THE OMAHA DAILY BEE.

WEATHER FORECAST.
For Nebraska—Fair.
For Iowa—Fair; continued cool.
For weather report see Page 2.

VOL. XXXIX—NO. 298. OMAHA, WEDNESDAY MORNING, JUNE 1, 1910—TWELVE PAGES. SINGLE COPY TWO CENTS.

CITY MUST BUY PLANT

Omaha Compelled to Pay $6,263,295 for Water Company Property by Supreme Court.

AFFIRMS COURT OF APPEALS

Decision Supports Judgment of Lower Tribunal.

END OF LONG, BITTER BATTLE

Litigation in Progress for the Last Five Years.

APPRAISEMENT STARTS FIGHT

First Conflict Arises Over Property to Be Included.

SHIFTING OF VANTAGE POINTS

First Victory to City, Then Company Gains Decision Just Confirmed—Arguments Held Last April in Washington.

WASHINGTON, May 31.—The city of Omaha will be required to purchase the water works system of the Omaha Water Works company for $6,263,295.49 under a decision of the supreme court of the United States today.

The court affirmed the judgment of the circuit court of appeals in the matter.

The history of the purchase of the Omaha water works embraces a long series of litigation in its various phases, most of which has grown out of the act of the Nebraska legislature of February 3, 1903, compelling the purchase of the water works and providing for the creation of the Water board, which should have charge of the administration of the water works when they became the property of the city.

To comply with the mandate of this law, an ordinance was passed by the city council of Omaha, March 2, 1903, electing to buy the water works plant under the purchase clause, and directing the appointment of a board of appraisers to appraise the plant. One of the appraisers to be appointed by the city, a second by the water company and the third to be selected by these two. The appraiser appointed by the city was John W. Alvord; by the water company, George H. Benzenberg, and these two selected Daniel W. Mead as the third member of the board.

Under the so-called Howell bill making compulsory the purchase of the plant, provision was also made for the creation of the water board to be appointed by the governor for various terms, two to be appointed each year or until their successors were elected. The first board, consisted of James E. Boyd, T. J. Mahoney, Milton Barlow, I. E. Congdon, J. F. Coad and Guy C. Barton. It was under this board that the appraisement was commenced, in May or June, 1903.

Appraisement Long Drawn Out.

The appraisement was long drawn out and involved considerable controversy relative to the procedure. Carl C. Wright, then city attorney, assisted by John Lee Webster, specially employed as attorney for the Water board, represented the city in the litigation.

At the outset the question arose as to the scope of the appraisement, the attorneys for the city holding that it should only include such of the property of the water company that lay within the city limits of Omaha. The Water board contended that the appraisement should embrace the entire plant, including the extensions to Dundee, South Omaha, over the property of the East Omaha Land company, and the pumping station and filtration plants and settling reservoirs at Florence.

The question of the "going" value of the plant was also pressed by the attorneys for the water company. The attorneys for the Water board held out for the natural deterioration of the plant and its inadequacy to fulfil its contract requirements with the growing demands of the city, and the disinclination of the water company to enlarge its pumping and piping capacity.

Suburbs Are Considered.

Regardless of these objections the appraisement continued until the matter finally got into the United States circuit court and a decree was issued directing that the board of appraisers should proceed with the appraisement as a whole with separate findings for the plant as lying within the corporate limits of the city of Omaha; of those portions of the plant supplying South Omaha, Dundee, East Omaha and the Florence plants and of the going value.

The board of appraisers finally submitted its report on July 7, 1906, fixing the appraisement of the entire plant at $6,263,295.49 signed by Benzenberg and Mead, Alvord withholding concurrence by direction of the Water board's attorney.

Immediately following the announcement of the appraisement President Woodbury of the Omaha Water company made a formal tender of the entire plant to the city of Omaha and demanded a check for the amount of the appraisement.

The Water board went through the form of rejecting the appraisement and ordering a new appraisement and then of employing experts to draw plans for a new plant. On July 9, 1909, President Woodbury brought suit in the United States circuit court for specific performance to compel the city and Water board to accept the plant under the appraisement and to pay for it. The Water board lawyers argued that the appraisement was excessive, that the terms agreed upon by the contending parties were not complied with and that the finding was reached by only two of the three appraisers and should have been by all three.

On June 29, 1907, a decree was entered by Judge Munger in the United States circuit court, dismissing the bill of complaint of the water company. An appeal was taken to the United States circuit court of appeals by the water company, and on April 7, 1908, a decree was issued from that court by unanimous action of all the judges, reversing the decision of the lower court, declaring the appraisement valid and binding upon the city of Omaha and requiring the city to complete the purchase.

The water board lawyers made application to the supreme court of the United States for a writ of certiorari, which is equivalent to an appeal from the decision of the circuit court of appeals, and the same was granted. The case was recently argued before the United States supreme court by John Lee Webster for the water board and city, and by R. S. Hall and Howard Mansfield for the water company.

While the case was still pending in the United States supreme court, the city of Omaha, on demand of the water board, voted $6,500,000 bonds for the purchase of the plant and extensions.

The water company lawyers scored an important point by directing the court's attention to the voting of bonds as acquiescence in the reasonableness of the award and recognition of the city's obligation to buy.

Water Works Case Chronology

February 2, 1903—Nebraska legislature passes law for immediate compulsory purchase of water works by city of Omaha.

March 2, 1903—Ordinance electing to purchase water works plant and fixing procedure. Appraisers later appointed:

By Water Board—John W. Alvord of Chicago.

By the Water Company—George H. Benzenberg of Milwaukee.

By These Two—Daniel W. Mead of Chicago.

July 20, 1903—First meeting of appraisers.

July 7, 1905—Water board enjoins appraisers from completing appraisement and asks the federal court for specific directions as to what should be included.

November 29, 1905—Judge Munger dissolves injunction and directs appraisers to make returns as a whole, and also separately, for property in South Omaha, East Omaha, Florence and Dundee, and going value.

July 7, 1906—Appraisement returned at $6,263,295.49.

July 29, 1906—Water board rejects appraisement and by resolution asks appointment of new board of appraisers. Water company makes tender and sues in federal court for decree of specific performance.

June 4, 1907—Judge Munger renders decision for city. Water company appeals.

April 7, 1908—Circuit court of appeals renders decision for water company.

June 1, 1908—United States supreme court on petition of Water board grants writ of certiorari.

November 2, 1909—City votes $6,500,000 bonds to pay judgment.

April 20, 1910—Argument on certiorari before United States supreme court.

May 31, 1910—United States supreme court decides in favor of the water company.

LOBECK LIKES THE DECISION

Says it Will Be a Great Thing for Omaha to Own Its Own Plant.

City Comptroller Lobeck is enthusiastic for the city taking over the plant just as soon as possible. "Take it at once and operate it and make money for the city," says the comptroller. "In all cities where the municipality owns the water and other plants they are making money, and we can do it in Omaha."

A. W. Jefferis said, when he heard of the decision: "It is just what I expected. But, when you are compelled to buy a lemon at a fancy price, the only thing to do is smile."

Councilman Burmester said: "Members of the council have no concern of any kind in the matter, other than their interest as citizens. Apparently the Water board is the only body having any say, either advisory or positive. I recall with a good deal of satisfaction now the occurences in the council of 1897, when, if myself and other members had prevailed, the Water company would now be in the position in which the city finds itself, except that we would have had possession of the plant as city property for the last two years almost, or since September, 1908. The hue and cry raised at that time was frightful, but events have proved we were on the right track and fighting for a good and proper solution of the question."

John Lee Webster, attorney for the Water board, said: "I have nothing to say regarding the decision of the supreme court in the water works case at this time. I have not seen the telegram announcing the decision, and hence know nothing about it."

WATER LITIGATION IS COSTLY

City Has Paid for Water Board $112,061 Before First of This Year.

The Water board has cost the city, since its establishment, $112,061.39, up to December 21, 1909. The cost so far in 1910, as near as it can be figured, is $2,612.45.

Of the total the amount spent for legal services is $62,122.47. During the first three years after the board was in existence the cost of legal services was $15,763.21. In 1907 the legal item was $22,624.51; in 1908, $15,752.75; in 1909, $7,977. The amount thus spent in 1910 is yet to be determined.

Since January 1, 1908, eleven hydrant bills have accumualted, each one approximately for $47,525, covering a six months' period. The total hydrant rental to date claimed by the water company is $522,008.65, of which the city has paid under judgment of the federal court $123,983.80. Of this, $95,000, approximately, was principal and the balance, $28,983, was interest. The city comptroller has not yet figured the interest due from the city on deferred payments for

(Continued on Second Page.)

MUST LOWER THROUGH RATES

Supreme Court Upholds Finding of Commerce Commission.

CUT FROM RIVER TO RIVER

Decision Affects Tariff on Shipments from Points on Atlantic Seaboard to Points on Missouri—Denver Case Also Affirmed.

WASHINGTON, May 31.—The long contested order of the Interstate Commerce commission, reducing the freight rate between the Mississippi river and the Missouri river as a part of the through rate on through shipments originating in the seaboard territory, was today declared to be valid by the United States supreme court. In so holding the court reversed the lower federal court. Justice McKenna in announcing the opinion, said the court hesitated to believe the commission sought to divide the country into rate zones and held that the record did not show that such had been done.

The contest began early in 1907, when shippers, jobbers and wholesalers in Kansas City, St. Joseph and Omaha filed a complaint with the Interstate Commerce commission alleging that the rates charged by the carriers operating between points on the Atlantic seaboard and Missouri river cities on traffic originating at the seaboard and destined to these cities were unjust and unreasonable. After many hearings and several parties had intervened, an order was issued by the commission directing the railroads doing business between the Mississippi river crossings and the Missouri river to reduce their rates as a part of the through rate on shipments originating in seaboard territory.

The railroads in the west and shippers, jobbers and wholesallers in the east, but outside of the seaboard territory went into the courts. The circuit court of the United States for the northern district of Illinois enjoined the commission from enforcing the order on the ground that it worked an unjust discrimination against the intermediate localities and shippers.

The commission and business men in Missouri river cities appealed from the decision of the circuit court.

The authority of the Interstate Commerce commission in issuing the order directing a reduction of the through freight rates from Chicago and from St. Louis to Denver, and the validity of that order was today upheld by the supreme court of the United States.

The supreme court's upholding the order of the Interstate Commerce commission reducing the freight rate between the Mississippi river and the Missouri river as a part of the through rate on through shipments originating in the seaboard territory will mean a saving of about $140,000 a year to the shippers of Omaha, Sioux City, St. Joseph and Kansas City. This is the claim of attorneys for the jobbers.

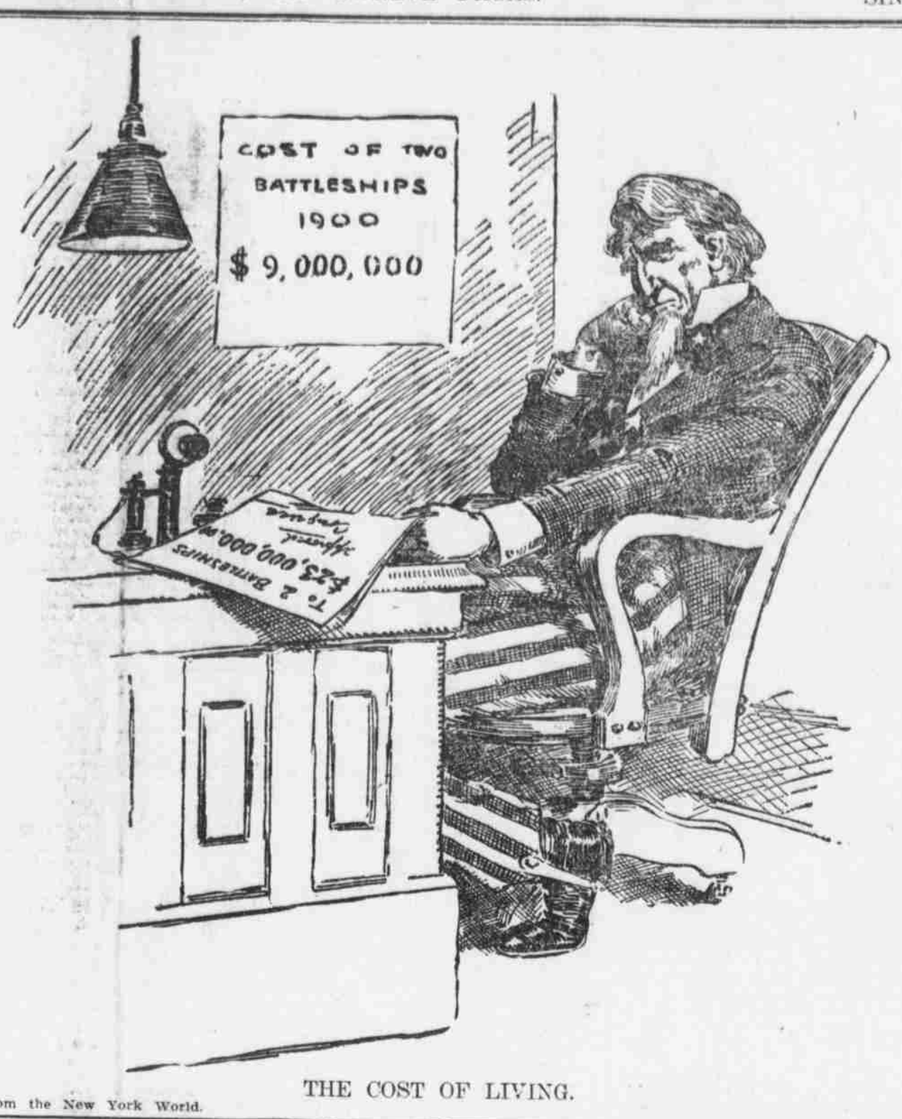
Attorney John Lee Webster, who represented the shippers at the hearing before the Interstate Commerce commission in Washington about six weeks ago, said that he does not wish to give out a statement concerning the matter until he hears direct from Washington.

"The shippers petitioned to the Interstate Commerce commission," said Mr. Webster, "to have the rates reduced on freight coming from Chicago to the Missouri river and the request was granted by the commission. This applied to all of the railroads and they in turn took the matter to the United States circuit court in Chicago, asking for an injunction to prevent the ruling of the commission from going into effect. The injunction was granted and the shippers and the Interstate Commerce commission appealed the case to the United States supreme court, asking that the injunction be removed. From the brief telegram received by the papers it would seem that the court ordered the injunction to be declared null and void and the reduced rates to go into effect, but I can not tell the details until I get first information from Washington.

"If the case is won in the manner which is indicated by the telegram received in Omaha it will mean a great saving to the shippers of the Missouri river section. During the hearing Edward B. Boyd, assistant to the vice president of the Gould lines, testified that if the reduced rates were allowed to go into effect it would mean a saving of $140,000 to the shippers of Omaha, Sioux City, St. Joseph and Kansas City alone."

W. W. Johnson, assistant general freight agent for the Burlington road, did not care to discuss the decision. He said: "A fellow doesn't like to say anything against our supreme court. At the same time we don't like to admit that they are right in this particular instance, so our position is on the fence, and we prefer to say nothing."

Attorney William D. McHugh, who represented the railroads at the hearing in Washington, was another silent member. He confined himself to a single expression: "I haven't anything at all to say about the matter."



From the New York World. THE COST OF LIVING.

CORPORATION TAX CASE SET

Supreme Court Decides to Have it Reargued Next Term.

FULL BENCH WILL HEAR IT

History and Provisions of Measure that Was Drafted Along Lines that Were Suggested by President Taft.

WASHINGTON, May 31.—The supreme court of the United States today set the corporation tax cases for reargument at the beginning of the next term before a full bench.

This action was announced by Chief Justice Fuller today at the conclusion of the announcement of opinions. It will insure the participation of Governor Hughes, recently appointed a justice, in the determination of the cases.

No reason was given for the resignment of the cases unless the statement, "for argument before a full bench," can be so interpreted.

The tax is required to be paid by July 1. As the constitutionality of the law will not have been passed upon by that time it is believed many complications will arise.

History of Measure.

President Taft is regarded as the father of the corporation tax idea; as represented in this statue. He evolved it during the discussion of tariff legislation and income and inheritance taxes in 1908-1909. As a result, congress inserted the "corporation tax law" into the Payne-Aldrich tariff act passed by congress last summer. It became section 38 of that statute.

The law subjected to the tax, in a general way, every corporation, joint stock company, or association, organized for profit and having a capital stock represented by shares, and every insurance company. The tax was designated as "a special excise tax with respect to the carrying on or doing business" and it was provided that it should be "equivalent to one per centum upon the entire net income" over and above $5,000 received "from all sources" during the year. There were to be excluded from the income, however, amounts received as dividends upon stock of other organizations, subjected to the tax. Exempted from the tax were certain organizations, such as labor, agricultural, horticultural and fraternal beneficiary societies.

One paragraph of the law provided for the publicity of the returns required as a basis of fixing the tax.

The tax was to be paid on or before June 30 of each year and the returns for each year were to be made by March 1. It was

(Continued on Page Two.)

Louisville Police Have Dragnet Out for Janitor

More Evidence Secured that Seems to Connect Him with Murder of Little Alma Kellner.

LOUISVILLE, Ky., May 31.—Persistent questioning of Mrs. Joseph Wendling, who is held at the police station here charged with having been an accessory to the murder of Alma Kellner, the child whose mutilated body was found in a subcellar of St. John's parochial school here yesterday has failed to shake the woman's first declaration that she knew nothing about the crime. She adheres to her statement that a ring and pin found in a trunk at her home, both of which have been identified as the property of the murdered girl, were given her by a boy, and, further, than her admission that she has seen nothing of her husband, who was janitor at the school, since his disappearance on January 14, when he drew $100 from the bank, she will say nothing about him.

The police are weaving a chain of circumstantial evidence about the missing janitor, for whom they last night began a wide search. Clothing which he is known to have worn bears numerous stains which the detectives said were traces of blood. A hat recovered from an old barrel, where Mrs. Wendling stated she had thrown it about the time of the janitor's flight, also bears similar discolorations. The trap door to the subcellar was so effectively hidden that its existence could have been known to no one not most intimately acquainted with the building. The keys to the school building, say the police, were always in Wendling's possession, who was given employment one month before the disappearance of Alma Kellner. Other carpet like that in which the body was wrapped for its hasty burial was found in the school store room.

It is believed the girl was in the school chapel when seized on the morning of December 8, and dragged to a remote part of the building.

The Kellner family today offered a reward of $1,000 for the arrest and conviction of the murderer of Alma.

Mrs. Wendling was presented in police court today and her case continued until June 8. She denied all knowledge of the murder. The matter of bail was deferred until tomorrow.

FORMER GOVERNOR MICKEY IS STILL GROWING WEAKER

Slight Rally Early Last Night is Succeeded by a Relapse.

OSCEOLA, NEB., May 31.—(Special Telegram.)—Ex-Governor Mickey's condition is rapidly getting worse. He has been growing weaker since 11 o'clock last night, and the doctor says he can hardly be expected to live through the day. He rallied somewhat at about 7 o'clock last night, but the indications of any change for the better were but slight. He does not recognize any of the family now.

DOXEYS HAVE TWO NAMES

Physician and Wife Register at Hotel as Mr. and Mrs. Erder.

MRS. DOXEY WILL TESTIFY TODAY

Evidence Shows that Defendant Had the Greater Part of Erder's Insurance Paid to Her Husband.

ST. LOUIS, May 31.—How Mrs. Dora E. Doxey and her husband, Loren B. Doxey, stopped at the Moser hotel under the names of "L. B. Erder and wife" and received mail under the names of both Erder and Doxey within a few days after Mrs. Doxey had received $2,500 insurance on Erder's life and had given Doxey $1,850 of it was told by Clerk Harry Thomure today to the jury in Mrs. Doxey's trial for murder.

"I suppose," the hotel clerk quoted the defendant as having said to him, "that you clerks think it funny that we register under the name of Erder and receive mail under the name of Doxey. We did that because we did not want some people to know our business."

Mrs. Theresa Schwartz, who nursed Mrs. Doxey after Erder's death, said she was taken to Mrs. Doxey's room at the hotel by Dr. Doxey, whom Mrs. Doxey said, according to the witness, was her cousin.

Children Are Excluded.

Judge Grimm, at the beginning of the session, enforced a ruling which bars children and young girls from the court room.

Mrs. Dora E. Doxey will be a witness in her own behalf, probably tomorrow, according to an announcement made by her chief counsel, former Lieutenant Governor Charles P. Johnson, today. She will testify, said the attorney, that she was a slave to morphine, as the result of the administration of the drug to her by her husband, Dr. Loren B. Doxey.

She will further declare that she knows nothing of the arsenic found in the stomach of William J. Erder, whom she is accused of having murdered by poison after bigamously marrying him, for the purpose of collecting his $2,500 insurance.

"Her testimony will show," said Johnson, "that she loved Erder. If Erder had only set his foot down when she first talked of going away and had forbidden her to go, things might have resulted very differently."

Two doctors from Columbus, Neb., will testify for the defense as to Mrs. Doxey's subjection to the morphine habit.

Dr. Doxey Gets Money.

Mrs. Doxey got for herself $850 of Erder's $2,500 insurance, as was shown today by witnesses. The balance was shown to have been put into the form of checks payable to Dr. Doxey.

The additional sum of $500 collected by Mrs. Doxey on the affidavit that she was Erder's widow was paid because of the death of Erder's sister.

Henry Nieman, cashier of a bank where Mrs. Doxey obtained the checks, said Mrs. Doxey returned to the bank the next day and had a new check made from one she

(Continued on Second Page.)

Long Search for Sugar Men "Higher Up" Bearing Fruit

NEW YORK, May 31.—With three defendants eliminated, but with the interest in the proceedings heightened rather than diminished by their withdrawal, the resumption today of the sugar conspiracy trial in the United States circuit court was accompanied by rumors that the government's long search for men still "higher up" in the alleged conspiracy might shortly be rewarded. The rumor arose chiefly out of developments said to have followed the arrest of James O. B. Rizzenski, the former special treasury agent, on a charge of perjury in connection with the sugar cases.

As the result of pleas of guilty last Friday by the three government checkers on trial, there ramained the big man in the case, Charles R. Heike, secretary of the American Sugar Refining company, and two of his former subordinates, Ernest W. Gerbracht, superintendent of the company's Williamsburg refinery, and James F. Bendernagel, the refinery cashier. Motions of their counsel to dismiss the indictments were denied by Judge Martin after the jury had been excused on the adjournment over to today and the taking of testimony in their behalf followed formal opening by the defense was expected to be well under way before the day's session was over.

WICKERSHAM FILES RATE SUIT

Attorney General Seeks to Enjoin the Proposed Raise of Freight Tariffs by Western Lines.

CONFERENCE AT WHITE HOUSE

Decision is Reached After Long Talk with President Taft.

SHIPPERS PRESENT THEIR PLEA

Large Delegation and Several Congressman Call on Wickersham.

LA FOLLETTE HAS RESOLUTION

Wisconsin Senator, in Address, Says Purpose of Advance Now is to Destroy Any Effect Railroad Bill Might Have.

HANNIBAL, Mo., May 31.—United States District Judge Dyer tonight granted an order restraining railroads, members of the Western Traffic association, from putting into effect a general increase in freight rates. The petition, alleging an unlawful combination and conspiracy, was filed by Frederick N. Judson, special counsel, and Edwain P. Grosvenor, special assistant to Attorney General Wickersham.

WASHINGTON, May 31.—A decision at a White House conference this morning between the president and Attorney General Wickersham to institute at once injunction proceedings, probably at St. Louis, against the Western Traffic association to prevent a general increase in freight rates tomorrow preceded by but half an hour the introduction in the senate a resolution by Senator La Follette declaring it to be the sense of that body that such an injunction suit should be brought.

None of the senators in the chamber when Mr. La Follette put in his resolution knew of the decision already reached. Senator Crane of Massachusetts, who saw the president at the conclusion of the conference with the attorney general, was the first to take the news to the capitol.

Senator La Follette was prevented from making a speech in support of his resolution by the determination of Senator Elkins to call up the railroad bill for immediate consideration.

Attorney General Wickersham, after attending the sitting of the United States supreme court, had a series of conferences with senators and it was decided that Senator Curtis of Kansas should make the reply to Senator La Follette, if the resolution should again be called up.

Shippers See Wickersham.

The decision to institute injunction proceedings followed a conference in this city yesterday between Attorney General Wickersham and a committee representing shippers, consumers and producers in the territory affected by the proposed increase in rates. This committee was accompanied to the Department of Justice by Senators Clapp of Minnesota, Cullom of Illinois and Warner of Missouri and Representatives Nye of Minnesota, Hitchcock and Norris of Nebraska, Hubbard of Iowa, Madden of Illinois and Stafford of Wisconsin. The committee protested vigorously against the proposed increase.

The Wisconsin senator presented his first resolution, which was a mere declaration purporting to give the views of the senate. It went in as a part of the routine business, but when he requested present consideration of it, objection was voiced by Senator Elkins.

Mr. La Follette's Resolution.

The resolution recited that the railroads had announced a general advance in all class and commodity rates, and after presenting several other considerations by way of preamble, proceeded:

"Resolved, That it is the sense of the senate that the attorney general should proceed at once to institute actions enjoining such advances as has been and may be filed with the Interstate Commerce commission, and should also institute prosecutions of the railroads filing such rates as being in violation of the act of congress approved July 3, 1890, entitled an act to protect trade and commerce against unlawful restraint and monopolies."

Senator LaFollette said he had introduced his rate resolution because the increases to be made by the railroads, ranging, according to his estimate, from 5 to 50 per cent, would impose intolerable burdens on the people. He declared that the excuse that the increases were made because of advanced wages amounted to "mere pretense" and the higher rates would result in an annual profit to the railroads of from $400,000,000 to $800,000,000. He believed that the notice that the rates would take effect tomorrow was for the purpose of "beating out" the railroad bill with its probable profibftion against rates being advanced without the approval of the Interstate Commerce commission.

Will Be Filed in St. Louis.

It is generally believed the suit against the railroads will be instituted at St. Louis as the most central point. The details of the legal proceedings were left by the president entirely in the hands of Attorney General Wickersham and the Department of Justice officials. Mr. Wickersham's conference with the president was a hurried one, but it is understood the matter was discussed at some length by the president at the cabinet meeting this moruing.

President Taft regards this situation as renewed evidence of the importance of the provision in the administrative railroad bill now pending in congress, which if enacted will give the Interstate Commerce commission the right to suspend for sixty days any proposed increase in railroad rates.

MINNEAPOLIS BANKER IS CHARGED WITH SMUGGLING

H. R. Lyon is Accused of Attempting to Get Jewelry Past Customs Collector.

NEW YORK, May 31.—H. R. Lyon, who is said to be the president and vice president of several banks and corporations in Minneapolis, Minn., was held today on the charge of smuggling two pearl necklaces, a brooch and gold watch.

Mrs. Custer Leaves for Michigan.

NEW YORK, May 31.—Mrs. Elizabeth B. Custer, widow of General Custer, the famous Indian fighter, will leave town tonight for Monroe, Mich., the birthplace of her husband, where a monument in his memory will be unveiled by her next Saturday. President Taft will attend the ceremony and will make an address.