safety without difficulty. Men from the nearby railroad yards rushed to the spot and aided in the fight.

CAUSE OF THE FIRE

The origin of the fire could not be determined last evening. Underwriters thought it might have started from an overheated journal in the mill, but the word of Hanley that the flames burst from the boiler room first suggest another origin. The underwriters and Fire Marshal Towe will further investigate the fire today.

While the horses were being hitched to engine 10 in response to the alarm a colt severely kicked Hoseman A. H. Speigel in the chest. Speigel was taken from the engine house, 3050 Seventeenth street, to the central emergency hospital. It is feared his breast bone is fractured.

MRS. HARVEY'S BODY FOUND IN A LAKE

Wife of Millionaire, Dressed in White and Covered With Jewels, Commits Suicide

NEWARK, N. J., Sept. 10.—The body of Mrs. Ashton Harvey, dressed in white and literally covered with a fortune in jewels, was found today in the private pleasure lake on the estate of Stewart Hartshorn at Short Hills, N. J., by bloodhounds which had been set on scent.

Mrs. Harvey was the wife of Ashton Harvey, a millionaire corporation lawyer at 32 Broadway, and lived in their magnificent country estate at Short Hills.

Mrs. Harvey, who was wealthy in her own right, had been acting peculiarly several weeks past and her daughter, Dorothy, and son, Harold, became alarmed yesterday afternoon when she left the house dressed in white, even to her shoes and stockings, and wearing all of her jewels. About her neck she wore a $25,000 pearl necklace and on her head she had placed a rich diamond tiara. Her breast was covered with sunbursts and other brooches set with diamonds, and her fingers were bedecked in jeweled rings. This was prior to her ordering a carriage to go to the home of Miss Du Barry at Madison.

Mr. Harvey and his daughter searched the roads in their automobile until dark, when they called in the police. Bloodhounds from New York arrived at 2 a. m. and after an all night search the animals pointed out the body in the lake. Mrs. Harvey's remains were taken out by grappling irons. Her husband believes she committed suicide. She had been a sufferer from headaches for nine years. She had also grieved over the death of her eldest son, Ashton.

FINAL WORK BEGUN ON LAGUNA DAM TRESTLE

Yuma Irrigation Project Nearing Completion and Some Water Already Delivered

SPECIAL DISPATCH TO THE CALL

WASHINGTON, Sept. 10. — Operations were begun last month on the first trestle to be used in the final closure of the great Laguna dam in the Yuma irrigation project. This trestle is now practically completed and the Colorado river closed to navigation. About 425 men are engaged working on both sides of the river, mainly in concreting the sluiceways. Water is being delivered by the scoop wheel to lands about 15 miles below Yuma and the farmers' pump is furnishing water to about 3,800 acres. Work on the reservation canals is going on steadily.

WILL APPEAL CASE

Bonaparte Confers With President Regarding Decision

OYSTER BAY, N. Y., Sept. 10.—While Attorney General Charles J. Bonaparte was in conference with President Roosevelt the report of the decision by the United States circuit court, that the commodity clause of the Hepburn railroad act is unconstitutibnal, was conveyed to the president's home by the Associated Press. The president and Bonaparte came to the conclusion that the department of justice should take an appeal. Bonaparte, as he was leaving for New York, said that he would take steps to appeal. He would say nothing about what the president had said in regard to the decision.

QUEEN WILHELMINA RECOVERS

AMSTERDAM, Sept. 10.—Telegraph dispatches received here from Apeldorn, where the royal castle is situated, state that Queen Wilhelmina suffered a miscarriage last Saturday evening. The general health of her majesty is satisfactory.

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King Solomon's Hall
Fillmore St. near Sutter
San Francisco

Was Popular in the School Set

Stephen F. Christy

DESPONDENT BOY LAYS HEAD ON RAIL

Professor Samuel Christy's Son Commits Suicide at Towle Station

SPECIAL DISPATCH TO THE CALL

SACRAMENTO, Sept. 10.—Stephen F. Christy, aged 17, a student at Agassiz hall, Alta, in Placer county, committed suicide at Towle station on the Southern Pacific at 9 o'clock last night by placing his neck across a rail and letting a freight car wheel sever his head from his body. He was found shortly afterward.

Last evening Christy asked permission to go to Towle to mail a letter. It was supposed he had returned and was in bed when news came to the school of his death. He left two letters, one for his teacher and one for his parents. Both were dated September 2. He expressed thanks to his teacher for kindness and said he considered himself a failure and was weary of life. In the letter to his parents he said he had been a burden to them and was a miserable failure.

BERKELEY, Sept. 10.—Although news of the death of Stephen Field Christy, the 17 year old son of Professor Samuel B. Christy, dean of the college of mining of the university, and one of the best mining engineers on the coast, brought no details to the family here, beyond the fact that young Christy had been killed by a railroad train. There were rumors in this city today that death had not been accidental, but intentional on account of despondency due to ill health.

Professor Christy, father of the boy, denied that he received a letter foretelling of his son's death, written by young Christy before he placed his head on the track and was instantly killed.

SUFFERED SPINAL TROUBLE

That young Christy has for the last 10 years been ill is known here, but his sickness is said not to have resulted in despondency and his friends are loath to believe that his death was self-planned.

Young Christy was a student of the class of 1907 of the local high school, but only attended for a short time over two years. At the time of leave taking from the school he went to a sanitarium for treatment. He has been treated by physicians here a number of times with spinal trouble, which has effected his mentality.

"My son was a good boy," said Professor Christy today at his home. "I cannot say more at this time, but I have received no letter or word telling of the reason of his death.

"When Stephen was a lad of 7 years he was kicked in the back and severely injured. He has had spinal trouble since that time and we have had a numbef of physicians treat him.

HAD A NERVOUS BREAKDOWN

"He had, however, fully recovered from the trouble and was pronounced cured by his physicians. During the summer he became exhausted, and for the betterment of his health we sent him to Dr. Price's school at Agassiz, Placer county. He was in bad shape, as he was suffering from a nervous breakdown.

"I received a letter from him Sunday, however, in which he said that he was in the best of health and liked the school."

The boy was popular with the younger set here and as he was always bright and cheerful even during his frequent illness, his many friends are shocked at the sad news of his death.

Professor Christy is one of the best known members of the university faculty. Stephen was the only son, but there are two daughters, Amelia and Elizabeth, both younger. The Christy home is at 2234 Piedmont avenue.

WILL FIGHT THAW'S RELEASE

ALBANY, N. Y., Sept. 10.—Any attempt to take Harry K. Thaw from the Duchess county jail at Poughkeepsie to Pittsburg or any point outside the state will be opposed by the state commission on lunacy. Dr. Albert W. Ferris, president of the commission, returned today from a long European trip and announced the position the commission would take regarding the order of Referee Blair of Pittsburg that Thaw shall be taken to Pennsylvania to be examined in bankruptcy proceedings instituted in his behalf.

CUMMINS DEADLOCK CONTINUES

DES MOINES, Ia., Sept. 10.—A second ballot for United States senator in joint session of the legislature today resulted materially the same as Wednesday. Representative Kendall was not present and Governor Cummins received one vote less. The stand patters scattered their votes. Governor Cummins stated at the close of the balloting that he would recommend that the progressives support a motion to adjourn until November 5.

WAYMAN COURT MARTIALED

NEW YORK, Sept. 10.—Lieutenant Guy H. Wayman, Eleventh United States cavalry, who was court martialed on Governors island last week for certifying that he was single, when he had a wife in Huntsville, Tenn., has been acquitted and restored to duty.

BEST RECORD MADE BY WRIGHT AIRSHIP

Machine Exceeds Time of Previous Performance by 3 Minutes 37 Seconds

Ten Mile Wind Necessitates Great Skill by Aeronaut, Who Keeps Control

WASHINGTON, Sept. 10.—Orville Wright today broke the world's record which he established yesterday for time and distance for a heavier than air flying machine. In a flight requiring great skill on account of a 10 mile mind, he circled around the drill grounds at Fort Myer 58 times in 65 minutes and 52 seconds, exceeding the time of yesterday's record flight by three minutes and 37 seconds. The flight was witnessed by nearly 1,000 persons.

Wright did not arrive at the field until after 4 o'clock, as the weather was threatening. The machine was wheeled across the field on the detachable wheels and placed on the starting track. At 5 o'clock Wright announced that he was ready.

The wind was blowing only about three miles an hour when Wright prepared to take his flight. The mounted soldiers who keep the field clear during the flights took their places and Wright started the motor.

MACHINE FACES WIND

At 5:05 Wright signaled C. E. Taylor, his mechanician, to release the machine. The aeroplane rose from the ground almost immediately after leaving the single starting rail. It continued to climb higher with each successive round of the field, until it reached an altitude of 75 feet.

For the first 30 rounds the machine flew as smoothly as on its previous flights, but from that time on it was seen to pitch at the turns as the breeze from the west struck it. As the machine moved from the northern end of the field to the southern end, where the aero garage for storing the aeroplane is located, Wright kept it several points in the wind.

Whenever the machine pitched it could be plainly seen from below that it responded promptly to every move of the levers. One of Wright's assistants marked the time in large figures at intervals on the roof of a shed in order that Wright might see how long he had been in the air.

A gust of wind unusually strong struck the aerial flyer during the forty-second round and it plunged sharply, causing the crowd to exclaim in alarm. Wright then brought his machine lower, but on the fifty-third round he had reached an altitude of 200 feet.

WORLD'S RECORD BROKEN

When Wright completed the fifty-fourth round he had beaten his record of yesterday afternoon, which in turn had broken the world's record established in the morning flight of yesterday. The crowd gave a lusty cheer, but Wright was too busy manipulating the levers to wave his cap, as he did yesterday, to show that he heard the applause.

Wright came down at the northern end of the field at the end of the fifty-eighth round, landing easily. The cavalry stationed on duty to protect the machine formed a cordon around it and Major Squier, acting chief signal officer, pressed forward to congratulate the aviator.

Signal corps officers at the war department today expressed the belief that Orville Wright will make a speed of at least 42 miles an hour with his heavier than air machine which did such excellent work at Fort Myer. This is based on their observations of Wright's record breaking experiment yesterday.

If he does make 42 miles an hour he will be entitled to a bonus of 20 per cent over the contract price, which would net him for his machine $30,000, the contract price being $25,000. The speed is to be taken on a measured course of more than five miles against and with the wind. The start is to be a flying one, the machine to pass the starting point at full speed at both ends of the course.

SLAYER IS EXONERATED—Redding, Sept. 10.—J. A. Reid was exonerated today at the coroner's inquest for causing the death of J. B. Wilson by slabbing him with a miner's candlestick on September 2. Wilson died five days later from the wound.

COMMODITY CLAUSE DECLARED ILLEGAL

Federal Court Holds Hepburn Railroad Act Unconstitutional

Coal Lines Win Suit Against Enforcement of Interstate Measure

PHILADELPHIA, Sept. 10.—Declaring it to be drastic, harsh and unreasonable and an invasion of the rights of the states and therefore repugnant to the constitution, the United States circuit court for the eastern district of Pennsylvania today dismissed the suits of the federal government to enforce the commodities clause of the Hepburn railroad act against the anthracite coal carriers of this state. Judges George Gray and George H. Dallas filed opinions dismissing the suits and Judge Joseph Buffington dissented, but did not file an opinion.

The commodities clause prohibits railroad companies from transporting in interstate commerce any article or commodity manufactured, mined or produced by them or under their authority. The case was argued in June, United States Attorney General Bonaparte delivering the principal argument for the government. The effect of the commodities clause, if constitutional, would be to confine the mining of anthracite coal by the railroads for use in Pennsylvania only, and compel the railroads to sell all the mining property they are interested in, either directly or indirectly.

WILL APPEAL CASE

It is almost certain that the case will be appealed directly to the United States supreme court.

The principal opinion was written by Judge Gray, who, as president of the anthracite strike commission, has an intimate knowledge of the mining of hard coal and of the many ramifications in the ownership of the coal mines. Judge Dallas said in his opinion that it can not be denied that the commodities clause was enacted "not actually for the regulation of interstate commerce, but really to coerce the conformity of interstate business with a 'policy' approved by congress."

Judge Gray, in his opinion, discussed at great length the limitations put upon congress by the constitution and concluded as follows:

"From every point of view which we have been able to approach the question, the unreasonableness and consequent invalidity of this so called 'commodities clause' is apparent. It invades the rights of the state by striking down the liberty hitherto innocently enjoyed by its citizens under the laws and usages of the commonwealth, to engage in interstate commerce to the fullest extent as to all harmless articles, whether owned or not owned by the carrier, and deprives of their property the defendants, contrary to the letter and spirit of the fifth amendment to the constitution. If the enactment in question be warranted by the commerce clause of the constitution it is hard to see what bounds may be set to the exercise of that power.

WILL BE OPEN DOOR

"It will indeed be an open door, through which the forces of centralization hitherto unknown may enter at will, to the overthrow of that just balance between federal and state power for which the makers of the constitution so wisely provided as an essential to the preservation of our dual form of government.

"We confine ourselves to the concrete facts presented by the pleadings in these cases and intimate no opinion either way as to cases where the property has been acquired by the carriers subsequent to the passage of the act. For the reasons stated, therefore, these bills in equity are dismissed and the petition for writs of mandamus on the law side of this court are denied."

Judge Dallas, in his opinion, says that he "fully concurs in the foregoing opinion, and the little now to be added is intended merely to accentuate my acceptance of it."

Continuing, he says:

"The prohibitory intent of the piece of legislation under consideration is too plain for disavowal, and the suggestion that what it prohibits is not interstate commerce, but interstate transportation by a railroad company of commodities which it has produced, etc., is delusive. The question is not whether the carriage from state to state of coal produced by the carrier is interstate, but whether congress may restrict a railroad company's interstate transportation of coal to coal not mined or owned by it and in which it has no interest.

DISCRIMINATIVE PROHIBITION

"Any such restriction, whatever it may be called, in its nature and effect is discriminative prohibition, and that the restrictive provision now in question was enacted, not actually for the regulation of interstate commerce, but really to coerce the conformity of interstate business with a 'policy' approved by congress, seems practically to be admitted and could not, with candor, be denied.

"No court has authority under the guise of interpretation to change the constitution for the purpose of meeting a supposed requirement of present conditions, and the covert tendency of any usurpation of such authority would inevitably be to transform the government of enumerated powers which the constitution establishes into a government with all power vested in its legislative and executive branches."

Continuing, he says:

"The inclination sometimes manifested to centralize power in the general government results in great measure, no doubt, from the apparent expediency of committing to it the correction of ills which it is supposed that the states cannot so readily redress; but the achievement of no presently desired end, however salutory, can justify the infraction of our fundamental law, or warrant its perversion by insidious construction. The constitution of the United States is a written instrument, not a progressive development, and the often quoted epigram that 'constitutions are not made, but grow,' should not apply to it."

DECLARE BARRETT WAS MURDERED

Convicts Who Witnessed Shooting of Prisoner Say Killing Was Unnecessary

At No Time Was There Danger of a Break and Dead Man Was Unarmed

SPECIAL DISPATCH TO THE CALL

SACRAMENTO, Sept. 10.—Although the coroner's jury in the case of the convict Mark Barrett, who was shot and killed at the Folsom prison yesterday by Guard Fleckenstein, brought in a verdict exonorating the guard from all blame, a close investigation into the facts surrounding the shooting indicate that if strict discipline had been maintained by Warden Reilly at the prison the killing would never have occurred.

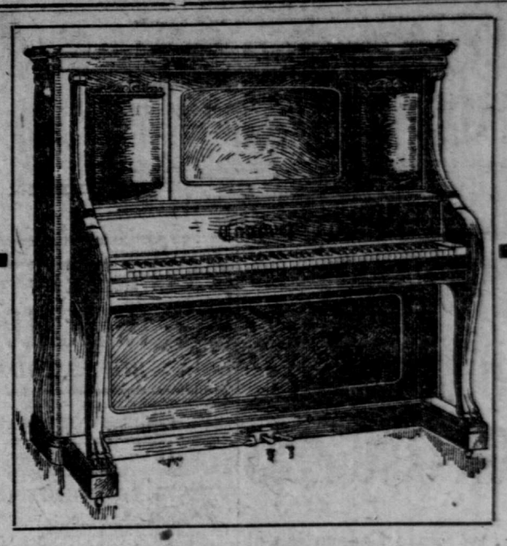
Barrett had engaged in a quarrel with an aged convict while they were working together in the sand pit. Guard Anderson was stationed 15 feet away from the pit. He is said to have talked to the prisoners to stop their fighting and report to their captain's office. Guard Clarke, who was stationed across the river, heard the noise. He was some distance from his rifle, and, fearing that it might be a break, ran to pick up his weapon. In his excitement he fell and the gun was accidentally discharged. Fortunately the bullet hit no one, although it is said to have struck in the midst of the sand pit gang. The shot from Clarke's rifle was followed by one from Anderson's gun. Anderson said he only shot to frighten the prisoners. Clarke fired a second time, declaring he, too, aimed to miss.

Great excitement prevailed among the guards, and they were apparently more frightened than the prisoners. In the meantime the fight between Miller and Barrett continued. Miller ran up the embankment, closely followed by Barrett, and Guard Fleckenstein took deliberate aim at him and fired. Barrett fell dead, the bullet striking him in the back of the head. Fleckenstein testified at the coroner's inquest that he aimed to hit the convict between the shoulders. He also said that Barrett was on top of Miller when the shot was fired. Several convicts who witnessed the tragedy denied this. They declared Barrett was nowhere near Miller when he was shot.

Other convicts testified that the guards did not, previous to the shooting, call to the men to stop fighting and report to the captain's office. The affair has created much talk, many persons believing that there was no justification for the shooting. The men were unarmed and it is believed that the fight could have been stopped without the cost of a life. Miller's life, it is said, was by no means in danger at any time during the quarrel. If proper discipline had been maintained at the prison it is said the fight could have been stopped without the necessity of firing a shot. The affair has caused great uneasiness among the convicts.

DR. LINDER ACQUITTED

BRENION, S. C., Sept. 10.—The jury in the case of Dr. W. L. Linder, charged with killing the negress, Lucy Lipsey, after being out nearly five hours returned a verdict of not guilty.



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