believe that the jury which found this verdict will be remembered with respect and honor long after the members of the court which nullified it are cast out and forgotten. If I am correctly informed, this case was not submitted to the appellate court until yesterday, and as I am told that the opinion contains 32 typewritten pages, it would seem to me that Justice Cooper must have labored pretty hard and very late on it last night to have it ready by today.

My order appointing an elisor for the Schmitz jury is held as error, but if I had been given the appointment of an elisor for the appellate court the judges of that court might have been able to see the law and the evidence in this case in a different light. It seems wrong to me that a judge of the appellate court should proceed to hear this case by proceeding on the theory that the trial judge had indicted one of his relatives. It was the grand jury and not myself that found those indictments, and the irony of this opinion is apparent. In my opinion there is something greater behind this decision than appears on the surface.

### ARE RESOLVED TO PUNISH SCHMITZ

Langdon and Heney Will Proceed Upon Any Indictments Against the Prisoner

Although disappointed by the decision of the district court of appeal in sustaining the demurrer to the Schmitz extortion indictment the members of the graft prosecution are determined to continue with their work to punish the men who preyed upon the city—especially Eugene E. Schmitz, the wanton mayor, whose one thought was plunder. Schmitz has been relieved of prosecution on only five out of 44 indictments which have been returned against him.

Immediately upon being informed of the court's decision the prosecutors met in conference in the office of District Attorney W. H. Langdon in the Grant building. There was present with Langdon Francis J. Heney, who had just returned from his eastern trip; Rudolph Spreckels, Special Agent William J. Burns, J. J. Dwyer and Charles W. Cobb, Assistant District

### DECISION GIVES RUEF NEW HOPE

Fallen Boss Boodler Maintains He Is Innocent, Although He Pleaded Guilty

When he heard of the action taken by the appellate court Abe Ruef was immediately relieved of a portion of the mental burden which weighed him down and made his first night's rest in a felon's cell a wearisome one. Though he had evidently formulated a plan of campaign, Ruef believes it better to withhold it from the public. As he sat in the office of the county jail with a Call reporter last night, the fallen boss' face was lighted by a smile that clearly foretold hope. The lines that were visible on his brow the previous evening had vanished, and the nervous twitches which were so noticeable of late were conspicuous by their absence. Ruef really bore the appearance of a changed man.

Ruef heard the news shortly after leaving the courtroom yesterday morning. Several of his still faithful lieutenants quickly gathered the facts for

### Opinion Striking Blow at Graft Prosecution Is Rendered in Record Breaking Time

### Freedom of Convicts Is Delayed as Order Is Subject to Reversal by Supreme Court

With the stroke of a pen the three justices of the district court of appeal yesterday reversed the decision of 12 men sworn to try the former mayor of San Francisco on a charge of extortion, and in declaring their conviction of the defendant illegal opened the door through which Eugene E. Schmitz and Abraham Ruef, the arch boodlers of San Francisco, may again step forth as free men.

The reversal of the conviction of former Mayor Schmitz was ordered and explained in an opinion of several thousand words, written by Justice J. A. Cooper and concurred in by his two associates, Justices Samuel B. Hall and Frank H. Kerrigan. The opinion was handed down yesterday, but while it annuls five indictments each against Ruef and Schmitz, including those on which Schmitz was convicted and Ruef pleaded guilty, it does not mean immediate freedom for the convicts. The case is subject to a rehearing before the supreme court of the state, if that body sees fit to grant such a review, and, moreover, the reversal of judgment and order of discharge do not become effective for 60 days.

The reversal of the Schmitz case strikes a blow, not at a single conviction secured in the battle against graft, but at the whole structure on which the graft prosecution has been reared. It does not mean the end of prosecutions nor the overthrow of all that has been accomplished during the past year and a half of strenuous endeavor, but it does cause a setback which it may take months more of labor to overcome.

Ruef is benefited by the decision of the court of appeal to an equal extent with Schmitz, for the reversal is based, among other things, on the ground that the indictment on which Schmitz was convicted does not constitute a public offense. It was as codefendant of Schmitz on an exactly similar indictment that Ruef entered his plea of guilty to the charge of extortion. With all the extortion indictments against the two public thieves held invalid, Ruef's plea of guilt is set aside and the ex-boss can demand his freedom at the same time that the ex-mayor asks for his.

Actual freedom for the two convicts is, however, still but a hazy possibility, even with a conviction and a plea of guilt set at naught. The order of discharge does not become operative for 60 days; it is still subject to a reversal by the supreme court, and even should it stand there remain against each of the men scores of indictments on which possibly the most enormous bail in criminal history would have to be raised to secure their release from custody.

In its opinion, which prefaces the order of reversal and discharge in the Schmitz

### THREE DIE IN WRECK; 18 INJURED

Six Coaches Behind Engine Go Off Track and One Rolls Into County Road

Hurts of Two So Serious Death Believed to Be Matter of Few Hours

Train Running at High Speed to Make Up Time Jumps From the Rails

Running Gear Under First Coach Believed to Have Broken and Caused Crash

SPECIAL DISPATCH TO THE CALL  
SAN JOSE, Jan. 9.—Train No. 10 of the Southern Pacific, known as the Sunset express, San Francisco to New Orleans, was wrecked early this evening at Rucker, a small station 25 miles south of here, and Mrs. A. P. Boyd of Portland, Ore., her little son and an unknown tramp, who was evidently stealing a ride beneath one of the coaches, were instantly killed. Eighteen were injured, three of them so seriously, that they may die.

DEAD:  
MRS. A. P. BOYD AND LITTLE SON, Portland, Ore.  
UNIDENTIFIED HOBO.  
PROBABLY FATALY HURT:  
WILLIAM FERGUSON, Lawrence, Mass.  
A. SAUNDERS, Chicago.  
HOWARD MULLER, San Francisco.

INJURED:  
MRS. W. ECKERT, South Dakota, scalp wound.  
MRS. L. HOWARD, 48½ River street, San Francisco, fractured ribs.  
M. JOHN, brakeman, San Francisco, foot amputated at ankle.  
WILLIAM OAKLEY, Santa Cruz, arm fractured.  
A. E. BELLIME, New Orleans, fractured arm.  
D. J. SCULLY, Napa, cut and bruised.  
CHARLES SAVAGE, Pasadena, scalp wounds.  
MR. AND MRS. H. W. SORBER, Chicago, Ill., flesh wounds.  
W. W. ABLES, Chicago, arms cut and bruised.

Five others were less seriously hurt.

As far as can be learned here and at Gilroy there is no known cause for the wreck, the theory being advanced that some of the machinery under the first coach must have broken and thrown one coach from the track, the other five following. There was nothing to indicate that the disaster was the work of professional train wreckers. This theory at first gained credence, but later investigation failed to substantiate it.

The train, which leaves San Francisco, where it is made up, daily about 3:20 and is due to reach here at 5:20 p. m., was one hour and fifteen minutes late as a result of a fire north of Santa Clara, where a hose had been stretched across the track and which held the train until the blaze had been extinguished.

RUNNING AT HIGH SPEED  
The train is a fast one and was running at high speed in an effort to make up lost time. It was in charge of Conductor Richard Crow. Six