By Mr. LINDSAY: Resolution of the Congress of Knights of Labor of New York State, favoring bill against food adulteration—to the Committee on Agriculture.

By Mr. LITTLEFIELD: Petition of citizens of Richmond, Me., against religious legislation for the District of Columbia—to the Committee on the District of Columbia.

By Mr. MOON of Tennessee: Paper to accompany bill for relief of Harriet E. Aiken, widow of Jesse Witt—to the Committee on Invalid Pensions.

Also, paper to accompany bill for relief of Ruth Holden, of Chattanooga, Tenn.—to the Committee on War Claims.

Also, paper to accompany bill for relief of Abraham Slaver—to the Committee on War Claims.

By Mr. MORRELL: Petition of Washington Camp, No. 93, Patriotic Order Sons of America, favoring restriction of immigration—to the Committee on Immigration and Naturalization.

Also, petition of citizens of Conneautville and Titusville, Pa., against religious legislation for the District of Columbia—to the Committee on the District of Columbia.

By Mr. NORRIS: Petition of the Woman's Christian Temperance Union of Benkelman, Nebr., against sale of liquor in Government buildings—to the Committee on Alcoholic Liquor Traffic.

Also, petition of W. B. Harlan, of Loomis, Nebr., against sale of liquor on Government premises—to the Committee on Alcoholic Liquor Traffic.

By Mr. PORTER: Resolution of the American Hardware Manufacturers' Association, relative to public lands and forestry—to the Committee on the Public Lands.

Also, petition of the Society of Friends of Allegheny County, to forbid sale of intoxicating liquor on Government premises—to the Committee on Alcoholic Liquor Traffic.

By Mr. RIDER: Resolution of the American Hardware Association, relative to public lands and forestry—to the Committee on the Public Lands.

Also, resolution of the Maritimers' Association of the Port of New York, favoring bill S. 2262—to the Committee on Interstate and Foreign Commerce.

Also, resolution of the Clothiers' Association of the City of New York, opposing repeal of the bankruptcy law—to the Committee on the Judiciary.

Also, resolution of the Congress of the Knights of Labor of New York, against adulteration of food—to the Committee on Agriculture.

By Mr. RUPPERT: Resolution of the Sixteenth Annual Congress of the Knights of Labor of New York City, favoring passage of the pure-food bill—to the Committee on Agriculture.

Also, petition of the board of directors of the Maritimers' Association of the Port of New York, favoring bill S. 2262—to the Committee on Interstate and Foreign Commerce.

By Mr. SPALDING: Petition of Enderlin Division, No. 453, Order of Railway Conductors, relative to bill H. R. 7041—to the Committee on the Judiciary.

Also, petition of citizens of Jamestown and Osnabrock, N. Dak., against religious legislation for the District of Columbia—to the Committee on the District of Columbia.

Also, resolution of the legislature of North Dakota relating to the Interstate Commerce Commission, favoring the President's recommendations—to the Committee on Interstate and Foreign Commerce.

By Mr. TAWNEY: Petition of citizens of Minnesota, against religious legislation for the District of Columbia—to the Committee on the District of Columbia.

By Mr. WACHTER: Paper to accompany bill for relief of Henry Kichne—to the Committee on Naval Affairs.

Also, paper to accompany bill for relief of William Keister—to the Committee on Invalid Pensions.

By Mr. WANGER: Resolutions of the Maritime Exchange, the Commercial Exchange, the Board of Trade, the Growers and Importers' Exchange, the Trades League, and the Board of Marine Underwriters, of Philadelphia, Pa., and the Vessel Owners and Captains' Association of Philadelphia, New Jersey, and Delaware, for passage of bill S. 2262—to the Committee on Interstate and Foreign Commerce.

By Mr. WALLACE: Resolution of senate and house of representatives of Arkansas, relative to union with Indian Territory—to the Committee on the Territories.

By Mr. WILEY: Petition of the Newark District of the Woman's Home Missionary Society, favoring an amendment to Constitution prohibiting polygamy—to the Committee on the Judiciary.

By Mr. ZENOR: Petition of citizens of Sullivan County and Patricksburg, Ind., against religious legislation for the District of Columbia—to the Committee on the District of Columbia.

SENATE.

TUESDAY, *February 14, 1905.*

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. HANSBROUGH, and by unanimous consent, the further reading was dispensed with.

The PRESIDENT pro tempore. Without objection, the Journal will stand approved.

REPORT OF CHESAPEAKE AND POTOMAC TELEPHONE COMPANY.

The PRESIDENT pro tempore laid before the Senate the annual report of the Chesapeake and Potomac Telephone Company for the calendar year 1904; which was referred to the Committee on the District of Columbia, and ordered to be printed.

GROWERS OF LEAF TOBACCO.

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of the Treasury, transmitting, in response to a resolution of the 9th instant, a construction of the proviso of section 69 of the act of August 28, 1894, made by the Commissioner of Internal Revenue, in regard to the sale of tobacco by farmers; which, on motion of Mr. DANIEL, was, with the accompanying paper, referred to the Committee on Finance, and ordered to be printed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had passed with an amendment the bill (S. 3456) to designate parcels of land in the District of Columbia for the purposes of assessment and taxation, and for other purposes; in which it requested the concurrence of the Senate.

The message also announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

H. R. 14534. An act to amend an act entitled "An act to incorporate the Washington and Western Maryland Railroad Company;"

H. R. 15970. An act to amend section 1141 of the act to establish a code of law for the District of Columbia, approved March 3, 1901, as amended by the act approved June 30, 1902;

H. R. 16187. An act for the extension of Nineteenth street from Woodley road to Baltimore street;

H. R. 16917. An act to provide for condemning the land necessary for joining Kalorama avenue and Prescott place;

H. R. 16989. An act to amend section 602 of an act entitled "An act to establish a code of law for the District of Columbia," as amended;

H. R. 17746. An act authorizing the Commissioners of the District of Columbia to furnish Potomac water without charge to charitable institutions, and so forth, in the District of Columbia;

H. R. 18000. An act authorizing the extension of W street NW.;

H. R. 18038. An act relating to the inspection of steam boilers in the District of Columbia;

H. R. 18216. An act to close and open an alley in square No. 806, in the city of Washington, D. C.;

H. R. 18589. An act to amend an act entitled "An act to establish a code of law for the District of Columbia;"

H. R. 18725. An act supplemental to the act of February 9, 1821, incorporating the Columbian College, in the District of Columbia, and the acts amendatory thereto;

H. R. 18881. An act for the extension of Rittenhouse street, and for other purposes; and

H. R. 18887. An act to amend an act approved February 28, 1903, entitled "An act to provide for a union station in the District of Columbia, and for other purposes."

ENROLLED BILL SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bill; and it was thereupon signed by the President pro tempore:

H. R. 16799. An act making Texas City, Tex., a subport of entry in the customs collection district of Galveston.

PETITIONS AND MEMORIALS.

Mr. WETMORE presented a petition of 17 citizens of Rhode Island, praying for an investigation of the charges made and filed against the Hon. REED SMOOT, a Senator from the State of Utah; which was referred to the Committee on Privileges and Elections.

Mr. PROCTOR presented the petition of Julia Billings and sundry other citizens of Woodstock, Vt., praying for the adoption of an amendment to the Constitution to prohibit polygamy; which was referred to the Committee on the Judiciary.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Mr. PERKINS presented a petition of Arrowhead Lodge, No. 314, Brotherhood of Locomotive Firemen, of San Bernardino, Cal., praying for the passage of the so-called "employers' liability bill;" which was referred to the Committee on Interstate Commerce.

He also presented memorials of sundry citizens of Santa Ana, San Jose, and San Francisco, all in the State of California, remonstrating against the enactment of legislation granting to the Interstate Commerce Commissison arbitrary power to fix the rate of freight on railroads; which were referred to the Committee on Interstate Commerce.

He also presented petitions of the California Pine Box and Lumber Company, the Mobile Carriage Company, the Overland Freight Transfer Company, the Weed Lumber Company, the Wendling Redwood Shingle Company, and the Wendling Lumber Company, all of San Francisco; the Board of Trade of Santa Cruz, and of W. E. Dargie, editor of the Tribune, of Oakland, all in the State of California, praying that the parties in interest be heard before action is taken on the so-called "Esch-Townsend freight-rate bill;" which were referred to the Committee on Interstate Commerce.

Mr. CLARK of Wyoming presented a petition of sundry citizens of Lander, Wyo., praying for the enactment of legislation providing for the opening of the Shoshone Indian Reservation; which was referred to the Committee on Indian Affairs.

Mr. NELSON presented a petition of sundry citizens of Boyd, Minn., and a petition of sundry citizens of Albert Lea, Minn., praying for the enactment of legislation to amend the patent laws relating to medicinal preparations; which were referred to the Committee on Patents.

He also presented memorials of sundry citizens of Blue Earth County, Minn., remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sundays; which were referred to the Committee on the District of Columbia.

Mr. DICK presented petitions of Local Lodge No. 470, of Plainsville, and of Local Lodge No. 175, of Columbus, of the Brotherhood of Railroad Trainmen; of Local Lodge No. 360, of Massillon, of Local Lodge No. 208, of Springfield, of Local Lodge No. 31, of Cleveland, of Local Lodge No. 628, of Columbus, and of Local Lodge No. 318, of Cleveland, all of the Brotherhood of Locomotive Engineers; of Local Lodge No. 398, of Middleport, and of Local Lodge No. 260, of Cleveland, of the Brotherhood of Locomotive Firemen, and of Local Lodge No. 166, Order of Railway Conductors, of Newark, all in the State of Ohio, praying for the passage of the so-called "employers' liability bill;" which were referred to the Committee on Interstate Commerce.

He also presented petitions of sundry citizens of Cincinnati, Akron, Cleveland, Toledo, Bedford, and Ravenna, all in the State of Ohio, and of the A. A. Kraft Company, of Spokane, Wash., praying for the enactment of legislation to enlarge the powers of the Interstate Commerce Commission; which were referred to the Committee on Interstate Commerce.

He also presented petitions of Rev. S. E. Sears and 92 other citizens of Creston, of the Woman's Christian Temperance Union of Norwalk, of the Woman's Christian Temperance Union of Damascus, of the United Presbyterian Church of Pravo, of the Woman's Christian Temperance Union of Eagleville, of Mrs. R. H. Clayland and 14 other citizens of Bridgeport, and of the Ministerial Association of East Liverpool, all in the State of Ohio, praying for an investigation of the charges made and filed against Hon. REED SMOOT, a Senator from the State of Utah; which were referred to the Committee on Privileges and Elections.

He also presented petitions of sundry citizens of Shanesville, Pierpont, Hicksville, Cambridge, Chandlersville, Dodsonville, and Cleveland, all in the State of Ohio, praying for the passage of the so-called "parcels-post bill;" which were referred to the Committee on Post-Offices and Post-Roads.

He also presented petitions of the Columbus Druggists' Association, of Columbus; of the Toledo Pharmaceutical Association, of Toledo, and of sundry citizens of Cleveland, Berea, Highland County, and Circleville, all in the State of Ohio, praying for the enactment of legislation to amend the patent laws relating to medicinal preparations; which were referred to the Committee on Patents.

Mr. FRYE presented a petition of the National Board of Trade, praying for the enactment of legislation providing for a revision of the public-land laws; which was referred to the Committee on Public Lands.

REGULATIONS AS TO MILITARY RESERVATIONS.

Mr. MORGAN. Mr. President, on the 9th instant I addressed a letter to Gen. George B. Davis, Judge-Advocate-General of the Army, asking for information as to the state of the law, the state of the regulations, and the state of practice in regard to military reservations. In response he has furnished me a very able paper, which will be quite useful, perhaps, in the consideration of whatever legislation we may enter upon in regard to the Panama Canal. I present this paper, and ask that it be printed as a document.

The PRESIDENT pro tempore. There being no objection to the request of the Senator from Alabama, the paper presented by him will be printed as a document.

REPORTS OF COMMITTEES.

Mr. BERRY, from the Committee on Commerce, to whom were referred the following bills, reported them each without amendment:

A bill (H. R. 18358) to authorize the Borderland Coal Company, of Nolan, W. Va., to bridge the Tug Fork of the Big Sandy River at a point about 2 miles east of Nolan, Mingo County, W. Va., where the same forms the boundary line between the States of West Virginia and Kentucky; and

A bill (H. R. 17869) relating to the Monroe and Lake Providence Railroad Company.

Mr. HALE, from the Committee on Naval Affairs, to whom was referred the bill (S. 1983) for the relief of George T. Pettengill, lieutenant, United States Navy, reported it without amendment, and submitted a report thereon.

BILLS INTRODUCED.

Mr. GAMBLE introduced a bill (S. 7177) granting an increase of pension to George Pike; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Pensions.

Mr. SMOOT introduced a bill (S. 7178) granting an increase of pension to Thomas E. Keith; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

Mr. FULTON introduced a bill (S. 7179) granting a pension to Joseph B. Doan; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Pensions.

Mr. GALLINGER introduced a bill (S. 7180) to authorize the levying of certain special assessments; which was read twice by its title, and, with the accompanying papers, referred to the Committee on the District of Columbia.

Mr. CULLOM introduced a bill (S. 7181) to amend section 1742 of the Revised Statutes of the United States; which was read twice by its title, and referred to the Committee on Foreign Relations.

Mr. FORAKER introduced a bill (S. 7182) amending the act of March 2, 1901, entitled "An act to carry into effect the stipulations of article 7 of the treaty between the United States and Spain, concluded on the 10th day of December, 1898;" which was read twice by its title, and referred to the Committee on the Judiciary.

Mr. PERKINS introduced a bill (S. 7183) to pay the heirs of D. F. Lansing the sum of $15,000 for services rendered and supplies furnished to the Bool Dam Indians of California; which was read twice by its title, and referred to the Committee on Indian Affairs.

Mr. PLATT of Connecticut introduced a bill (S. 7184) to provide for an additional associate justice of the supreme court of the Territory of Arizona, and for other purposes; which was read twice by its title, and referred to the Committee on the Judiciary.

Mr. SIMMONS introduced a bill (S. 7185) granting an increase of pension to G. P. Edney; which was read twice by its title, and referred to the Committee on Pensions.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. BURROWS submitted an amendment authorizing the Ottawa and Chippewa Indians of Michigan, within ninety days from the approval of the act, to file a petition in the Court of Claims for the purpose of settling the question as to the ownership of stocks, Government bonds, or moneys held in trust by the Government at the date of the treaty of July, 1855, between the Ottawa and Chippewa Indians and the United States, etc., intended to be proposed by him to the Indian appropriation bill; which was ordered to be printed, and, with the accompanying papers, referred to the Committee on Indian Affairs.

Mr. SMOOT submitted an amendment proposing to appropriate $25,000 for the establishment of a fish-cultural station in the State of Utah, etc., intended to be proposed by him to the sundry civil appropriation bill; which was referred to the Committee on Fisheries, and ordered to be printed.

Mr. OVERMAN submitted an amendment proposing to appropriate $50,000 for continuing the improvement of the Cape Fear River above Wilmington, N. C., intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

Mr. HALE submitted an amendment proposing to appropriate $1,678.88 to pay B. Jackman, agent of the Maine Central Railroad Company, Vanceboro, Me., for refund of duties on 1,499 cases of condensed milk erroneously entered for consumption and shipped in transit through the United States to Dawson, Yukon Territory, intended to be proposed by him to the general deficiency appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

Mr. KITTREDGE submitted an amendment proposing to appropriate $5,000 to enable the Secretary of the Interior to sink an artesian well or wells at or near Lake Andes, on the Yankton Indian Reservation, S. Dak., etc., intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

Mr. FORAKER submitted an amendment proposing to appropriate $50,000, or so much thereof as the Attorney-General shall deem advisable, out of all moneys, arrears of pay, and bounty which are due the estates of deceased colored soldiers who served in the late civil war and which were in the hands of the Commissioner of the Freedmen's Bureau and have been repaid into the Treasury, etc., for the purpose of erecting a drill hall, gymnasium, dormitory, and armory upon the lands owned by the trustees of Wilberforce University, Wilberforce, Green County, Ohio, intended to be proposed by him to the sundry civil appropriation bill; which was referred to the Committee on Military Affairs, and ordered to be printed.

Mr. HEYBURN submitted an amendment authorizing the sale and disposition of surplus or unallotted lands of the Fort Hall Indian Reservation, in the State of Idaho, intended to be proposed by him to the Indian appropriation bill; which was referred to the Committee on Indian Affairs, and ordered to be printed.

Mr. SIMMONS submitted an amendment proposing to appropriate $60,000 for improving the Neuse and Trent rivers, North Carolina, of which $40,000 shall be used in continuing the improvement of the Neuse River, etc., intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

He also submitted an amendment proposing to appropriate $15,000 for completing the improvement of existing projects and for maintenance of the Pimlico and Tar rivers, North Carolina, etc., intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

BEQUEST BY GEORGE WASHINGTON.

Mr. FRYE submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That the Secretary of the Treasury be directed to inform the Senate what was the amount of the bequest made by George Washington to the United States for the foundation of the university and what appropriation was made of it.

SECTARIAN INDIAN SCHOOLS.

Mr. BARD. I offer a Senate resolution, which I ask to have read, printed, and lie over until to-morrow, subject to my call.

The resolution was read, as follows:

Resolved, That the Secretary of the Interior be, and he is hereby, directed to furnish for the information of the Senate, a statement showing all contracts made since January, 1903, providing for the care and education of Indians in sectarian or denominational schools, together with copies of all petitions and applications for said contracts, and of all papers and correspondence relative to the subject of sectarian education addressed to or on file in his Department; also copies of opinions rendered by the Department of Justice relative to the authority of the executive department for granting contracts to sectarian schools for the care and education of Indians, and for using trust funds belonging to Indian tribes or other moneys appropriated by Congress for fulfilling treaty stipulations with Indian tribes or other purposes for the payment of such contracts.

The PRESIDENT pro tempore. On the request of the Senator from California, the resolution will be printed and lie on the table subject to his call.

ASSESSMENT AND TAXES IN THE DISTRICT OF COLUMBIA.

The PRESIDENT pro tempore laid before the Senate the amendment of the House of Representatives to the bill (S. 3456) to designate parcels of land in the District of Columbia for the purposes of assessment and taxation, and for other purposes, which was, on page 3, line 24, to strike out all after the word "Columbia" down to and including the word "subdivision," in line 25.

Mr. GALLINGER. I move that the Senate concur in the amendment of the House of Representatives.

The motion was agreed to.

HOUSE BILLS REFERRED.

The following bills were severally read twice by their titles, and referred to the Committee on the District of Columbia:

H. R. 14534. An act to amend an act entitled "An act to incorporate the Washington and Western Maryland Railroad Company;

H. R. 15970. An act to amend section 1141 of the "Act to establish a code of law for the District of Columbia," approved March 3, 1901, as amended by the act approved June 30, 1902;

H. R. 16187. An act for the extension of Nineteenth street from Woodley road to Baltimore street;

H. R. 16989. An act to amend section 602 of an act entitled "An act to establish a code of law for the District of Columbia," as amended;

H. R. 18725. An act supplemental to the act of February 9, 1821, incorporating the Columbian College, in the District of Columbia, and the acts amendatory thereto;

H. R. 18881. An act for the extension of Rittenhouse street, and for other purposes; and

H. R. 18887. An act to amend an act approved February 28, 1903, entitled "An act to provide for a union station in the District of Columbia, and for other purposes."

AGRICULTURAL APPROPRIATION BILL.

Mr. PROCTOR. I ask unanimous consent that the agricultural appropriation bill be now laid before the Senate.

There being no objection, the Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 18329) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1906.

The PRESIDENT pro tempore. The pending question is on the amendment offered by the Senator from North Dakota [Mr. HANSBROUGH], which will be read.

The SECRETARY. On page 65, at the end of the bill, add the following:

That paragraph 234 of the act of July 24, 1897, entitled "An act to provide revenue for the Government and to encourage the industries of the United States," was not intended and shall not be held to be affected by the provisions of section 30 of said act.

Mr. HANSBROUGH. Mr. President, when I yielded at the suggestion of the Senator from Maryland [Mr. GORMAN] yesterday, that the Senate might proceed to the consideration of executive business, I was endeavoring to explain the amendment which I had offered. I was stating that the amendment proposes to declare the intent of Congress with respect to paragraph 234 of what is known as the "Dingley tariff act." I stated that this provision, paragraph 234, first appeared in what we all know as the "McKinley Act" of 1890, and that in 1894 it was copied, with some slight changes, into the law known as the "Wilson-Gorman tariff act." Those changes were immaterial. In the McKinley Act and in the Dingley Act it is provided that there shall be a specific duty of 25 cents per bushel on importations of wheat. In the act of 1894, known as the "Wilson-Gorman law," it is provided that the duty on wheat shall be 20 per cent ad valorem.

Mr. President, there is also in the existing tariff law a section known as the "drawback section." It is section 30 of the Dingley law. It is precisely the same as it first appeared in the McKinley Act, and the same provision was enacted in the Wilson-Gorman law without any change whatever. I will have that section of the statute read.

The PRESIDENT pro tempore. The section will be read.

The Secretary read as follows:

Where imported materials on which duties have been paid are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less 1 per cent of such duties: *Provided,* That when the articles exported are made in part from domestic materials the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles that the quantity or measure thereof may be ascertained: *And provided further,* That the drawback on any article allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall, in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either, or to the person to whom such manufacturer, producer, exporter, or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe.

Mr. HANSBROUGH. The first proviso of that section is the one which pertains to the amendment which I have offered. That proviso is as follows:

Provided, That when the articles exported are made in part from domestic materials, the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles that the quantity or measure thereof may be ascertained.

When the McKinley bill was reported to the House of Representatives that proviso was not in the bill. The first paragraph of the section was in the bill, the one providing for the use of imported materials in manufactures without reference to the use of domestic materials.

During the hearings before the Committee on Ways and Means officers of the Treasury Department appeared before the committee and stated that to provide for the blending of imported materials with domestic materials would give rise to opportunity for fraud. The Treasury Department was decidedly opposed to the blending of these articles. There appeared before the committee about that time the representative of a firm located in New York, I believe, the firm of E. Greenfield's Son & Co., who were engaged in the manufacture of petroleum and articles made from petroleum. They were very anxious to secure a provision in the law which would permit the blending of imported materials with domestic materials; but the Treasury Department having taken the ground that that could not be done without giving rise to the opportunity for fraud, the representative of Greenfield's Son & Co. suggested these words, which appear in the proviso:

Shall so appear in the completed articles that the quantity or measure thereof may be ascertained.

"Shall so appear." How? In the completed article, of course, by analysis, by analytical examination or otherwise, because that is the only way the Department could ascertain whether the imported articles really went into the finished article or not.

So the McKinley bill was enacted into law with that provision in it, intended to protect those who were engaged in producing the raw materials which enter into finished products, against the use of raw materials in a way that would admit of irregularities amounting to free importations.

That was in 1890, and for eight years, Mr. President, that was the law, and that was the construction which the law officers of the Government placed upon it.

In 1894 a smelting company made application to the Treasury Department for the right to import and use lead ores from Mexico, and to mix them with domestic ores, and to export the finished product, and have the privilege of the rebate upon the imported material. The case was sent to the Attorney-General, Mr. Richard Olney, and he gave an opinion upon that question. I shall read a part of that opinion. Mr. Olney, in his opinion, said:

It appears that this ore was of the kind known as fluxing ore, containing a large quantity of lead, and used in this country for the purpose of smelting in combination with the refractory or dry domestic ores; that is, ores containing little or no lead. It appears that the imported and domestic ores go together into the furnace. The main product in value is the silver. An important by-product, however, is lead. The lead in the ores which go into the furnace is about 90 per cent foreign and 10 per cent domestic. Some of this lead is wasted. It is presumable that the waste of foreign and domestic lead, respectively, is in the proportions above stated, and that therefore 10 per cent of the resulting by-product is domestic in origin. Each molecule of domestic lead being precisely like each molecule of foreign lead in this product, it is, of course, utterly impossible to distinguish between them by any examination of the completed article.

Then Attorney-General Olney goes on to quote the section which I have had read. He then continues:

The importers claim that they have sufficiently complied with this proviso, because they have kept accurate records showing the amount of foreign lead and also the amount of domestic lead which went into the furnace and because they are thus able to state the proportions of each in the mass of lead resulting from their operations with substantial accuracy. Your letter assumes, however, that this is not the case. You assume that the proviso forbids the allowance of a drawback except in cases where the article manufactured or produced can be so separated chemically or mechanically into its component materials that the relative proportions of each material may be ascertained without reference to past books of accounts. This assumption, in my opinion, is entirely correct. The section is intended to apply only to cases where an article is made of two or more different materials. The possible existence in commerce of a mere mixture or melting together of articles identically the same, though part domestic and part foreign, does not seem to have been contemplated by Congress. It is a casus omissus.

And so the application of the smelting company for this rebate privilege was denied by Mr. Olney, and his opinion remained as the rule under which the Department proceeded thereafter until 1898.

Mr. FULTON. Will the Senator from North Dakota allow me to ask him a question?

Mr. HANSBROUGH. Certainly.

Mr. FULTON. I will premise my question by the statement that I am fully and heartily in accord with the Senator's provision and favor his amendment; but he made a statement a few minutes ago that interested me, in which he said that this proviso was inserted on the suggestion of certain persons who were engaged in the importation of articles which went into the manufacture of products of petroleum. Does the Senator know whether or not those articles those people had reference to were such that when they went into the manufactured product they could be analyzed, and by analysis detected?

Mr. HANSBROUGH. It was stated by Greenfield's Son & Co. that the articles which they manufactured from raw petroleum, imported and domestic, could be ascertained by analysis, and, in order to make sure of that, they suggested that these words should be inserted in the law.

Mr. HALE. I am interested in the Senator's statement. The reading of the Olney decision seemed to be very clear on this subject. I ask the Senator whether the action of the present Attorney-General is an overruling of the decision by former Attorney-General Olney?

Mr. HANSBROUGH. It is. The recent opinion of Attorney-General Moody with respect to imports of wheat clearly overrules the opinion of Mr. Olney with respect to imports of lead.

Mr. HALE. It seemed to me very clear that it does. Does the Senator know whether that opinion of the then Attorney-General was before the present Attorney-General during his consideration of the matter?

Mr. HANSBROUGH. Oh, yes. I called the attention of Attorney-General Moody to it, and filed a brief with him in which I referred to the matters I have spoken of here. So it was doubtless before him.

Mr. HALE. So it is an overruling of that decision?

Mr. HANSBROUGH. It is. I will say to the Senator from Maine that Mr. Olney's opinion had been overruled in 1898 by Attorney-General Griggs in the same case passed upon by Mr. Olney. The smelter people, having been denied the privilege which they asked in 1894, returned to the Treasury Department in 1898 and secured a reversal of the Olney opinion.

Mr. FULTON. May I ask the Senator if it does not appear from the opinion of Attorney-General Moody that he was influenced largely in the conclusion he reached by the previous opinion of Attorney-General Griggs? As I remember the decision, Attorney-General Moody states that he would hesitate to disturb the practice that had grown up under the opinion of Attorney-General Griggs. It seemed to me from a casual reading of the opinion of Attorney-General Moody that had it been a new question he might possibly himself have reached a different conclusion.

Mr. HANSBROUGH. I think that is true. I am also led to believe by the references which I find in the opinion of Attorney-General Moody that if it had been a new question for the first time before the Department he would have sustained Attorney-General Olney. That is my opinion.

Now, Mr. President, in order to show what the intent of Congress was and how that proviso came into the law I will read from the statements made by E. Greenfield's Son & Co. to show that it was the intention to prevent, as far as possible, the perpetration of fraud, and for that reason the words which I have quoted in the proviso were placed in it. In Greenfield's Son & Co.'s statement, dated the 13th of February, 1890, and addressed to the Hon. William McKinley, I find the following:

The disadvantage which we are placed at will be readily perceived when we state that the drawback now allowed on the grade of refined sugar referred to amounts to 0.026 cent per pound.

It seems that Greenfield's Son & Co. were engaged also in the manufacture of confectionery.

If the law were so changed as to permit us to collect the drawback, we could compete successfully with England, both in her own markets and the foreign markets which she now exclusively controls.

We have been informed that it has been alleged by Treasury officials that such an amendment to the law would be productive of fraud.

That was the position held by the Treasury Department at that time, that this commingling of foreign and domestic products could not be carried out in certain cases without the possibility of fraud.

There surely would not be any grounds on which to urge such an objection if the law were so modified as to only allow the drawback when the part or parts of articles claimed on can be distinctly separated, either by chemical analysis or other effective means, and that it is possible to perform such an analysis with all articles manufactured chiefly from sugar can be practically demonstrated to the satisfaction of the Government.

Mr. President, that can not be done with respect to the article of flour. No chemical analysis can reveal the different kinds of wheat which are in the exported article and separate them from the domestic article after it has been finished and ready for export.

I find in the opinion of the Attorney-General the following reference to this case. In commenting upon the first proviso which I have had read, the Attorney-General says:

The word "appear" is here used with a very common meaning—perhaps the most common meaning it has in legal phraseology—and describes that knowledge which comes to the mind as the result of evidence as well as the knowledge derived from the exercise of the senses. In that sense a fact "appears" to exist when by any evidence which satisfies the understanding it is shown to exist. Giving to the word this meaning, the statute does not require that the im-

ported materials should appear in the sense of being seen in the completed articles.

It seems to me that this view of the case is in direct hostility to the language we find in the law.

Mr. SPOONER. What is the precise language?

Mr. HANSBROUGH. In the law?

Mr. SPOONER. Yes; where the words "so appear" occur.

Mr. HANSBROUGH. The proviso which relates directly to the amendment which I have offered is as follows:

Provided, That when the articles exported are made in part from domestic materials, the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles that the quantity or measure thereof may be ascertained.

Mr. SPOONER. The Senator's point is, as I understand it, that under the statute the imported raw material must appear in the article for export.

Mr. HANSBROUGH. In the completed article.

Mr. SPOONER. And not in an affidavit.

Mr. HANSBROUGH. And not in an affidavit.

Mr. HALE. That is, if the language of the statute had been "unless it is shown," I should say undoubtedly under such a provision it might be shown by evidence as to what was put in, but in making this provision, which would be the natural provision, if such a method was not intended, it is provided that the goods shall be refused the privilege of rebate unless it "shall so appear."

Mr. SPOONER. In the article.

Mr. HALE. Yes, in the article. So, as the Senator says, it can not be made manifest by testimony, but it must appear.

Mr. ALLISON. It must "so appear."

Mr. HALE. "So appear." It seems to me that the contention is complete.

Mr. FULTON. Had it been contemplated that it might be shown by affidavit, as the Senator from Wisconsin suggests, would not the language at least have been that it shall or that it may be made to appear? But here the law uses the words "shall so appear."

Mr. HALE. That language would give more scope. The language that it "shall so appear" is very clear, indeed.

Mr. HANSBROUGH. The language of the statute is that it shall so appear, but the construction placed upon it by the Attorney-General is that it shall appear to so appear.

Mr. HALE. That it shall be shown, in other words.

Mr HANSBROUGH. Yes. I doubt if the present Attorney-General was very sure about his premises in this case. I find in the concluding paragraph of his opinion the following, which I will read:

I do not wish to be understood as expressing the opinion that the evidence of the books of account of the manufacturers is alone sufficient, without the aid of other evidence to establish the right of the manufacturer to the drawback. I express no opinion upon that subject, as the nature of the evidence disclosed by them is not before me. The amount and character of the evidence which should be required by you is within your administrative discretion.

This was addressed to the Secretary of the Treasury.

So, Mr. President, after all, after the Attorney-General has reviewed the opinion of Mr. Griggs and assumed to agree with that opinion, reversing the former opinion of Mr. Olney, he leaves it with the Secretary of the Treasury.

Mr. President, if this thing goes on there is not a single article of manufacture into which raw materials of any character, foreign or domestic, enter that may not be brought within the pale of that opinion and the subsequent regulation issued by the Secretary of the Treasury.

In other words, Mr. President, we hear a great deal about tariff revision and tariff readjustment, but I say if this is permitted to go it will be unnecessary for Congress ever to revise the tariff, because the Treasury Department will do that for us.

In the case we are considering, the Millers' Association of the United States made application here for the privilege of importing wheat and blending it with domestic wheat and manufacturing it into flour for export, and then claiming the privilege of receiving a drawback upon the imported material. I have no doubt, from interviews which I have seen in the newspapers with the Secretary of the Treasury, and from conversations which I have had with him, he was very strongly inclined to grant the request of the Millers' Association. But the opposition to the petition of the millers became so strong that the Secretary of the Treasury finally concluded to refer the matter to the law officers of the Government, and in that way we have the opinion of the Attorney-General, in which he says that he thinks, following the former opinion of his predecessor, Mr. Griggs, and under his construction of the law, the millers should be given this privilege.

Mr. President, this is a great big question. There are numerous articles upon which the Treasury Department has passed, articles of small consequence, where imported materials are used in manufactures for export. Perhaps there are four or five hundred different articles that come within the purview of this section. But upon all of the articles thus manufactured for export the rebates have not exceeded $5,000,000 a year.

Now, what would be the situation with respect to free importations of wheat to be used in the export of flour? Let us see for a moment to what extent this would go. I find by the statistics which I have gathered on this subject that the exports of domestic wheat flour in 1901 amounted to 18,650,000 barrels. These figures are for the fiscal year. In that same year there were produced in the United States 748,460,000 bushels of wheat. These figures are for the calendar year. In 1902 the exports of flour were 17,000,000 barrels; the production of wheat in the United States 670,000,000 bushels. In 1903 the exports of flour were 19,000,000 barrels; the production of wheat in the United States 637,000,000 bushels. In 1904 the exports of flour were 16,000,000 barrels; the production of wheat 552,000,000 bushels.

Mr. President, these figures are interesting on account of the fact that in most years we have a surplus of wheat for export, and when we have a surplus of wheat for export—to be exported in the shape of flour, of course—the price paid for that wheat abroad fixes the price for the entire domestic product we have at home. In the years 1901 and 1902 it will be seen that we had a surplus, and if the idea which I have advanced with respect to the price is the correct one—and I think there is no doubt about it—then the price paid in Liverpool fixed the price for all the wheat in the United States during those years. The domestic output of wheat in 1904 was far below those of previous years. There was no wheat for export in that year, and the domestic demand fixed the price. The result is that the farm price has ranged around $1 per bushel, as against 60 to 70 cents per bushel in those years when we had a surplus to dispose of.

Mr. PATTERSON. Mr. President——

The PRESIDENT pro tempore. Does the Senator from North Dakota yield to the Senator from Colorado?

Mr. HANSBROUGH. Yes, sir.

Mr. PATTERSON. I wish to ask the Senator from North Dakota whether his amendment affects wholly the rebate upon flour—that is, the rebate of the tax which is put upon imported wheat.

Mr. HANSBROUGH. That is all. It relates solely to the article of flour.

Mr. PATTERSON. But I also understand——

Mr. ALLISON. If the Senator from Colorado will allow me——

Mr. PATTERSON. Certainly.

Mr. ALLISON. While that is the article specifically referred to for the present, the amendment expresses a construction of every other item in the law of that year.

Mr. PATTERSON. That was the point to which I was going to direct the attention of the Senator from North Dakota. The reading of Secretary Olney's opinion shows that it was rendered upon the question of the importation of lead ore.

Mr. HANSBROUGH. But it is an analogous case, undoubtedly.

Mr. PATTERSON. It relates to the question of imported lead; and that opinion was overruled.

Mr. FULTON. By Attorney-General Griggs.

Mr. PATTERSON. By Attorney-General Griggs. Now, why should not the amendment, if Mr. Olney's opinion or construction is the right one, be so framed as to place the law on all imported articles alike, and not select one particular article to reverse that opinion and leave all the rest undisturbed?

Mr. HANSBROUGH. Because, Mr. President, the parties who may be aggrieved or injured as the result of the adoption of the rule as to the article to which the Senator refers have made no complaint, so far as I know, and the grain growers of this country, numbering probably between four and five million people, have made serious complaint in respect of the application of the millers' importation of wheat.

Mr. PATTERSON. The theory of the Senator is that the later construction of the law is injurious to all growers of wheat.

Mr. HANSBROUGH. The theory advanced by the Senator from Iowa [Mr. ALLISON], if I understood him correctly, is that this construction would be placed upon all the articles which have been passed upon by the Department. I do not think so.

Mr. PATTERSON. I understand that the particular instance that the Senator has in mind is the wheat-growing interest, because the construction of the law as it now is injuriously affects the wheat grower, and that that is the view which is impelling the Senator from North Dakota to offer this amendment.

Mr. HANSBROUGH. That is my view, and not only my

view, but it is the view of a large number of grain growers who have given expression to that view in resolutions and otherwise in their gatherings throughout the country. The legislature of North Dakota has passed strong resolutions against the position taken by the Government.

Mr. PATTERSON. I am not taking issue with the Senator, but if this construction is injurious to that industry, I suppose the enforcement of the latter-day view will be injurious in like way—though possibly it may not be in the same degree—to any other industry that produces any article the like of which is produced abroad and imported and mingled with home articles. If that is the case, why select one branch of industry for relief and leave the others undisturbed? Why not so frame the amendment as that it may be voted upon on principle and not be for the benefit of one particular branch of American industry?

Mr. HANSBROUGH. I doubt the propriety of going into the whole question at this time because, as I have stated to the Senator, there have been no complaints by parties who may be injured in respect to these other articles, but there have been very serious complaints by the grain growers of the country in respect to the instructions issued by the Secretary of the Treasury regarding the importation of wheat, and I do not believe that Congress ever intended that the drawback provision should apply to wheat.

Mr. HEYBURN. Mr. President——

The PRESIDENT pro tempore. Does the Senator from North Dakota yield to the Senator from Idaho?

Mr. HANSBROUGH. Yes, sir.

Mr. HEYBURN. Mr. President, the reason there has been no complaint from the interests to which the decision of Mr. Olney applied is not because the parties affected by it have been content, for they have not, but it is through the condition which has been brought about by the existence of the lead trust, which is both a smelter and a mine owner, which enables them to shut out from the lead market anyone who will not cooperate with them.

Anyone conversant with that condition will readily understand why there has not been a very strong organized opposition to that decision and its results. It has been my intention, when I could do so without interfering with the pending amendment or the amendment of some other Senator, to see if I could not include the discrimination, or rather the indirect repeal of the duty on lead, which is brought about by this decision. It has been my intention to see if we could not find some remedy for it, some expression of opinion that, even though it might not have any controlling force, might be persuasive in its effect.

Mr. HANSBROUGH. I hope the Senator will defer his efforts in that line until later.

Mr. HEYBURN. I had thought this morning of asking the Senate to incorporate such a provision into this amendment, which relates to flour, because right around me in my State we produce 12 per cent of the flour of the United States. So in that respect I sympathize very strongly with the Senator from North Dakota who has presented this amendment; but I have made this suggestion in reply to the suggestion of the Senator from Colorado [Mr. PATTERSON], in order that it may not seem to be admitted at this time that the lead producers of this country are content with the partial repeal of the duty on lead by the decision rendered by Solicitor-General Richards.

Mr. HANSBROUGH. Mr. President, our great difficulty in all these cases is this: The parties who may not agree with the regulations of the Treasury Department and the opinions of the Attorney-General can not take their case into court, because the Government waives its right to collect the duty; it declines to do a thing which Congress has directed it to do, and, therefore, the aggrieved party can not get into court so that he may have a judicial determination of this question. If it were possible to get the decision of a court on this question, I would not be here asking for the adoption of this amendment; the Congress of the United States is the only tribunal to which we can appeal.

Mr. President, I am not going into this question at any considerable length. I want to make this statement, however, and to call the attention of the Senate to the fact that the difference in the price of wheat between Canada and the United States last fall and now is, as I understand, from 17 to 20 cents per bushel by reason of the fact that the American wheat is protected. If this opinion prevails, and the millers of the country are allowed to import wheat from Canada, very naturally the price of wheat in the United States must fall. It will doubtless increase the price of Canadian wheat to some extent, but at the same time it will reduce the price of wheat in the United States. It is for this reason, Mr. President, that the grain growers of the United States, numbering close onto 5,000,000 people, are complaining and protesting against this decision; and it is for this reason that I have urged this amendment before the Senate.

Mr. PATTERSON. Mr. President——

Mr. HANSBROUGH. I wish to make a request before the Senator from Colorado proceeds.

Mr. PATTERSON. Certainly.

Mr. HANSBROUGH. I ask the consent of the Senate to be permitted to insert as a part of my remarks the opinion of Attorney-General Olney.

The PRESIDENT pro tempore. Is there objection? The Chair hears none, and that order is made.

The paper referred to is as follows:

DRAWBACK—IMPORTED LEAD.

Section 25 of the tariff act of October 1, 1890, applies only to articles made of two or more materials.

In a mass of lead, of which 90 per cent is foreign in origin, and 10 per cent domestic, the domestic lead can be regarded neither as a mere incident to the other nor as small enough in amount to be disregarded.

DEPARTMENT OF JUSTICE,
December 28, 1894.

SIR: Your communication of November 16, asking my opinion with relation to the claim of the Kansas City Smelting and Refining Company for drawback upon imported lead, has received my careful attention.

It appears that the lead in question was imported in the months of September, 1893, to March, 1894, inclusive, from the Republic of Mexico, contained in silver-lead ores known commercially as lead carbonates. Silver being the component material of chief value in these ores, they are regarded as silver ores, and the duty upon the lead therein contained was exacted under the proviso to paragraph 199 of the McKinley tariff act of October 1, 1890, chapter 1244, which proviso is as follows:

"That silver ore and all other ores containing lead shall pay a duty of 1½ cents per pound on the lead contained therein, according to sample and assay at the port of entry."

It appears that this ore was of the kind known as fluxing ore, containing a large quantity of lead, and used in this country for the purpose of smelting in combination with the refractory or dry domestic ores; that is, ores containing little or no lead. It appears that the imported and domestic ores go together into the furnace. The main product in value is the silver. An important by-product, however, is lead. The lead in the ores which go into the furnace is about 90 per cent foreign and 10 per cent domestic. Some of this lead is wasted. It is presumable that the waste of foreign and domestic lead, respectively, is in the proportions above stated, and that therefore 10 per cent of the resulting by-product is domestic in origin. Each molecule of domestic lead being precisely like each molecule of foreign lead in this product, it is, of course, utterly impossible to distinguish between them by any examination of the completed article.

The importers claim a drawback under section 25 of the McKinley Act, which provides:

"That where imported materials on which duties have been paid are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less 1 per cent of such duties."

The section, however, contains the following important proviso:

"*Provided*, That when the articles exported are made in part from domestic materials, the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles that the quantity or measure thereof may be ascertained."

The importers claim that they have sufficiently complied with this proviso, because they have kept accurate records showing the amount of foreign lead and also the amount of domestic lead which went into the furnace and because they are thus able to state the proportions of each in the mass of lead resulting from their operations with substantial accuracy. Your letter assumes, however, that this is not the case. You assume that the proviso forbids the allowance of a drawback except in cases where the article manufactured or produced can be so separated chemically or mechanically into its component materials that the relative proportions of each material may be ascertained without reference to past books of account. This assumption, in my opinion, is entirely correct. The section is intended to apply only to cases where an article is made of two or more different materials. The possible existence in commerce of a mere mixture or melting together of articles identically the same, though part domestic and part foreign, does not seem to have been contemplated by Congress. It is a casus omissus.

You ask my opinion "whether the presence of a slight incidental percentage of domestic lead in the metal entered for drawback should be regarded as a bar to the allowance thereof," or "whether the lead produced as above described may properly be considered as an article wholly manufactured from materials imported." I think that in no proper sense can any portion of the lead entered for drawback be regarded as incidental to any other portion thereof or to the whole. Nor is the proportion of domestic lead in the total product small enough to be disregarded. (Magone *v.* Luckemeyer, 139 U. S., 612.)

It is unnecessary, therefore, to consider the question whether this lead, in view of the various statutory provisions above quoted, is an "article manufactured or produced in the United States." (See United States *v.* Hathaway, 4 Wall., 404; Junge *v.* Hedden, 146 U. S., 233, 239; Seeberger *v.* Castro, 153 U. S., 32, 35; Attorney-General *v.* Lorman, 59 Mich., 157.)

Very respectfully,

RICHARD OLNEY.

The SECRETARY OF THE TREASURY.

DRAWBACK—IMPORTED LEAD.

The drawback under section 25 of the act of October 1, 1890, is measured by the duties paid on the imported materials used in the manufacture of the exported articles and not by the imported materials found in such articles.

The proviso of this section requires only that the imported materials "shall so appear in the completed artcles that the quantity or measure thereof may be ascertained."

It does not prescribe how they shall appear, except that they shall so appear that the quantity and measure thereof may be ascertained.

Ascertainment of quantity and measure is an act of the mind, and the required appearance is therefore not a visual, but a mental presentation.

In order that there may be a recovery of drawback under this proviso, where the article exported is made in part from domestic materials, the imported materials shall so appear in the completed article—that is, be shown to the satisfaction of the customs officers to exist in the completed article—that the quantity or measure thereof may be ascertained.

Satisfactory proof having been presented to the customs officers that a certain amount of imported lead had been used in the manufacture of pig lead, an inspection or analysis of the pig lead must show that the imported lead, after allowing for wastage, is present in the pig lead to be exported, on which drawback is claimed.

All the facts necessary having been established to identify the imported materials used, to ascertain the quantity thereof, and to compute the duties paid thereon, and it being satisfactorily shown that the imported materials so appear in the exported product that the quantity or measure thereof may be ascertained, a drawback is allowable.

DEPARTMENT OF JUSTICE, *July 13, 1898.*

SIR: You have submitted to this Department a claim of The Consolidated Kansas City Smelting and Refining Company for drawback on certain exportations of imported lead smelted, refined, and exported in the years 1893 and 1894, and request my opinion upon the question whether such drawback may be legally allowed. The determination of this question demands a reconsideration of the opinion given by this Department on December 28, 1894 (21 Opin., 110), in which it was held that a similar claim was excluded by a proviso in section 25 of the act of October 1, 1890.

The general facts of the case are sufficiently stated in the opinion mentioned. In addition, the communication from your Department, dated March 26, 1897, contains the following:

"Upon an examination of the records in the case, the statements contained in the affidavit made by the president of said company (The Consolidated Kansas City Smelting and Refining Company), under date of the 19th of January, 1897, are found to be accurate. This affidavit contains all the facts necessary to identify the materials used, to ascertain the quantity thereof, and to compute the duties paid thereon."

The proviso of section 25 of the McKinley Act, which was held sufficient to exclude this claim, reads:

"*Provided*, That when the articles exported are made in part from domestic materials, the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles that the quantity or measure thereof may be ascertained."

After calling attention to this proviso, it is stated in the opinion of December 28, 1894, that the Secretary of the Treasury assumes "that the proviso forbids the allowance of a drawback except in cases where the article manufactured or produced can be so separated chemically or mechanically into its component materials that the relative proportions of each material may be ascertained without reference to past books of account;" and then, without other reason than that the section is intended, in the opinion of the writer, to apply only to cases where an article is made of two or more different materials, the alleged asumption of the Secretary is approved.

Prior to the passage of the McKinley law drawbacks were only allowed on articles "wholly manufactured of materials imported," under the provisions of the Revised Statutes, section 3019, which reads as follows:

"There shall be allowed on all articles wholly manufactured of materials imported, on which duties have been paid when exported, a drawback equal in amount to the duty paid on such materials, and no more, to be ascertained under such regulations as shall be prescribed by the Secretary of the Treasury. Ten per cent on the amount of all drawbacks so allowed shall, however, be retained for the use of the United States by the collectors paying such drawbacks respectively."

The purpose of this provision for drawback is well stated by Mr. Justice Brown in the recent opinion in Tidewater Oil Company *v.* United States (171 U. S., pp. 210, 216):

"The object of the section was evidently not only to build up an export trade, but to encourage manufactures in this country, where such manufactures are intended for exportation, by granting a rebate of duties upon the raw or prepared materials imported, and thus enabling the manufacturer to compete in foreign markets with the same articles manufactured in other countries."

In order further to promote this policy of encouraging our home manufactures and extending our export trade, the right to drawback was, by the McKinley Act, broadened so as to include all imported materials, on which duty was paid, used in the manufacture of articles produced in this country and exported for sale abroad, whether such articles should be manufactured wholly of imported materials or partly of domestic. In view of this change, from a policy excluding domestic materials to one permitting their use, it may fairly be inferred that Congress intended to encourage the use by our manufacturers of domestic in connection with imported materials, thus promoting the home industries which produce such domestic materials. This evident object of the law should not be forgotten in construing it.

Coming now to such construction, section 25 begins with the following broad and clear provision:

"That where imported materials on which duties have been paid are used in the manufacture of articles manufactured or produced in the United States there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less 1 per cent of such duties."

It is to be observed that under this provision the drawback is measured by the duties paid on the imported materials used in the manufacture of the exported articles and not by the imported materials found in such article. In every process of manufacture there is a waste of material. The drawback being for the materials used, an allowance is made by the Government for such wastage or loss in manufacture. It is obvious, therefore, that the imported materials used and the amount of the duties paid thereon can only be ascertained by a reference to the records. No separation of the completed article into its component materials, whether by chemical analysis or mechanical disintegration, will show the amount of materials used or the duties paid on such materials.

It appears to me that this fundamental fact lying at the basis of the drawback system, namely, that the duties refunded are those which have been paid upon imported materials used in the production of an article manufactured in this country and subsequently exported, is lost sight of in the opinion under consideration. The manufacturer is induced to pay the duties on imported materials by the assurance, given by the Government, that if he uses these materials in manufacturing articles for export, thus giving additional employment to capital and labor at home, and extending our export trade abroad, the duties so paid will be refunded upon proper proof of these facts being made to the customs officers.

That the drawback is not limited by the imported material found in the completed article appears further from the closing proviso in section 25, which reads:

"That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall in all cases, where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid * * * under such regulations as the Secretary of the Treasury shall prescribe."

The proviso upon which the opinion under consideration turns requires "that when the articles exported are made in part from domestic materials the imported materials * * * shall so appear in the completed articles that the quantity or measure thereof may be ascertained." The opinion takes it for granted that the words "shall so appear in the completed articles" refer to an appearance in tangible form, after a separation, chemical or mechanical, of the completed article into its component materials.

It takes it for granted that the quantity must be ascertained by an analysis, "without reference to past books of account." But is *not* this mere assumption? All the proviso requires is that the imported materials shall so appear in the completed articles that the quantity or measure thereof may be ascertained. The proviso does not prescribe in what way ascertained. It does not prescribe how they shall appear, except that they shall so appear that the quantity or measure thereof may be ascertained. The ascertainment of the quantity or measure is an act of the mind. The appearance is therefore not a visual but a mental presentation. The words "appear" and "appearing" are well known to legal phraseology. The fact is required to appear, or be made to appear, not to the eye, but to the mind.

"The word 'appear' or 'appearing' is one of frequent use in judicial proceedings (and is sometimes used in statutes referring to them) as meaning clear to the comprehension when applied to matters of opinion or reason, and satisfactorily or legally known or made known when used in reference to facts or evidence." (Gorham *v.* Luckett, 6 B. Monroe, 146, 165.)

The meaning of this proviso, therefore, is that where the article exported is made in part from domestic materials the imported materials shall so appear in the completed article—that is, be shown to the satisfaction of the customs officers to exist in the completed article—that the quantity or measure thereof may be ascertained.

What material is domestic and what imported can only appear or be shown to the customs officers by a reference to the records, or by an inspection of the process of manufacture. In the present case it is conceded that the imported materials used have been identified and distinguished from the domestic materials used. Taking these facts, together with the allowance for wastage regularly made by your Department, and the lead derived from the imported ore does so appear in the exported pig lead that the quantity or measure thereof may be ascertained. The proviso only deals with the ascertainment of the quantity or measure of the imported material existng in the completed article. It has nothing to do with the identification of the imported materials. The imported materials used in manufacturing articles must be identified by intrinsic evidence. After the imported materials have been identified, then the proviso simply requires that such imported materials thus identified must so appear in the completed article that the quantity or measure thereof can be ascertained. The nature of the appearance, the sufficiency of the proof to be presented in order to comply with the requirements of the proviso, is of course for the customs officers to determine.

In the opinion under consideration it was held that under the proviso in question the imported materials must be capable of identification by an analysis; that is, that the imported material must be of a distinct kind, so that the disintegration of the article would distinguish the imported from the domestic material. The identification of the imported materials is, however, covered by the concluding proviso of the section, which requires "that the imported materials used * * * shall in all cases where drawback of duties paid on such materials is claimed be identified, etc." The imported materials used having been identified by documentary evidence under this proviso, the first proviso simply requires that such imported materials thus used shall so appear in the completed article that the quantity or measure thereof may be ascertained. In other words, satisfactory proof having been presented to the customs officers that so many pounds of imported lead have been used in the manufacture of pig lead, an inspection or analysis of the pig lead must show that the imported lead, after allowing wastage, is present in the pig lead to be exported on which drawback is claimed. This serves as a check, a method for verification only.

In identifying imported materials used in manufacturing articles subsequently exported it has long been the policy of your Department to require and accept extrinsic evidence, documentary proof, verified, if necessary, by official inspection. Thus, in case of steel rails exported, the imported materials used upon which drawback is allowed are required to "be verified by an official inspection of the company's records of manufacture" (Syn., 13937); on solder composed of lead and pig tin used in making oil cans, "the actual quantity of the metals so used in each month shall be shown by a sworn statement of the company's superintendent" (Syn., 14273); on the "alcohol actually consumed in the preparation of the several extracts, including necessary wastage, and not of the alcohol contained in the exported fluids," "verified by reference to the formulæ" (Syn., 13641); on refined butter, made of salt, glucose, and imported grease, "the exact quantity" to be "shown in the manufacturer's statement on each export entry" (Syn., 14578); and on dynamite, "the quantity of such glycerin shall be determined by allowing 47.4 pounds of the same for each 100 pounds of nitroglycerin contained in the exported articles" (Syn., 14475).

It appears from the statement submitted that before engaging in the business of thus smelting imported along with domestic ore, with a view to export the refined metal and claim the drawback on the imported material used therein, The Consolidated Kansas City Smelting and Refining Company submitted its proposed plan of operation to your Department. This plan was at least impliedly approved, and the company proceeded with its operations, and made large importations of lead ore from Mexico, paying considerable sums as duties thereon, upon the understanding that the amounts thus paid would be refunded on

the exportation of the refined lead. Three different drawback claims arising under these circumstances were allowed and paid by the Government before the present claim accrued. It being conceded that all the facts necessary to identify the imported materials used, to ascertain the quantity thereof, and to compute the duties paid thereon have been established, and that it is satisfactorily shown in the manner heretofore indicated that the imported materials so appear in the exported product that the quantity or measure thereof may be ascertained, it is my opinion that no provision of law forbids the allowance of the drawback claimed.

Respectfully, JOHN K. RICHARDS, *Solicitor-General.*

Approved. JOHN W. GRIGGS.

The SECRETARY OF THE TREASURY.

JANUARY 24, 1905.

The SECRETARY OF THE TREASURY.

SIR: By your letters of December 8 and 10, you inform me that a question of law has arisen in the administration of your Department from the following facts: Flour is sometimes manufactured in this country partly from domestic wheat and partly from foreign wheat which, upon its importation, had paid the duties prescribed by law. The amount of imported wheat used in the manufacture of every sack or barrel of this flour is readily ascertainable. The manufacturers of the flour thus made from a mixture of imported and domestic wheat propose to export it, and claim that upon its exportation they are entitled to a drawback of 99 per cent of the duty paid upon the imported material contained in the exported product. Upon this statement of facts you ask my opinion whether the exporter may lawfully be allowed the drawback claimed.

The answer to your question must be found in section 30 of the tariff act of July 24, 1897, which is the law now in existence relating to the subject. That section is as follows:

"Where imported materials on which duties have been paid are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less 1 per cent of such duties: *Provided*, That when the articles exported are made in part from domestic materials the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles that the quantity or measure thereof may be ascertained: *And provided further*, That the drawback on any article allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall, in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either or to the person to whom such manufacturer, producer, exporter, or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe."

It is obvious from the statement of the case made by you that the imported wheat used in the manufacture of the flour has been, by the process of manufacture, so transformed and commingled with the domestic wheat used with it that its presence in the flour can not be ascertained by chemical analysis, nor by separation of the constituent parts, nor by the use of the sight or any of the senses. On the contrary, its presence there can be ascertained only through evidence which convinces the judgment of the Treasury officials charged with the administration of the law.

Under like circumstances, Attorney-General Olney, having under consideration the identical law now in force, held that a drawback could not be allowed. (21 Opinions, 110.) The case before him was the claim of the Kansas City Smelting and Refining Company for a drawback of duties paid upon imported lead which had been commingled with domestic lead in the manufacture of the completed product. After saying that "each molecule of domestic lead being precisely like each molecule of foreign lead in this product, it is, of course, utterly impossible to distinguish between them by an examination of the completed article," he drew attention to the following proviso:

"*Provided*, That when the articles exported are made in part from domestic materials, the imported materials, or the parts of the articles made from such materials shall so appear in the completed articles that the quantity or measure thereof may be ascertained."

He then said:

"You assume that the proviso forbids the allowance of a drawback except in cases where the article manufactured or produced can be so separated chemically or mechanically into its component materials that the relative proportions of each material may be ascertained without reference to past books of account. This assumption, in my opinion, is entirely correct. The section is intended to apply only to cases where an article is made of two or more different materials. The possible existence in commerce of a mere mixture or melting together of articles identically the same, though part domestic and part foreign, does not seem to have been contemplated by Congress. It is a casus omissus."

The principle upon which the opinion of Mr. Olney was based clearly excludes from the privilege of the drawback the case you have stated to me. This opinion was affirmed by Attorney-General Harmon. (21 Opinions, 229.)

The same company, however, again presented to the Secretary of the Treasury the same claim for drawback under the same circumstances. The question was again referred to this Department, and in an elaborate opinion, prepared by Solicitor-General Richards and approved by Attorney-General Griggs, Mr. Olney's opinion was reversed, and it was held that if the imported contribution to the completed article were shown to exist in it to the satisfaction of the customs officer, so that the quantity or measure thereof could be ascertained, a drawback might be allowed, even though, because of the commingling of the imported and domestic contributions to the article intended for export, the imported material could not be ascertained by analysis or by the operation of the senses. It is to be noted that the latter opinion was rendered during the Administration of President McKinley, who, as chairman of the Committee on Ways and Means of the House of Representatives, had prepared this identical drawback law, which first appeared in the tariff act of 1890, and in a speech in the House of Representatives explained its purpose and gave to its provisions a liberal interpretation.

"The bill," said Mr. McKinley, "proposes that the American citizen may import any product he desires, manufacture it into the finished article, using in part, if necessary, in such manufacture domestic materials, and when the completed product is entered for export refunds to him within 1 per cent of all the duty he paid upon his imported materials.

"That is, we give to the capital and labor of this country substantially free trade in all foreign materials for use in the markets of the world. We do not require that the product shall be made wholly of the foreign material. Already, under special provisions of laws and regulations of the Treasury Department, parts of a finished product made here and attached to the finished article do not deprive the exporter of his drawback.

"We have extended this provision and in every way possible liberalized it, so that the domestic and foreign product can be combined and still allow to the exporter 99 per cent upon the duty he pays upon his foreign material intended for export; which is, in effect, what free traders and our political opponents are clamoring for, namely, free raw material for the foreign trade. And if you are desirous of seeing what you can do in the way of entering the foreign market, here is the opportunity for you.

* * * * * * *

"It completely, if the provision be adopted, disposes of what has sometimes seemed to be an almost unanswerable argument that has been presented by our friends on the other side, that if we only had free raw material we could go out and capture the markets of the world. We give them now within 1 per cent of free raw material, and invite them to go out and capture the markets of the world.

"Mr. SPRINGER. Will the gentleman permit me to ask if that also applies to wool?

"Mr. MCKINLEY. Yes; it applies to anything which they choose to import for purposes of manufacture." (Vol. 21, CONGRESSIONAL RECORD, p. 4248.)

The principle upon which the opinion of Mr. Griggs was based as clearly admits the case stated by you to the privilege of the drawback as that of Mr. Olney excludes it. The two opinions are irreconcilable, and the later distinctly overruled the earlier. The opinion of Mr. Griggs has been acted upon in administration. Upon inquiry from you I have learned that, accepting the opinion of Mr. Griggs as stating the settled interpretation of the drawback law, drawbacks in large amounts have been ascertained from books of account of the exporters and other evidence, and upon such evidence have been paid by the Treasury Department to those claiming them. In the total drawback, amounting to over $5,000,000, paid by the Treasury Department in the year 1903, a very large proportion was paid upon the exportation of manufactures in which the imported and domestic materials were so blended that they were not apparent to the sight or other senses, and could only be ascertained by the manufacturer's record. The following specific cases are cited as instances:

All forms of manufactured lead	$145, 141. 70
Manufactures from sugar and molasses	800, 002. 36
Alcoholic preparations of all kinds	106, 974. 00
Manufactures of iron and steel	307, 597. 97

It is clear, therefore, that a departure from the principle governing Mr. Griggs's opinion and a return to that governing Mr. Olney's opinion would have grave consequences in the administration of the drawback law by requiring the cessation of many drawbacks now allowed.

I should hesitate long before rendering an opinion which would have so disastrous an effect, and should especially hesitate to overrule an opinion of one of my predecessors, delivered after grave consideration, itself overruling a previous opinion, and followed by administrative acts of serious importance. Nothing would justify such a course except a controlling judicial opinion. No such opinion has come to my attention, but, on the contrary, the only decision of the Supreme Court which has any bearing upon the question tends to sustain drawbacks of this character. (Joseph Schlitz Brewing Company *v.* United States, 35 Ct. Cls. Rpt., 110; 181 U. S., 584.)

The claimant in this case was engaged in the manufacture of beer for export. In the brewing of the beer imported hops and barley, upon which duties had been paid, were used with other material of domestic origin, thus presenting a case of the blending of imported and domestic materials so that the imported contribution was not apparent to the sight or other senses in the completed article. The bottles in which the exported beer was placed and the corks used in them were also imports upon which duties had been paid. The action was brought for the purpose of recovering the drawback of the duties paid upon the hops and barley used and of the duties paid upon the bottles and corks used. The Court of Claims rendered the judgment that the claimant could recover the drawback on the barley and hops but not upon the bottles and corks. The claimant appealed, while the Government acquiesced in the judgment of the court allowing the drawback upon the hops and barley. The question, therefore, of the legality of that drawback was not directly before the Supreme Court. But the opinion of the Supreme Court affirming the judgment of the Court of Claims with respect to the drawback upon the bottles and corks, on the ground that they did not enter into and form one of the ingredients of the manufactured article, expressly says that the drawback in the case of the hops and barley, which did form one of the ingredients of the manufactured article, was "properly allowed by the Court of Claims." It need not be said that such an expression of opinion, even though unnecessary to the decision of the case, ought to be given great weight. I am unable to see any distinction between the case of imported hops and barley used as an ingredient in beer manufactured for export, and imported wheat used as an ingredient of flour manufactured for export. As, however, the question itself was not before the court for decision, making it therefore unnecessary to state the grounds of the opinion expressed, I venture to discuss the question apart from the authorities which I have cited. There are two canons of interpretations which are applicable to this case.

First. The intention to grant a drawback must clearly appear in the law under which it is claimed. Drawbacks are privileges, and therefore the statute under which they are claimed must be strictly construed and all doubts resolved in favor of the Government. (United States *v.* Allen, 163 U. S., 499; and Cornell *v.* Coyne, 192 U. S., 419.)

Second. The statute must be so construed as to give every part of it some meaning and effect.

I enter upon the discussion of the meaning of the law having in full view these principles of interpretation.

Under the main part of section 30, under consideration, upon exportation of the product, a drawback is allowed of the duties paid on imported materials which "are used in the manufacture of articles manufactured or produced in the United States." Under this provision, un-

qualified, undoubtedly drawbacks would be allowable of the duties on all imported materials "used" in the manufacture, even though it had not become a component part of the completed product. There is a distinction between the use of imported material in manufacture and its appearance as a component part of the completed product. The one may exist without the other. This distinction has been clearly recognized in the tariff laws, and appears, for instance, in paragraph 74 of the act of 1890, which is as follows:

"All medicinal preparations, including medicinal proprietary preparations, of which alcohol is a component part, or in the preparation of which alcohol is used, not specially provided for in this act, 50 cents per pound."

In paragraph 58 of the act of 1894, which is as follows:

"All medicinal preparations, including medicinal coal-tar preparations and medicinal proprietary preparations, of which alcohol is a component part, or in the preparation of which alcohol is used, not specially provided for in this act, 50 cents per pound."

And in paragraph 67 of the act of 1897, which is as follows:

"Medicinal preparations containing alcohol, or in the preparation of which alcohol is used, not specially provided for in this act, 55 cents per pound."

I am informed that in point of fact many of the materials sometimes used in the manufacture are consumed in whole or in part in the use, or wasted in part in the use, or, having been extracted, survive for future use. So far as such materials are consumed by the use, or wasted or extracted for future use, they do not form a component part of the completed product. Such is the case, for instance, with respect to alcohol used in solid extracts, to solvent used in cutting the shellac used in the manufacture of stiff hats, to fusel oil and acetic acid used in the production of celluloid. Unless, then, Congress intended to allow a drawback upon imported materials used in the manufacture, whether they subsequently appeared as a component part of the completed product or not, it was necessary to restrain the generality of the provision of the main body of the act by some appropriate language. This was done by the first proviso, which is as follows:

"*Provided*, That when the articles exported are made in part from domestic materials, the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles that the quantity or measure thereof may be ascertained."

This proviso excludes from the privilege of the drawback the imported materials which, though used in the manufacture, do not appear as a component part of the completed product. Such an interpretation gives to the proviso a clear and well-defined office and effect.

The imported materials on which a drawback is claimed must "appear in the completed articles." Does this language mean that the imported material must appear so that it may be seen and weighed or measured? In my opinion the word ought not to be given that meaning. The word "appear" is here used with a very common meaning—perhaps the most common meaning it has in legal phraseology—and describes that knowledge which comes to the mind as the result of evidence as well as the knowledge derived from the exercise of the senses. In that sense a fact "appears" to exist when by any evidence which satisfies the understanding it is shown to exist. Giving to the word this meaning, the statute does not require that the imported materials should appear in the sense of being seen in the completed articles, "but only in the sense of being proved to be present in the completed articles." This meaning of the word "appear" is emphasized by the words which follow and which qualify and explain it. The imported materials, the statute says, "shall so appear in the completed articles that the quantity or measure thereof may be ascertained." The words "quantity or measure thereof may be ascertained" are appropriate to describe knowledge obtained not merely from the senses, but as the result of evidence and the judgment arrived at by reasoning upon evidence. In the next proviso in this very section, where it is provided that "the quantity of such materials used and the amount of duties paid thereon shall be ascertained," the word "ascertained" is obviously used to describe the knowledge which is obtained from evidence, and not merely that which is obtained from the exercise of the senses. I think the same word is used in the same sense in the first proviso also.

In my opinion, where it is proposed to export a product manufactured in the United States from a combination of domestic material and foreign material which has paid duty, and the customs officials can identify the foreign material and can ascertain to their satisfaction, by the evidence of books of account or otherwise, the quantity or measure of the foreign material actually present in the completed article, the exporter is entitled to receive a drawback of 99 per cent of the duties paid upon the imported material thus ascertained to be actually present in the completed article.

I do not wish to be understood as expressing the opinion that the evidence of the books of account of the manufacturers is alone sufficient without the aid of other evidence to establish the right of the manufacturer to the drawback. I express no opinion upon that subject, as the nature of the evidence disclosed by them is not before me. The amount and character of the evidence which should be required by you is within your administrative discretion. It is to be presumed that, having in view the dangers of mistake or substitution of material, suitable regulations will be framed which will require clear proof of the identity and quantity of the imported material used, the amount of duties paid thereon, and the quantity or measure of the imported material actually present in the completed article offered for export. Under the conditions which I have stated the manufacturer, in my opinion, is entitled to the drawback allowed by section 30 of the tariff act of July 24, 1897, and I so advise you.

My conclusion is not affected by provisions contained in section 15 of the tariff act of July 24, 1897, relating to manufacture in bonded warehouses. That section does not attempt to deal with the question of drawbacks of duties which have been paid, but provides merely for manufacture from raw materials which, by reason of their remaining in bonded warehouses, have paid neither customs duty nor internal-revenue tax. I can not, therefore, conceive of any bearing which section 15 has upon the interpretation of section 30.

Very respectfully,

W. H. MOODY, *Attorney-General.*

Mr. PATTERSON. Mr. President, it seems to me there is no question but that the opinion of Attorney-General Olney announced the correct interpretation of the law. When that opinion was overruled, it opened a door for frauds that Congress attempted to close and had closed. I am quite in sympathy with the Senator whose amendment is before the Senate, but it surely does not go far enough. It is in the nature of legislation for a particular interest—a kind of legislation that should not be indulged in.

I think that the ore producers of the country, especially the lead ore producers, have as much to complain of from the present construction of the law as have the wheat producers. According to the statement that was read—I think it was an extract from Mr. Olney's opinion—90 per cent of the lead product of the smelters is from foreign ores—I think chiefly of Mexican ores.

The lead trust, that was referred to as a mine owner as well as a smelter owner, is the owner of many mines that are located in Mexico. They have their smelting works in this country. Owning large lead-producing mines in Mexico, under this construction of the law the trust is enabled to import their lead ores from Mexico to the detriment of the lead ore producers of the United States, practically without any duty whatever. As I understand the law, the duty on lead ores is repaid to the trust upon such showing as they are enabled to make to the Government, less 1 per cent of the amount of duties that they paid in the first instance. Mr. President, that is protection that does not protect; it is protection that is of little or no benefit to the lead producers of this country and that confers a benefit solely upon one of the most powerful trusts in the country.

The smelting trust, Mr. President, really has the smelting of ores in the United States absolutely within its grasp and under its control, and independent smelters have become a practical impossibility. Now and then we learn of capitalists who are venturesome enough to invest their money in the construction of an independent smelter, only to learn within a very short time that they must close their doors, shut down their furnaces, or sell their works to the trust for a mere fraction of the money they invested in them.

Mr. President, the evil is even worse. The smelter trust is now able to declare what mines shall be or shall not be worked. Through their ability to secure lead ores from Mexico absolutely free of duty the necessity no longer exists for the purchase of lead ores from the American producer, the American miner, except on terms fixed by the trust, and we know from experience that entire mining localities have been seriously injured because such rates of treatment are imposed upon the ores of those camps that many of the mines can no longer be worked at a profit. Yet, Mr. President, in so far as the present lead tariff would make it incumbent upon them to purchase American ores, they could not inflict those injuries upon the miners of the precious metals.

The smelting trust controls the smelters at Kansas City, at Denver, at Salt Lake, at Omaha, and at El Paso, in Texas; they control, I think, all of the refineries; they own the smelting works in old Mexico; and by reason of this practically universal ownership upon this continent of the mills in which ores are reduced by the fire process, they can force, and they do force, out of business any independent smelter against whom the trust sees fit to array itself.

Mr. HEYBURN. Will the Senator from Colorado allow me?

The PRESIDING OFFICER (Mr. PERKINS in the chair). Does the Senator from Colorado yield to the Senator from Idaho?

Mr. PATTERSON. Certainly.

Mr. HEYBURN. I wish to say to the Senator that they control the freight rates on the ores.

Mr. PATTERSON. That is a matter, Mr. President, for the Committee on Interstate Commerce of this body, and I have no doubt in the world they are investigating that question; and the fact that the trusts do control freight rates will tend to accelerate the action of the Committee on Interstate Commerce upon the bill that lately passed the House of Representatives. The only additional reply I will make to the suggestion of the Senator from Idaho [Mr. HEYBURN] is that I sincerely hope that the Committee on Interstate Commerce will not lag in the duty it owes the country in that respect.

But I did not intend, Mr. President, to occupy the floor for any great length of time. What I desire particularly to urge is that if we have the legislation that is proposed by the Senator from North Dakota [Mr. HANSBROUGH], who has introduced the amendment, it may be made applicable to all articles similarly situated, whether they be wheat or lead or whatever other foreign article is imported and blended with domestic articles, so that their existence can not be determined by analytical or mechanical processes.

I do not believe that the matter of rebate should be permitted to depend upon affidavits, and I can not but believe that if the Senator will so amend his amendment as that it will give a proper construction to the section of the tariff law that is affected by it it will come more nearly receiving the approval

of this body than the amendment as it is, selecting, as it does, a single item and leaving all the rest to suffer as they have been suffering since Attorney-General Griggs overruled Attorney-General Olney.

Mr. HANSBROUGH. Let me say to the Senator that it would require considerable time for the Senator himself or anyone else, to go through all of the articles which are affected by these regulations and opinions and select from them those articles which might be classified with the article of wheat. It would require a great deal of time, and the Senator knows that the time of this session is now limited; that within fifty minutes we have a special order, and I know the Senator from Vermont [Mr. PROCTOR] is anxious to get this bill out of the way.

Mr. PATTERSON. It seems to me, Mr. President, that it will not be necessary to select each particular item, but that a declaration from Congress upon the decision of Attorney-General Olney in fit and proper language would remedy the evil to which the Senator has reference.

Mr. McCUMBER. Mr. President, this is a matter growing out of a contest between the wheat growers and the millers of the Northwest. It is therefore appropriate, inasmuch as we have in that section great interests engaged in farming and great capital and interests engaged in the manufacture of flour, that some one should present, in as brief a form as possible, an epitomized statement of the peculiar condition in that section of the country, not only as it affects our farmers, but as it also affects the millers.

Under normal crop conditions, Mr. President, when the export of flour and wheat from foreign countries is necessarily considerable, when both this country and Canada are exporting both the raw product—wheat—and the manufactured product—flour—to a common market, then the value of either at the point of production would necessarily be the foreign value less the cost of transportation, of handling, insurance, etc. Therefore, if a million or so of wheat is shipped from Canada into this country, ground into flour, and exported into this common market, our people, the producers, could in no sense suffer; in fact, they would gain, for while the amount shipped in the consumers' country has not increased a bushel, and while the amount of the product for consumption at home has not increased a bushel, we have increased the number of consumers at home just to the extent of the number of workers required to grind that wheat into flour. Our millers, therefore, Mr. President, instead of the Canadian millers, have made the grinding profit. So, under these conditions, when the identical thing is shipped out with none of the by-products put into competition with our own products, we, the producers, can not, in my opinion, in any sense be the losers. But this presupposes a condition when both countries are exporting countries and when the value of the grain on one side is the same as on the other side of the Canadian line.

But whenever our product is short, as in this year, and the export is comparatively little, so scarce that the home demand increases our prices to an extent that our values are greater than the foreign prices less the transportation, handling charges, etc., then even the importation for the purpose of grinding is detrimental to the interests of the producer. Why is this so? Simply because the miller must pay the higher price, made higher by the home demand—the shortage.

Other things being equal, he can not compete with the Canadian miller, who can purchase cheaper at home. But he must keep up his grinding and his shipments abroad. If he does not he loses the markets he has secured during years of laborious enterprise. He must, therefore, have wheat to grind and flour to ship. And if he can not get the cheaper Canadian wheat, he is compelled to buy the dearer American wheat. Now, that is just what the farmer wishes to force the miller to do, and that is just what the miller does not want to do. This is a battle, as I say, between the farmer, the producer, and the miller, the manufacturer of flour.

Suppose we are short 100,000,000 bushels; that is, that many bushels below the average. Of course that would raise the price in this country. But suppose at the same time Canada is 100,000,000 bushels long. Anyone can understand that if we can take Canadian grain just over the line and grind it into flour and export that flour, it will enable the miller to supply his foreign customers without doing it from our own higher-priced wheat, and that will bring our price to the same level as the Canadian price, or just the same as it would have been had we not been short those 100,000,000 bushels.

That is just what our millers ran up against this year, and they immediately began clamoring for reciprocity with Canada. But such a cry went up from the country press that the great dailies of the Northwest, which are supposed to reflect the sentiment of the millers, seemed forced to abandon the idea of free trade on grain between this country and Canada, and they are now the exponents of a policy the effect of which will be to allow the millers to buy any quantity of Canadian wheat, mix it with our American wheat, and grind it into flour, so long as they show that they export as many bushels in the shape of flour as they receive in the shape of the raw material—wheat. Our farmers answer this and say that if it is done it is absolutely equivalent to free trade, and I confess I do not understand just how people differentiate this from free trade.

There is another element which must be taken into consideration as affecting prices of grain locally, and of it our agriculturists seem fully aware. The great bulk of the wheat of the Dakotas and Minnesota is marketed at Minneapolis and at the head of the Lakes. In these places are located the great mills of the country. The people have noticed that when the visible supply is extremely low in these localities usually a premium is paid on grain—that is, a price over and above the foreign market, less the cost of handling, transportation, etc. And when the visible supply at these places is quite large, the reverse is the rule.

The millers must have on hand a supply, we will say, equivalent to several months' grinding. And when it falls much below this amount—I do not give this as the actual amount—it is necessary for them to go into the field to buy wheat, and the competition engendered thereby appreciates the value of that product. So the farmer believes that his interest lies in having this local visible supply diminished as much as possible, and he naturally understands that if the millers can, at any time, reach over into a foreign country like Canada and increase the visible supply without drawing on our home product, the tendency would be to depreciate the price.

The millers answer this in substance as follows: They say they, on the whole, have assisted largely in keeping up the value of the wheat of the Northwest; that their grinding the wheat and converting it into flour at these terminals has made the price higher than it would have been had no mills existed there and the raw product been shipped directly to Europe. I do not think this is seriously disputed. They therefore insist that the continuation of these mills is a blessing to the wheat producer of the Northwest, and it is to their interest that they be maintained and their output not diminished, and they point out that it will be diminished materially unless they can supply the foreign markets which they have obtained at prices equally as low as other countries can. In other words, that they can not hold these markets if competitors come and offer to sell at prices below what they can furnish the flour for. To hold these markets they must not only be able to get the wheat necessary to supply the demand, but they must get it at such prices as will enable them to supply it; and that the farmer is interested, therefore, in the long run with them in holding these markets, even at the expense of temporary loss.

The agriculturist meets this, however, with the assertion that the interest of the miller is such that he is bound to maintain those foreign markets, even at a loss, and as those markets in the past have given considerable profit to the miller, the latter will, under no consideration or circumstances, allow them to be taken away from him. It is stated also that much of the grain raised in portions of the Dakotas and Minnesota this season could not be used except it is mixed with a better grade of wheat. I refer to that injured by the rust. This is probably true, but again our agricultural communities assert that there is an amount of first-class grain sufficient to supply this demand, but of course at higher prices.

It seems to me that in this year at least the agriculturists have the better of the argument. They see the direct benefit of a protective tariff on grain, having tasted it. You will find them as ardent protectionists as any iron-manufacturing community in the United States. The value of grain in our own State, as has been suggested by my colleague, has averaged during the fall months from 17 to 20 per cent higher than corresponding grain on the opposite side of this imaginary boundary line.

The legislature of the State of North Dakota, composed almost wholly of those who are farmers themselves or are directly interested in agriculture, have formulated a resolution, which was passed almost unanimously, requesting the delegation from that State to support an amendment of this character. I believe they are justified, from all of the evidence this year and under the conditions as they exist this year at least.

Mr. President, I have made this brief epitomized statement for the purpose of showing the particular line of demarcation in ideas between the agriculturist on the one side and the miller

on the other side. In ordinary years, when we export a great amount of grain and when Canada also exports a great amount of grain——

Mr. PROCTOR. Mr. President——

The PRESIDING OFFICER. Does the Senator from North Dakota yield to the Senator from Vermont?

Mr. PROCTOR. I rise to make the point of order, if the discussion is to continue any longer.

Mr. McCUMBER. It will continue one second longer.

Mr. PROCTOR. Well, one second.

Mr. McCUMBER. I wish to say there can be no possible loss if conditions were the same as they have been in most of the years, not in the mixing, but the mere bonding and grinding into flour.

Mr. PETTUS. Mr. President, I make the point of order that this amendment is new legislation; that it is a change of the present law; and I should like also to say a word for a gentleman who is very much interested in the matter. We sometimes call him "Uncle Sam." You have had the two sides represented—the millers and the farmers, the miners and the lead trust. The United States is somewhat interested. There are leaks in the collection of the revenue, and this adds one about twice as large as those usually found. Six million dollars goes out of the United States Treasury every year through this leak called "drawback." This drawback always hurts the United States, and generally hurts one of the parties to the transaction outside.

I was really in hopes, when I heard that the millers wanted their wheat free from Canada, that somebody would wake up in that section of the country and see how the farmer raising wheat was defrauded, and how the United States was robbed of its revenue.

The PRESIDING OFFICER. The Senator from Alabama makes the point of order that the proposed amendment offered by the Senator from North Dakota, which reads as follows:

Was not intended and shall not be held to be affected by the provisions of section 30 of said act—

is new legislation. In the opinion of the Chair it is merely a construction upon legislation that has already been enacted. However, the Chair will submit the question to the Senate if the Senator from Alabama is not satisfied. [A pause.] The Chair holds that the point of order is not well taken. Does the Senator from Alabama desire the Senate to pass upon the question?

Mr. HANSBROUGH. The question is on agreeing to the amendment.

The PRESIDENT pro tempore. The question is on agreeing to the amendment offered by the Senator from North Dakota.

Mr. PATTERSON. I offer an amendment to the amendment, to follow immediately after it.

The PRESIDENT pro tempore. The Senator from Colorado offers an amendment to the amendment, which will be stated.

The SECRETARY. It is proposed to add at the end of the amendment the following:

Nor shall rebates provided for in existing revenue laws be made on imports which when blended with domestic products can not be mechanically or analytically separated and determined.

Mr. HANSBROUGH. Mr. President, I hope the amendment to the amendment will not prevail. It raises another question altogether.

Mr. PATTERSON. It raises precisely the same question.

Mr. ALLISON. Mr. President, I wish to say a word before the amendment is disposed of. In the first place I hope the Senator from North Dakota will modify his amendment by striking out the words "was not intended and." Those words are not necessary. Then the amendment will read:

Shall not be held to be affected by the provisions of section 30.

Mr. HANSBROUGH. Does the Senator think that that would have any bearing upon the decision which has just been rendered? Would it overturn that opinion?

Mr. ALLISON. It would read, "shall not be held to be affected by the provisions."

Mr. HANSBROUGH. It would say that it shall not be held in the future. That is exactly what it would mean then. I fear it would not affect the opinion which has been promulgated.

Mr. ALLISON. The object I have in suggesting the amendment is that we shall not be committed by our vote here to what was said or what was understood in 1890.

Mr. HALE. Let me comprehend the Senator. Let me see how it will read if these words are stricken out.

Mr. ALLISON. I do not think it will at all affect the object of the Senator from North Dakota.

Mr. HANSBROUGH. It would then read:

That paragraph 234 of the act * * * shall not be held to be affected by the provisions of section 30 of said act.

Now, the question is whether, if we adopt the amendment in that form, it will relate back to the opinion of Atorney-General Moody with respect to wheat. Would it not relate to some opinion that might be rendered in the future? That is the question in my mind.

Mr. ALLISON. The opinion that has been rendered by the Attorney-General probably would not be affected as an opinion, but this legislation would affect the statute in the future because it construes that statute in opposition to the opinion of the Attorney-General.

Mr. HANSBROUGH. Let me ask the Senator from Iowa a question. He has been a distinguished member of this body for a great many years. He is on the Committee on Finance. He had much to do with the three tariff bills to which I referred this morning. Does the Senator say to the Senate that it was his intention when he voted to place the duty of 25 cents a bushel on wheat that it should be nullified by the opinion of the Attorney-General construing section 30?

Mr. ALLISON. I will say this in answer to the Senator. By the act of 1890, which was passed after long discussion both here and in the other House, it was intended that the drawback features of the tariff should be greatly enlarged. That it was intended that they should apply to this, that, or the other paragraph in the schedules, I would not undertake to say. But I believe that the phraseology employed in the act of 1890, and the act of 1894, and the act of 1897, had, and was intended to have, a wider scope than was given to it by the argument of the Senator from North Dakota.

I am somewhat fortified in that opinion by an extract which I find in the opinion of Attorney-General Moody upon this question, from our beloved, departed friend, President McKinley, who was then chairman of the Committee on Ways and Means in the House of Representatives, and who in the debate stated the aim and purpose of this provision.

Mr. HANSBROUGH. The Senator, of course, sees that the time is very limited. I have asked that the opinion be published in the RECORD. On consultation with others interested in this matter I will yield to the suggestion of the Senator from Iowa that those words be stricken out.

Mr. ALLISON. Then I will merely ask that Mr. McKinley's observations, made in the House, may be read in connection with the proper construction of section 30 of the act of 1897.

The PRESIDENT pro tempore. The Secretary will read as requested.

The Secretary read as follows:

The bill—

Said Mr. McKinley—

proposes that the American citizen may import any product he desires, manufacture it into the finished article, using in part, if necessary, in such manufacture domestic materials, and when the completed product is entered for export refunds to him within 1 per cent of all the duty he paid upon his imported materials.

That is, we give to the capital and labor of this country substantially free trade in all foreign materials for use in the markets of the world. We do not require that the product shall be made wholly of the foreign material. Already, under special provisions of laws and regulations of the Treasury Department, parts of the finished product made here and attached to the finished article does not deprive the exporter of his drawback.

We have extended this provision and in every way possible liberalized it, so that the domestic and foreign product can be combined and still allow to the exporter 99 per cent upon the duty he pays upon his foreign material intended for export, which is, in effect, what free traders and our political opponents are clamoring for, namely, free raw material for the foreign trade. And if you are desirous of seeing what you can do in the way of entering the foreign market, here is the opportunity for you.

* * * * * * *

It completely, if the provision be adopted, disposes of what has sometimes seemed to be an almost unanswerable argument that has been presented by our friends on the other side, that if we only had free raw material we could go out and capture the markets of the world. We give them now within 1 per cent of free raw material, and invite them to go out and capture the markets of the world.

Mr. SPRINGER. Will the gentleman permit me to ask if that also applies to wool?

Mr. McKINLEY. Yes; it applies to anything which they choose to import for purposes of manufacture.

Mr. PATTERSON. Mr. President——

The PRESIDENT pro tempore. The question is on agreeing to the amendment offered by the Senator from Colorado [Mr. PATTERSON] to the amendment.

Mr. ALLISON. Mr. President, I have not yielded the floor. I desire to say a word or two more upon this question before a vote is taken. I will, in the beginning, say that I think it is an amendment which ought not to be considered upon an appropriation bill. But as the Chair has made a ruling that the

amendment is not general legislation, I, of course, yield. I think it not only general legislation, but important legislation.

The reason why I asked that the words "was not intended and" be stricken out, is that I wish to confine this legislation to the exact phraseology now proposed, namely, that it shall be confined to paragraph 234, and as that paragraph is affected by section 30 of the act. I do that because I recognize that the duty on wheat, applying as it does to Canadian wheat, which is in close proximity to our wheat growers, is practically nullified by section 30 of the act and, therefore, our wheat producers have a strong equitable case. But I do not wish by any phraseology or construction of language that this provision shall be extended. I do not know, and I think none of us can know, the extent to which a change of law as respects the ruling of the Attorney-General may go.

Mr. HANSBROUGH. If we included all articles, of course it would go to the full extent of the whole list.

Mr. ALLISON. Yes; it would go to the whole list.

Mr. HANSBROUGH. But we specifically say "paragraph 234," the one relating to wheat alone.

Mr. ALLISON. I understand.

Whatever may be said of these provisions, they have had the effect very greatly to enlarge the drawback system in connection with our tariff, and they have enabled us, I am sure, greatly to increase our manufactures for exportation. Drawbacks have been allowed in many cases of manufacture, not only as suggested by the Senator from Colorado [Mr. PATTERSON], but in nearly every branch of manufacture, and under these provisions and other liberal provisions we have largely extended our export trade.

I do not wish to interfere with that export trade without careful study of all the conditions and of all the relations of the tariff to that trade, and I submit that we can not afford to attempt to do that on an agricultural appropriation bill. It would practically be a revising of our tariff, and I think we will have time enough to do that in future years, without dealing with it now.

So, Mr. President, I shall interpose no objection to the consideration of this paragraph as it now stands with the modification made by the Senator from North Dakota.

Mr. PROCTOR. I feel compelled to move to lay the proposed amendment of the Senator from Colorado on the table, and I make that motion because I feel that this whole matter has no place on the agricultural appropriation bill. But the original proposition having been fully discussed, I do not object to it.

Mr. PATTERSON. Mr. President——

Mr. PROCTOR. But I hope there will be no extension of it.

Mr. PATTERSON. I raise the point of order that you can not lay on the table an amendment to an amendment without carrying the entire proposition.

The PRESIDENT pro tempore. The Chair is of the opinion that the rule is just the other way.

Mr. MALLORY. I ask to have the amendment of the Senator from Colorado again read.

The PRESIDENT pro tempore. The amendment of the Senator from Colorado to the amendment will be stated.

The SECRETARY. It is proposed to add at the end of the amendment the following words:

> Nor shall rebates provided for in existing revenue laws be made on imports which when blended with domestic products can not be mechanically or analytically separated and determined.

The PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Vermont to lay on the table the amendment to the amendment.

Mr. PATTERSON. Mr. President, the Senator from Alabama [Mr. MORGAN] requested that I make a statement as to the effect of my amendment, and I should like the privilege of doing so. I am a little astonished that the Senator from Vermont should exclude an expression of the Senate upon an amendment of this character, to an amendment, when its purpose is to make general a tariff rule that the Senator from North Dakota would apply to a specific commodity, and I should like the privilege before the vote is taken, if I may be permitted, to make a statement as to the effect of my amendment.

The PRESIDENT pro tempore. Does the Senator from Vermont withdraw his motion?

Mr. PROCTOR. I do not think the Senator from Colorado should be surprised that I am a little anxious to see the termination of this bill. These matters have no proper connection with it whatever.

Mr. PATTERSON. The Chair has ruled differently.

Mr. PROCTOR. I withdraw the motion for a very brief explanation, and as it is now a quarter of 2 o'clock it must be very brief.

Mr. PATTERSON. We can do as we did yesterday—go into legislative session immediately after the adjournment of the impeachment court, and I imagine the Senator from Vermont sees the end of his bill very well in sight. I shall be as brief as I can in making the explanation. It is a matter of very considerable importance.

The PRESIDENT pro tempore. The motion to lay on the table is withdrawn. The Senator from Colorado is recognized.

Mr. PATTERSON. Mr. President, my amendment, over which the discussion arises, proposes to bring the revenue law back to its status of 1894 in the matter of rebates and as it was left by a decision of Mr. Attorney-General Olney. There has been no legislation since 1894 to affect that decision. Decisions, however, have been rendered by Attorneys-General that have materially modified the decision of Attorney-General Olney. So the complaint which is made by the senior Senator from Iowa that this is an attempted material modification of the revenue act is not very well founded in view of the fact that it simply brings the revenue act back to where Attorney-General Olney left it as far as this particular question is concerned.

The controversy arose in 1894 over the matter of rebates upon imported articles, and it arose over ores imported, I understand, from old Mexico into the United States. The law of rebates, without giving its exact language, requires that where imported commodities are blended in manufacture with domestic articles the law of rebates shall not apply unless the imported article in the manufactured article can be determined by analysis or mechanical methods.

Mr. HANSBROUGH. By the senses?

Mr. PATTERSON. By the senses. That language was placed in the law of rebates for the purpose of preventing the commission of frauds upon the Government in securing rebates. The question went to Attorney-General Olney in the case of imported lead ores, the demand being that the rebate should be permitted on Mexican ores when the lead in them was blended with the lead in American ores in the process of reduction. Attorney-General Olney's decision was in effect that 90 per cent of the manufactured lead was the imported lead and but 10 per cent was the domestic lead, but that the amount of imported lead could not be determined by the senses—by mechanical or analytical processes; and he held because of that fact that such imported lead ores were not within the meaning of the law and the rebate upon such ores could not be permitted.

That continued to be the law until a change of Administration, when in another lead-ore case the succeeding Attorney-General held directly contrary to Attorney-General Olney and allowed the rebate and ruled that the amount of lead in the imported lead ores might be shown by affidavit or otherwise. That has been the ruling and that has been the law ever since.

By a late decision of Attorney-General Moody it was made applicable to imported wheat, upon which I believe the duty is 20 per cent ad valorem; and although imported wheat ground into flour with domestic wheat was incapable of determination so far as the foreign article was concerned——

Mr. SPOONER. Identification.

Mr. PATTERSON. Because it was incapable of identification—that is a better word—the Department allowed the rebate. That has been the law as to imported wheat, as to imported lead ores, and perhaps other articles since the overruling of the decision of Attorney-General Olney.

Now, the amendment of the Senator from North Dakota is practically that that ruling shall not apply to wheat; that because when ground the flour of that wheat mingled with the flour of the domestic wheat can not be determined. Therefore the law of rebate shall not apply to wheat.

My amendment is to bring the whole subject back to the ruling of Attorney-General Olney. We want that rule applicable not only to imported wheat, but we want it applicable to imported lead ores.

I wish to say that the importation of lead ores, merely that the lead that is in them may be smelted out, is not to any very great extent an encouragement of American manufactures. It is merely bringing ore from a foreign country into this and mingling that ore with the American ores, and taking from both ores the metals they contain.

The metal can hardly be said to be a manufactured article. The process the ore undergoes is the separation of the ores into some of their component parts.

Now, what is the effect of this ruling of the Department upon the lead-ore producers of the United States? It does not protect them; it injures them; it tends to destroy them. The smelting trust need not depend any longer for their fluxing lead ores upon the American miner; but, owning all the smelters of the country and being a large owner of mines in Mexico and probably in South American countries, that produce great quantities of lead ores, they bring those lead ores into this country free of

duty, and the necessity of purchasing the lead ores of the American miner, and thereby encouraging the American miner, no longer exists.

Now, Mr. President, my amendment, as I said, simply brings the tariff law back to where Congress left it in 1894, as that law was construed by Attorney-General Olney. It interferes in no way with any subsequent act of Congress upon the subject.

The mining industry in a very great section of the country is of as much importance as the wheat-raising industry, and all I ask is, not that the miner shall be particularly selected as the object of justice upon the part of the Government, but that the wheat raiser and the ore producer and those engaged in any other industry that may be affected in the same manner shall have the benefit of this declaration by Congress.

The PRESIDENT pro tempore. The question is on agreeing to the amendment offered by the Senator from Colorado [Mr. PATTERSON].

Mr. PATTERSON. On that amendment I ask for the yeas and nays.

Mr. PETTUS. Before the vote is put, I wish to make the point of order in the language of the rule. I made a mistake in speaking of new legislation. I make the point of order now that "no amendment which proposes general legislation shall be received to any general appropriation bill."

The PRESIDENT pro tempore. That point of order was made before, and overruled by the Presiding Officer who then presided in the Senate. The Senator from Colorado [Mr. PATTERSON] demands the yeas and nays.

Mr. BLACKBURN. Let us have the yeas and nays.

Mr. ELKINS. I should like to have the amendment read.

Mr. PETTUS. Mr. President, I make another point of order:

Nor shall any amendment not germane or relevant to the subject-matter contained in the bill be received; nor shall any amendment to any item or clause of such bill be received which does not directly relate thereto.

The PRESIDENT pro tempore. Is that point of order made against the amendment offered by the Senator from Colorado?

Mr. PETTUS. No, sir; it is against the amendment offered by the Senator from North Dakota.

The PRESIDENT pro tempore. It is too late to make it against that amendment. The point of order was made against that amendment and overruled, and it is too late now to make it again against that amendment. If the amendment offered by the Senator from Colorado is adopted and that amendment is amended, then that point could be made.

Mr. PROCTOR. I move to lay the amendment of the Senator from Colorado on the table. I yielded to him for some remarks.

Mr. PATTERSON. I have asked for the yeas and nays.

The PRESIDENT pro tempore. The Senator from Colorado has demanded the yeas and nays. Is there a second to that demand?

The yeas and nays were ordered.

Mr. HOPKINS. Before the yeas and nays are called can we have the amendment read?

The PRESIDENT pro tempore. The Secretary will read the amendment.

The SECRETARY. Add at the end of the proposed amendment the following words:

Nor shall rebates provided for in existing revenue laws be made on imports which when blended with domestic products can not be mechanically or analytically separated and determined.

The PRESIDENT pro tempore. The Secretary will call the roll.

Mr. PATTERSON. What is the roll being called on?

The PRESIDENT pro tempore. On the amendment offered by the Senator from Colorado.

Mr. PATTERSON. Is the vote on the motion to lay on the table or on the amendment?

The PRESIDENT pro tempore. It is on the Senator's amendment.

Mr. PATTERSON. Directly on the amendment?

The PRESIDENT pro tempore. Directly on the amendment.

The Secretary proceeded to call the roll.

Mr. PETTUS (when his name was called). I desire to know if the junior Senator from Massachusetts [Mr. CRANE] has voted.

The PRESIDENT pro tempore. The Chair is informed that he has not.

Mr. PETTUS. I withhold my vote, being paired with that Senator.

The roll call was concluded.

Mr. CLAPP (after having voted in the negative). I observe the absence of my pair, the senior Senator from North Carolina [Mr. SIMMONS], and I feel constrained to withdraw my vote on that account.

Mr. BEVERIDGE (after having voted in the negative). I voted inadvertently. I observe that my pair, the senior Senator from Montana [Mr. CLARK], is not present. Therefore, I withdraw my vote.

Mr. DILLINGHAM. I have a general pair with the Senator from South Carolina [Mr. TILLMAN]. If he were present, I should vote "nay."

Mr. ELKINS (after having voted in the negative). I am paired with the junior Senator from Texas [Mr. BAILEY], and I withdraw my vote.

Mr. MORGAN. Has the senior Senator from Indiana [Mr. FAIRBANKS] voted?

The PRESIDENT pro tempore. The Chair is informed that he has not.

Mr. MORGAN. I am paired with that Senator, and I withhold my vote.

Mr. BLACKBURN (after having voted in the affirmative). I voted in the absence of my pair, the senior Senator from Maryland [Mr. McCOMAS], and I ask leave to withdraw my vote.

Mr. HOPKINS (after having voted in the negative). Has the junior Senator from North Carolina [Mr. LATIMER] voted?

The PRESIDENT pro tempore. The Chair is informed that he has not.

Mr. HOPKINS. Then I withdraw my vote.

Mr. BERRY. I ask if the Senator from Minnesota [Mr. NELSON] has voted?

The PRESIDENT pro tempore. The Chair is informed that he has not.

Mr. BERRY. I am paired with the Senator from Minnesota [Mr. NELSON].

The result was announced—yeas 18, nays 34, not voting 38.

YEAS—18.

Bate	Culberson	Mallory	Stone
Carmack	Dubois	Martin	Taliaferro
Clarke, Ark.	Foster, La.	Overman	Teller
Clay	McCreary	Patterson	
Cockrell	McLaurin	Stewart	

NAYS—34.

Alger	Dietrich	Kean	Platt, N. Y.
Allee	Foraker	Kearns	Proctor
Allison	Foster, Wash.	Kittredge	Quarles
Ankeny	Frye	Lodge	Scott
Ball	Fulton	Long	Smoot
Bard	Gallinger	McCumber	Spooner
Burnham	Gibson	Millard	Wetmore
Cullom	Hale	Perkins	
Dick	Hansbrough	Platt, Conn.	

NOT VOTING—38.

Aldrich	Clark, Wyo.	Gorman	Morgan
Bacon	Crane	Hawley	Nelson
Bailey	Daniel	Heyburn	Newlands
Berry	Depew	Hopkins	Penrose
Beveridge	Dillingham	Knox	Pettus
Blackburn	Dolliver	Latimer	Simmons
Burrows	Dryden	McComas	Tillman
Burton	Elkins	McEnery	Warren
Clapp	Fairbanks	Mitchell	
Clark, Mont.	Gamble	Money	

So Mr. PATTERSON's amendment was rejected.

Mr. PROCTOR. I shall ask that the bill be taken up immediately on the conclusion of the impeachment proceedings to-day.

IMPEACHMENT OF JUDGE CHARLES SWAYNE.

The hour of 2 o'clock having arrived, Mr. PLATT of Connecticut assumed the chair.

The PRESIDING OFFICER (Mr. PLATT of Connecticut). The Senate is now sitting for the trial of the impeachment of Charles Swayne, United States judge in and for the northern district of Florida. The Sergeant-at-Arms will make proclamation.

The Sergeant-at-Arms made the usual proclamation.

The PRESIDING OFFICER. The Sergeant-at-Arms will see if the managers on the part of the House are in attendance.

The managers on the part of the House of Representatives to conduct the impeachment appeared and were conducted to the seats assigned them.

The respondent, Judge Charles Swayne, and his counsel, Mr. Higgins and Mr. Thurston, entered the Chamber and took the seats assigned them.

The PRESIDING OFFICER. The Journal of the last trial day will be read.

The Journal of the Senate sitting for the trial of the impeachment Monday, February 13, was read.

The PRESIDING OFFICER. In reference to the witness

Paquet, the Presiding Officer directed the Sergeant-at-Arms yesterday to telegraph to his attending physician to know his condition at this time and to state fully. The following dispatch has been received by the Sergeant-at-Arms:

The Secretary read as follows:

NEW ORLEANS, LA., *February 14, 1905.*

UNITED STATES SENATE, *Washington, D. C.:*

Louis P. Paquet can not leave. Suffering with pneumonia.

DR. MAESTRI.

The PRESIDING OFFICER. Are the managers ready to proceed?

Mr. Manager OLMSTED. We are. I call Mr. James D. Maher.

James D. Maher sworn and examined.

By Mr. Manager OLMSTED:

Question. Mr. Maher, where do you reside?

Answer. In the city of Washington.

Q. What is your occupation?

A. I am assistant clerk in the office of the clerk of the Supreme Court.

Q. Of the United States?

A. Of the United States.

Q. Have you charge of the records and documents which are filed in that court?

A. I am one of the clerks in charge.

Q. State if you have the transcript of the record in the case of Florida McGuire and others against William A. Blount and others from the circuit court of appeals, fifth circuit.

A. I have.

Q. I think numbered 1202 in the said court.

A. (Producing paper.) That is the record, sir.

Q. Certified by the clerk of that court?

A. Yes, sir.

Q. Will you state what has been done with this record since it reached the Supreme Court of the United States?

A. It has been printed, sir, in this shape.

Q. Under a rule of the court?

A. It has been printed in this shape for the use of the court.

Q. Printed under the——

A. Under the direction of the clerk.

Q. And under a rule of the court?

A. Under a rule of the court.

Q. State whether this——

Mr. HIGGINS. We will admit that the copy is correct and save the trouble of any examination of this kind.

Mr. Manager OLMSTED. Very well. [To the witness.] Then that book which you hold in your hand is what the Supreme Court of the United States accepts and acts upon as the record of the evidence and documents and proceedings in that case?

A. It is.

Mr. Manager OLMSTED. That is all. [To the witness.] Will you let me have that record, please?

The record was handed to Mr. Manager OLMSTED.

Mr. Manager OLMSTED. Mr. President, we now offer so much of that record as begins on page 455, as printed on the top thereof, and from there to the end, being the proceedings in the circuit court of appeals upon a motion to strike off a paper purporting to be a bill of exceptions signed by the respondent. Of course it is possible that as a matter of strict right the whole record ought to go in, but I think not. All this voluminous matter has reference to proceedings in which nobody here is interested. We simply want to prove the proceedings upon a motion to strike off the bill of exceptions signed by Judge Swayne in that case while it was pending in his court.

Mr. HIGGINS. We have no objection.

The PRESIDING OFFICER. Do the managers wish it to be read at this time?

Mr. Manager PALMER. We do, sir.

Mr. THURSTON. Mr. President, so far as we are concerned, we will waive the reading of this entire exhibit; but in making no objection to the introduction of that portion of this record which has been offered, we reserve the right to offer as a part of our case any further portions of this same record that we may desire.

Mr. Manager OLMSTED. Well, I assume that whatever right the counsel have would not be waived, but, of course, when they attempt to exercise it, it would be subject to such objection, if any, as we might have to make at that time.

I will ask, Mr. President, that the Secretary read the paper beginning at the point I have marked, and I will then indicate what other parts we should like to have read.

The Secretary read from page 455, as follows:

United States circuit court of appeals, fifth judicial circuit, at New Orleans. Florida McGuire and Matilda Caro *v.* William Fisher, William A. Blount, et, al. No. 1202. Writ of error, United States circuit court, northern district of Florida.

1. The defendants in error move to strike the paper copied in the transcript, purporting to be a bill of exceptions, because:

The said paper, though signed by the judge of circuit court a quo, in order to expedite plaintiffs in error in the perfection of their writ of error, was placed by the said judge in the hands of one E. T. Davis, one of the attorneys for complainants in error, with the direction that it should not be effective as a bill of exceptions until certain points of differences then pending between the counsels for the respective parties as to what said bill should contain should be determined by the said judge. That thereafter the attorneys for the respective parties adjusted all of such differences but two, the said E. T. Davis yielded to all of the contentions of the attorneys for defendants in error, and striking out many parts of the said alleged bill of exceptions so signed by the said judge, and omitting many pages which had been therein inserted before the said judge had signed the same, and thereupon the attorneys for the parties resubmitted the same to the said judge, and said E. T. Davis returning the paper to him in order that he might decide upon the said two contentions still open between the attorneys for the parties; that thereupon the said judge decided such contentions in favor of the defendants in error, and redelivered the said paper to the said E. T. Davis with a direction to him that it should not be used as a bill of exceptions until certain papers, covered by the said two contentions of the attorneys for defendants in error, should have been inserted therein; but that the said E. T. Davis without inserting in or in anywise making the said papers any part of the said alleged bill of exceptions, and knowing that the said papers had not been inserted or included, and intending not to insert them, placed the said alleged bill of exceptions with the clerk of the said court, and demanded and procured against the protest of the attorneys of the defendants in error, and the command of the judge, that the said alleged bill of exceptions should be included in and made a part of the transcript of the record which is in this court; and that the said alleged bill of exceptions does not contain the said papers ordered by the said judge to be inserted therein.

Mr. Manager OLMSTED. Mr. President, I will not ask for the further reading of that. Of course, it will all be printed in the RECORD. I will now ask the Secretary to read—but I will state first, Mr. President, that this is offered in support of the sixth and seventh articles for the purpose of showing that the respondent was residing and transacting the business of his court at Guyencourt, in the State of Delaware.

The PRESIDING OFFICER. In support of the sixth and seventh articles?

Mr. Manager OLMSTED. In support of the sixth and seventh articles, and for the purpose of negativing the allegations or averments of the respondent's answer to the effect that his absence from his district did not impede the course of justice or work disadvantage to the public.

Now, I will ask that the Secretary read the paper entitled "F," on page 468.

The Secretary read as follows:

Page 468, subheading "F:"

F.

Judge's chambers, United States district court, northern district of Florida. Charles Swayne, judge.

GUYENCOURT, DEL., *8 Mo., 26th, 1902.*

W. A. BLOUNT, Esq., *Pensacola, Fla.*

DEAR SIR: I inclose your objections and Mr. Davis' replies in re bill of exceptions in Florida McGuire case. Also copy of letter I send to Mr. Davis, that explains the matter.

Yours, truly, CHAS. SWAYNE.

Mr. Manager OLMSTED. Also the paper entitled "G."

The Secretary read as follows:

G.

AUGUST 29, 1902.

Florida McGuire *v.* Wm. Fisher et al.

E. T. DAVIS, Esq., *City.*

DEAR SIR: Inclosed please find a letter to you from Judge Swayne, which he asked me to hand you, together with other papers contained in a letter to me, received this morning. I have written Judge Swayne objecting to his signature to the bill of exceptions without having verified or disproved the objections which I made, and without being convinced that all of the papers used at the trial were copied into the bill of exceptions.

Yours, very truly, W. A. BLOUNT.

(Inclosures.)

Mr. Manager OLMSTED. Now, the letter marked "H."

The Secretary read as follows:

"H."

Judge's chamber, United States district court, northern district of Florida, Charles Swayne, judge.

GUYENCOURT, DEL., *8 Mo. 29th, 1902.*

W. A. BLOUNT, Esq., *Pensacola, Fla.*

DEAR SIR: I have yours of 25th and have written Mr. Davis in this mail. Unless you agree fully to send me the bill of extns. again and I will pass on your differences.

Yours, truly, CHAS. SWAYNE.

Mr. Manager OLMSTED. Also "I."

The Secretary read as follows:

"I."

McGuire *v.* Fisher et al. Judge's chamber, United States district court, northern district of Florida, Charles Swayne, judge.

GUYENCOURT, DEL., *9 Mo. 3d, 1902.*

W. A. BLOUNT, Esq., *Pensacola, Fla.*

DEAR SIR: Yours of 29th at hand in re bill of exs. Fla. McGuire case. I had already written Mr. Davis not to use said bill until you and he agreed or I had an opportunity to pass upon your contentions. I believe I will be able to hold up the case in the court of appeals if he does not regard my request but attempts to use the bill in its present shape.

Very truly, yours, CHAS. SWAYNE.

Mr. Manager OLMSTED. I do not think it necessary to consume the time of the Senate by reading further. Call E. T. Davis.

The PRESIDING OFFICER. How much of this record do the managers desire to have appear in the RECORD—from what page to what page?

Mr. Manager OLMSTED. Beginning on page 455, about the middle, where the figures "460" appear upon the left margin—from there on to the end.

Mr. SPOONER. Mr. President, I wish to inquire, through the Chair, whether I correctly understood the managers as offering this as bearing on the question of residence—on the articles of impeachment relating to the question of residence?

Mr. Manager OLMSTED. Yes, sir.

The PRESIDING OFFICER. It bears on the question of residence, and is to rebut the claim that no inconvenience was suffered by the absence of Judge Swayne from Florida.

The portion of the record referred to is as follows:

United States circuit court of appeals, fifth judicial circuit, at New Orleans. Florida McGuire and Matilda Caro *v.* William Fisher, William A. Blount, et al. No. 1202. Writ of error, United States circuit court, northern district of Florida.

1. The defendants in error move to strike the paper copied in the transcript, purporting to be a bill of exceptions, because—

The said paper, though signed by the judge of circuit court a quo, in order to expedite plaintiffs in error in the perfection of their writ of error, was placed by the said judge in the hands of one E. T. Davis, one of the attorneys for complainants in error, with the direction that it should not be effective as a bill of exceptions until certain points of differences then pending between the counsels for the respective parties as to what said bill should contain should be determined by the said judge. That thereafter the attorneys for the respective parties adjusted all of such differences but two, the said E. T. Davis yielded to all of the contentions of the attorneys for defendants in error, and striking out many parts of the said alleged bill of exceptions so signed by the said judge, and omitting many pages which had been therein inserted before the said judge had signed the same, and thereupon the attorneys for the parties resubmitted the same to the said judge, the said E. T. Davis returning the paper to him in order that he might decide upon the said two contentions still open between the attorneys for the parties; that thereupon the said judge decided such contentions in favor of the defendants in error, and redelivered the said paper to the said E. T. Davis, with a direction to him that it should not be used as a bill of exceptions until certain papers, covered by the said two contentions of the attorneys for defendants in error, should have been inserted therein; but that the said E. T. Davis, without inserting in, or in any wise making the said papers any part of the said alleged bill of exceptions, and knowing that the said papers had not been inserted or included, and intending not to insert them, placed the said alleged bill of exceptions with the clerk of the said court, and demanded and procured, against the protest of the attorneys of the defendants in error and the command of the judge, that the said alleged bill of exceptions should be included in and made a part of the transcript of the record which is in this court; and that the said alleged bill of exceptions does not contain the said papers ordered by the said judge to be inserted therein.

2. That the paper purporting to be a bill of exceptions, a copy of which is in the transcript of the record of this court, is not the same paper signed by the judge of the court below, but that the paper signed by him has, since it was signed by him, been materially altered by the said E. T. Davis, one of the attorneys for the plaintiff in error, by inserting therein certain material papers, and by omitting therefrom certain material matters; and that the paper in the transscript, purporting to be a bill of exceptions, is not the paper signed by the said judge, but has been altered as aforesaid.

3. That the said paper, purporting to be a bill of exceptions, has not been approved by the judge of the court below, and was filed in said court and inserted in the transcript of the record now on file in this court without his consent and against his express command.

W. A. BLOUNT,
A. C. BLOUNT, Jr.,
BLOUNT & BLOUNT,
Attorneys for Defendants in Error.

(Indorsement: No. 1202. Florida McGuire et al. *v.* William A. Blount et al. Motion of defendants in error to strike bill of exceptions. United States circuit court of appeals. Filed January 2, 1903. Charles H. Lednum, clerk. Blount & Blount, Pensacola, Fla.)

Certificate of Hon. Charles Swayne on motion to strike bill of exceptions.

United States circuit court of appeals, fifth circuit. No. 1202. Florida McGuire et al. *v.* William A. Blount et al. Filed January 2, 1903. United States circuit court of appeals. Filed January 12, 1903.

CHARLES H. LEDNUM, *Clerk.*

In United States circuit court, State of Florida. Florida McGuire et al. *v.* William Fisher et al.

I, Charles Swayne, judge of said court, do hereby certify that I have read the affidavit of William A. Blount, dated December 13, 1902, relating to the proceedings to settle the bill of exceptions in this case. That the letters attached to the same purporting to be signed by me were signed and sent by me, and that I received the originals purporting to have been sent by him, of which copies are attached to the said affidavit. That before June 16, 1902, I received from E. T. Davis, one of the counsel for plaintiffs in error in this case, a proposed bill of exceptions, and from Blount & Blount, objections to the same. That I disposed of such objections on or about June 16, 1902, sustaining all of them, and directing the said Davis to make his bill of exceptions conform to the said objections. That the said Davis, in the latter part of August, presented the said bill of exceptions to me as conforming to the directions which I had given, and I, desiring to expedite the making of the said bill, and assist the plaintiffs in error as much as possible in so doing, signed the same, and sent it to the said Davis by mail, I then being at Guyencourt, Del.

I, however, wrote to him that if there were any differences between him and Blount & Blount, attorneys for defendants in error, the signing of the bill by me was subject to the adjustment of such differences, and that he was not to use the same until such differences, if any, had been adjusted, and directing him that unless he and the said Blount should agree fully to return the bill of exceptions to me again and I would pass on the differences. He did so send it to me, and the said William A. Blount sent to me his objections thereto, and the said Davis his replies to such objections, and I decided as I had decided in June, 1902, that the bill did not contain all the papers which had been offered at the trial, and which should be inserted in the bill, and I returned it to the said Davis with instructions to insert the plats and protocols mentioned in the last exceptions of Blount & Blount before using the bill, and I supposed that such insertions had been made until I learned from Blount & Blount and the clerk of this court that the said Davis insisted that because he had in his possession a bill of exceptions signed by me he was entitled to use it, although it did not contain the papers which he had been instructed to insert in it and that he had procured that the clerk should insert it without such papers. The position of the said Davis with reference to the matter is shown by his letter to me, which is hereto attached, marked "Exhibit A."

In witness whereof I have hereunto signed my name and caused the clerk of said court to affix the seal thereof this December 13, 1902.

[SEAL.] CHAS. SWAYNE, *Judge.*

A.

PENSACOLA, FLA.

Hon. CHARLES SWAYNE,
Guyencourt, Del.

DEAR SIR: After further investigation of the law I find that it is now too late to amend, change, or alter the bill of exceptions. After they are signed and filed the defendants can apply for a writ of certiorari to the circuit court of appeals, and if their exceptions are well taken the court will order such documents as they refer to to be made up and included in the record. I cite you Mich. Ins. Bank *v.* Elder (143 U. S., 298), and also Sutherland *v.* R——— (57 Fed. Rep., 467).

Yours, very truly,

E. T. DAVIS.

(Indorsement:) No. 1202. Florida McGuire et al. *v.* William A. Blount et al. Certificates of Hon. Charles Swayne on motion to strike bill of exceptions. United States circuit court of appeals. Filed January 2, 1903.

CHARLES H. LEDNUM, *Clerk.*

Affidavit of W. A. Blount on motion to strike bill of exceptions.

United States circuit court of appeals, fifth circuit. No. 1202. Florida McQuire et al. *v.* William A. Blount et al. Filed January 2, 1903.

United States circuit court of appeals. Filed January 12, 1903.

CHARLES H. LEDNUM, *Clerk.*

United States circuit court of appeals, fifth judicial circuit, at New Orleans. Florida McGuire and Matilda Caro *v.* William Fisher, William A. Blount, et al. No. 1202.

Before the subscriber personally appeared William A. Blount, who, being duly sworn, says that he was one of the counsel for the defendants in error in this cause on the trial thereof in the court below, that the said trial took place on the —— day of ———, 1902, before a jury, which resulted in a verdict for the defendants, defendants in error herein; that in April, 1902, E. T. Davis, one of the attorneys for the plaintiffs below, plaintiffs in error herein, presented to affiant a proposed bill of exceptions in this case; that on April 23 affiant delivered to the said Davis objections to such proposed bill, upon the ground that more than thirty documents offered on the trial had been omitted, including certain plats and protocols. A copy of the said objections is hereto attached and marked "Exhibit A." The plats omitted are those mentioned in objection twelve (12), and the protocols in objection eighteen (18). That thereafter, on May 28, 1902, the said E. T. Davis presented to affiant an amended proposed bill, in answer to which the affiant filed objections upon the ground that there were still many papers and documents, more than twenty in number, which were omitted, including the plats and protocols mentioned. A copy of said objections is hereto attached and marked "Exhibit B." The plats mentioned are included in objection nine (9), and the protocols in objection twelve (12).

On June 16, 1902, the said judge heard both parties, as to the said objections, and sustained them all, and ordered that the papers objected to as omitted should be inserted in the bill of exceptions; that thereafter the said E. T. Davis presented an amended bill of exceptions to which the affiant objected on the ground that a large number of papers and documents, including the plats and protocols above mentioned, were not, but should be, included, and that certain language therein was erroneous and should be changed. A copy of such objections is hereto attached and marked "Exhibit C," and made a part hereof. The plats and protocols are referred to in the third (3) and fourth (4) objections from the last.

Upon the trial there had been offered an original Spanish protocol, which was read in evidence before the jury. Instead of making a copy of this the proponent of the said bill had caused a translation into Spanish from the English translation, also used on the trial, to be made and inserted in the record. The fifth (5) objection from the last in Exhibit C refers to this.

That without further submission of the bill of exceptions to the affiant, or any direction from the defendants in error, the said Davis transmitted the proposed bill of exceptions to the Hon. Charles Swayne, who was then in Guyencourt, Del. Affiant, after the transmission of the proposed bill of exceptions to the judge and after affiant's receipt of replication (so called) by the said Davis to affiant's objections, sent

to the said Davis a letter dated August 25, 1902, suggesting that the bill of exceptions should have been submitted to him before being sent to the judge. A copy of this letter is attached as Exhibit D, and copy of the letter to the said judge, transmitting a copy thereof, is attached as Exhibit E.

Thereafter the said judge signed the proposed bill of exceptions as presented, and returned the same to the said Davis on August 26, 1902, and wrote to the said Davis a letter which he transmitted to affiant to be handed to the said Davis, and which was transmitted by affiant to the said Davis on the day of its receipt, to wit: August 29, 1902. A copy of the said judge's letter to affiant is hereto attached and marked "Exhibit F," and a copy of affiant's letter to said Davis is attached and marked "Exhibit G."

Affiant has not a copy of the said judge's said letter to the said Davis, but it said substantially that the bill of exceptions was signed by the said judge subject to an adjustment of any differences between the said Davis and affiant touching the contents of the said bill.

The said Davis has, of course, the letter and can produce it.

On or about September 1, 1902, affiant received a letter from the said judge, dated August 29, 1902, informing affiant that he had written to the said Davis, that unless he and affiant agreed fully, to send the bill of exceptions again to him (the said judge), and that he would pass on the differences between affiant and the said Davis. A copy of said letter is hereto attached and marked "Exhibit H." *Affiant has not*, of course, a copy of letter to the said Davis, but the said Davis can produce it. And affiant also received about September 5, 1902, a letter from the said judge, dated September 3, 1902, which is hereto attached, marked "Exhibit I."

Thereafter, on September 4, 1902, the said Davis brought to affiant the said proposed bill of exceptions, with the request that he and affiant should go over and endeavor to adjust their various contentions. After going over the bill the said Davis yielded to all the objections of the affiant except two, which related to the plats and protocol before mentioned. He thereupon changed certain parts of the bill of exceptions as it then stood by striking out parts thereof, as is shown by his letter to the said judge dated September 5, 1902, attached hereto as Exhibit J. The said Davis proposed to submit these two matters to the judge, to which affiant consented, although in June, 1902, the judge had decided that these plats and protocols should be inserted in the bill of exceptions. Accordingly, the said Davis sent the bill to the said judge, who was then at Guyencourt, and affiant wrote on September 5 to said judge a letter, a copy of which is attached and marked "Exhibit K." A copy of the objections mentioned in the letter is attached and marked "Exhibit L." Upon the receipt of the proposed bill of exceptions the said judge decided that the plats and protocols heretofore mentioned should be inserted in said bill, and so wrote to affiant in a letter dated September 12, 1902, in which he said that he had "returned record to Mr. Davis, with instruction to insert the plats and protocols before using it." The said letter is hereto attached as Exhibit M. Affiant, of course, has not the letter to the said Davis, but he, the said Davis, can produce it. Affiant attaches copies of two other letters written by him to said Davis September 2, 1902, and September 5, 1902, marked "Exhibits X, Y."

That upon the receipt of the said bill of exceptions the said Davis without inserting the said plats and protocols therein, placed the same in the hands of the clerk of the circuit court, and demanded that the same should be copied as it stood in the transcript, although he knew that it did not contain the said plats and protocols, and although affiant protested to him, the said Davis, against the copying of the said bill of exceptions until the said plats and protocols were inserted; and *the said clerk copied* the said transcript of the bill of exceptions, which is before this court, in its state as altered, after the said judge had signed the same, and without the insertion of the said plats and protocols; such copying being done against the protest of the affiant. The said plats and protocols have not been inserted in the said bill of exceptions, and are not now in the transcript of the record before this court.

W. A. BLOUNT.

Sworn to and subscribed before me this 13th day of December, A. D. 1902.

[SEAL.] A. C. BINKLEY, *Notary Public.*

A.

In United States circuit court, northern district of Florida. Florida McGuire and Matilda Caro *v.* William Fisher et al. Objections to bill of exceptions proposed by plaintiffs in this suit.

It will be remembered that this case went off on a direction of a verdict by the judge, and in order that it may be properly reviewed the court above must have all the testimony given upon the trial below before it, as otherwise it would be unable to tell whether the court was justified in its peremptory direction or not.

There are omitted from the bill of exceptions the following papers—possibly others—but the following papers upon the face of the proposed bill of exceptions to have been offered, and yet are not set out in the bill. The defendants insist that each and every one of them shall be set out in extenso, to wit:

1. Original Spanish will of Gabriel de Rivas, and the probate thereof.
2. Certified copy in Spanish of such will and probate.
3. Translation of such will and probate.
4. Original Spanish proceedings by Maria Morena for the sale of Edward Towns & Co. of a lot in the city of Pensacola.
5. Certified copy in Spanish of such proceedings.
6. A translation of such proceedings.
7. Original Spanish proceedings showing the sale of the property in controversy.
8. A translation thereof, in English.
9. Page 332 of Book A of the proceedings of the Commissioners for the settlement of land claims in West Florida.
10. Page 333 of the same book.
11. Statement by Joseph E. Caro, keeper of the public archives, under his hand and seal, being an abstract of the property in controversy.
12. The plats certified by Joseph E. Caro, keeper of such archives, of the lands confirmed by the Commissioners, including the land in controversy.
13. Page 103, volume 4, American State Papers.
14. Act of Congress, April 22, 1826, page 156, vol. 4, U. S. Statutes at large.
15. Certified copy of deed from Gregorio Caro to James Fitzsimmons, Samuel Smythe, and John Chabeaux.
16. Certified copy of the deed from James Fitzsimmons to John Chabeaux.
17. Certified copy of deed of partition between John Chabeaux, Louis Doquemil de Morant and Laurent Millaudon.
18. The protocols in the original Spanish, ten or twelve in number, found with the protocol showing the testamentary proceedings divesting the property in controversy out of Maria Moreno, executrix, and vesting it in Gregorio Caro, such originals having been offered together with the other papers above mentioned.
19. Spanish grant to Gabriel de Rivas of the property in controversy with the map or plan annexed thereto.
20. The plan or map of the new city of Pensacola, made by George E. Chase, offered in evidence.
21. The map or plan of the new city of Pensacola, made by Harding & Lee, offered in evidence.
22. Certified copy of the petition of A. V. Caro, to the circuit court of Escambia County, Fla., to award to him the property known as the "Ahrens property."
23. Decree under such petition.
24. Certified copy of bill in chancery in Escambia County circuit court, in the case of W. H. Davidson et al *v.* J. C. Petterson et al.
25. Answer in the same case.
26. Decree in the same case.
27. Deed from Runyan heirs to Florida McGuire.
28. The various deeds deraigning the title from Smythe, Chabaux, and others to the trustees of the Pensacola City Company.
29. The deed from the said trustees to the Pensacola City Company, a corporation.
30. The various deeds introduced in evidence by Thomas C. Watson, William A. Blount, and William Fisher, showing deraignment of title to portions of the land in controversy from the Pensacola City Company to them, and showing the instruments under which they claimed.

BLOUNT & BLOUNT,
Attorneys for William Fisher and Others.

B.

In United States circuit court, northern district of Florida, at Pensacola. Florida McGuire and Matilda Caro *v.* William Fisher et al.

The defendants make the following objections to the bill of exceptions presented to them through their attorneys, Blount & Blount, on May 28, 1902, to wit:

1. The abstract mentioned on page 22, made by J. E. Caro, should be inserted in the record. The statement that this was not produced is not correct; it was produced, offered in evidence, and is now in the hands of the surveyor-general.
2. The will and probate of Gabriel de Rivas mentioned on page 73 was produced, offered in evidence, and should be in the record. It is now in the hands of the surveyor-general.
3. The proceedings relating to the sale of the lot in 1808 by Maria Moreno was produced and offered in evidence, and should be in the record. It is mentioned on page 96 of the record. It also is with the surveyor-general.
4. On page 139 is a translation of the proceedings to sell this tract of land. It purports, however, in the bill of exceptions to be proceedings to sell a lot of land mentioned, and which was actually sold in 1808.
5. The proceedings mentioned on page 195, being proceedings by Maria Moreno before the Spanish governor for the sale of these particular lands, as offered in the original, and should be in the bill of exceptions. It is in the hands of the surveyor-general.
6. On same page the bill of exceptions purports to set out a translation of these proceedings, but it is not set out.
7. Pages 332 and 333 of Book A of commissioners' proceedings, mentioned on page 196 of the bill of exceptions, was produced, offered in evidence, and read to the jury, and should be in the bill of exceptions. This book is in the possession of the surveyor-general.
8. The original abstract made by J. E. Caro, mentioned on page 196 of the bill of exceptions, was produced in evidence and read to the jury, and should be in the bill of exceptions. It is with the surveyor-general.
9. The plats by J. E. Caro of confirmed grants were produced, offered in evidence, and exhibited to the jury, and should be in the record. They are referred to on page 196 of the bill of exceptions. They are with the surveyor-general.
10. The confirmation to Chabeaux, shown on page 103, volume 4, American State Papers, was produced, offered in evidence, and read to the jury, and should be in the bill of exceptions. It is referred to on page 196 of the bill of exceptions.
11. The act of Congress of April 22, 1826 (4 Stat. L., p. 158), was produced, offered in evidence, and read to the jury, and should be in the record. It is easily accessible. It is referred to on page 196 of the bill of exceptions.
12. On page 203 appears a statement that Mr. Blount, counsel for defendants, offered a protocol and gave the names of certain notaries. This is entirely incorrect. There were eight or ten protocols offered and exhibited to the jury. Mr. Blount did not give the names of the notaries, but gave Thomas Marshall and perhaps Joseph Marshall as the names of beneficiaries under proceedings contained in the protocol. They were offered as showing the authenticity of the proceedings relating to this particular tract of land, because found at the same place, signed in large part by the same persons, and having the same general appearance. They should be in the bill of exceptions.
13. The George E. Chase plan, referred to on page 211, was offered in evidence and exhibited to the jury and should be in the bill of exceptions.
14. The Harding & Lee plan, referred to on page 202 of the bill of exceptions, was offered in evidence and exhibited to the jury and should be in the bill of exceptions.
15. The agreement with Caro, read by Mr. Fisher to the jury, was offered in evidence and should be in the bill of exceptions. It is referred to on page 213 of the bill of exceptions.
16. The attorneys for the defendants have not verified the several documents and the testimony set forth in the bill of exceptions, preferring to postpone this onerous task until all the documents which should be in the record are inserted in the bill of exceptions.

BLOUNT & BLOUNT,
Attorneys for Defendants.

C.

In United States circuit court, northern district of Florida, at Pensacola. Florida McGuire et al *v.* William Fisher et al.

The defendants except to the bill of exceptions as presented to them July —, 1902, for the following reasons:

Page 21. Before the words "went into possession," about the middle of the page, should be inserted the word "never."

Page 24. The record in the suit of A. V. Caro *v.* Samuel Jardon and N. Thurston was offered in evidence, but is not in the record. It can

be found in the office of the clerk of the circuit court of Escambia County, Fla.

Pages 35 to 41, inclusive, purport to be copies of bill of complaint, but are copies of final decree.

Pages 53 to 58 purport to be a deed, but are an answer in chancery.

Page 66. The deed from the Pensacola City Company to Charles Ahrens is not, but should be, in the record.

Page 36. There should be this statement inserted: "It was agreed between the attorneys for the plaintiffs and for the defense of R. L. Scarlett, surveyor-general of the State of Florida, that the various Spanish documents introduced by each side came from his custody as surveyor-general of the United States for said State, and that he was the proper custodian thereof."

Page 75. The paper purporting to be a bill and answer is not such, but an order appointing a receiver.

Page 168. The date "1873" should be changed to "1783."

Page 215. The proceedings of the land commissioners, though offered in evidence, are not set out in the record.

Pages 120 and 121. These constitute a deed from Maria Moreno to Townes & Co., and should not be interpolated between two parts of the proceedings by Maria Moreno to sell the property.

Page 122 should follow page 120 without the written caption.

Pages 115 to 125. The translation on these pages (eliminating 120 and 121) is omitted.

Pages 127 to 157. The paper set out on these pages is not a copy of the original offered in evidence, but is a translation from the English translation offered in evidence back into Spanish, having been evidently made by some person in employ of plaintiffs in error. We insist upon a copy of the original.

Page 224. The whole of the plats and explanations, etc., of Joseph E. Caro are not in the record, but should be.

Page 239. Not only were the protocols relating to Thomas Marshall and Joseph Marshall offered, but eight or ten others, which are not, but should be, in the bill of exceptions.

Page 314. The word "proved" should be stricken out and the word "claimed" inserted.

Page 319. The words "that land" should be changed to "the land in controversy."

BLOUNT & BLOUNT,
Attorneys for Defendants.

D.

AUGUST 25, 1902.

Florida McGuire and Matilda Caro *v.* William Fisher et al.

E. T. DAVIS, Esq., *City.*

DEAR SIR: I have been over your replication to the exceptions of the defendants in this case to the bill of exceptions. It is impossible for me, without having the bill of exceptions in my hands, to say whether the amendments to which you allude in your replication have been made in such form as to meet my former objections. For instance, in the second, third, fourth, fifth, sixth, and other replications you say that documents which I required to be inserted have been inserted in their proper place in the record. Of course, I should have before me the bill of exceptions, so as to see whether, in my opinion, the objections have been met. There are other matters which the judge will have to dispose of because at issue between us, and I should have the bill of exceptions in order to refer to the pages where the omissions occur. For instance, your fourteenth and fifteenth replications say that all that were offered and read are set out in the record in their proper place. I should have before me the bill of exceptions in order to point to the judge the particulars of my objections.

I see no way of settling the matter except to submit to me the bill of exceptions before submitting it to the judge.

I return one of the copies of replication which you handed me, and retain the other, as I presume you intended.

Yours, very truly, W. A. BLOUNT.

Inclosure.

E.

AUGUST 25, 1902.

Florida McGuire and Matilda Caro *v.* Wm. Fisher et al.

Hon. CHAS. SWAYNE, *Guyencourt, Del.*

DEAR SIR: Mr. E. T. Davis has presented to me a replication, as he calls it, to the exceptions which I made to the bill of exceptions. I beg to inclose copy of letter which I have written him, which explains my position in the matter.

Yours, very truly, W. A. BLOUNT.

Inclosure.

F.

[Judge's chambers, United States district court, northern district of Florida. Charles Swayne, judge.]

GUYENCOURT, DEL., *8 Mo. 26th, 1902.*

W. A. BLOUNT, Esq., *Pensacola, Fla.*

DEAR SIR: I inclose your objections and Mr. Davis's replies in re bill of extns. in Fla. McGuire case. Also copy of letter I send to Mr. Davis that explains the matter.

Yours, truly, CHAS. SWAYNE.

G.

Florida McGuire *v.* Wm. Fisher et al.

AUGUST 29, 1902.

E. T. DAVIS, Esq., *City.*

DEAR SIR: Inclosed please find a letter to you from Judge Swayne, which he asked me to hand you, together with other papers contained in a letter to me, received this morning. I have written Judge Swayne, objecting to his signature to the bill of exceptions without having verified or disproved the objections which I made, and without being convinced that all of the papers used at the trial were copied into the bill of exceptions.

Yours, very truly, W. A. BLOUNT.

Inclosures.

H.

Judge's chambers, United States district court, northern district of Florida. Charles Swayne, judge.

GUYENCOURT, DEL., *8 Mo. 29th, 1902.*

W. A. BLOUNT, Esq., *Pensacola, Fla.*

DEAR SIR: I have yours of 25th, and have written Mr. Davis in this mail. Unless you agree fully to send me the bill of exceptions again, and I will pass on your differences.

Yours, truly, CHAS. SWAYNE.

I.

McGuire *v.* Fisher et al. Judge's chambers, United States district court, northern district of Florida. Charles Swayne, judge.

GUYENCOURT, DEL., *9 Mo. 3d, 1902.*

W. A. BLOUNT, Esq.,
Pensacola, Fla.

DEAR SIR: Yours of 29th at hand in re bill of exceptions Florida McGuire case. I had already written Mr. Davis not to use said bill until you and he agreed or I had an opportunity to pass upon your contentions. I believe I will be able to hold up the case in the court of appeals if he does not regard my request, but attempts to use the bill in its present shape.

Very truly, yours, CHAS. SWAYNE.

J.

[E. T. Davis, attorney and counselor at law, No. 14½ E. Government street.]

PENSACOLA, FLA., *9/5/1902.*

Hon. CHARLES SWAYNE,
Guyencourt, Del.

DEAR SIR: I was away from the city when your letter, requesting me to submit the bill of exceptions to Mr. Blount and then forward them to you, came; in fact, after receiving the bill of exceptions I went immediately and filed them, and went over to New Orleans to prepare the writ of error, and after that being done I made my return with the expectation of having it perfected, but upon receiving your letter I saw that the matter had taken a very unexpected turn, and I then proceeded to do as the court had requested. This is the cause of my delay in answering your letter. I deeply regret this delay, and hope that we will not be debarred by it.

I am, yours, very truly, E. T. DAVIS.

P. S.—You will find the exceptions now made by defendants, also replied to, in parenther, which was before you, and which replication you will recognize as the one before you when you approved the bill. You will find that no changes have been made in the bill except the word "proved" and the words "that land," and rather than delay *I* submitted to Blount's contention.

X.

SEPTEMBER 2, 1902.

Florida McGuire et al. *v.* William Fisher et al.

E. T. DAVIS, Esq., *City.*

DEAR SIR: I have a letter from Judge Swayne, under date of 29th ultimo, in which he says that he has written you that unless we can agree fully as to the bill of exceptions in this case to return it to him and he will pass on our differences. I will be glad to have the bill of exceptions before it is returned to him.

Yours, very truly, W. A. BLOUNT.

Y.

Florida McGuire et al. *v.* William Fisher et al.

E. T. DAVIS, Esq., *City.*

DEAR SIR: I herewith beg to return you the bill of exceptions handed to me yesterday, with my objections thereto. You will note that the changes which you have made caused an elimination by me of all objections but two.

Yours, very truly, W. A. BLOUNT.

Inclosure.

K.

Florida McGuire et al. *v.* Wm. Fisher et al.

SEPTEMBER 5, 1902.

Hon. CHAS. SWAYNE,
Guyencourt, Del.

DEAR SIR: Mr. E. T. Davis brought to me yesterday the bill of exceptions in this case. He and I went over it, and he has yielded to all of my objections except those which he has numbered 14 and 15 in his "replication," and which are to be found on pages 234 and 239. For the purpose of having this before you, I repeat them, and inclose you a copy.

As I have said before, this writ of error is from a judgment which was rendered upon a verdict directed by the court, and it is necessary that all testimony that went before the jury should go into the record.

The attacks made by the plaintiff upon the Spanish document divesting the title out of Maria Moreno as executrix and vesting it in Gregorio Caro were, in gentral terms, twofold, the first relating to the form and the second to the authenticity of that document. For the purpose of showing the authenticity, the plats embraced in exception 14 and the protocols embraced in exception 15 were offered by us, the purpose being to show that the instrument which we offered was not fabricated, but that they were found in the same possession, and in the case of the plats under the same cover, with other papers of like kind signed by the same people, and thereby to furnish one of the strongest evidences of authenticity to the evidence that other papers relating to large tracts of land in the same locality were treated exactly as this was. This is exceedingly important evidence, and necessarily should go in.

There is no question about their having been offered. You will recollect that the plats were all bound together, and Mr. Davis has simply selected out one and left the others. If one was offered, necessarily the others were. In fact, they were all offered, and the attention of the jury was called to several of them.

So with the protocols. The attention of the jury was called to the fact that the signatures of persons appearing in these protocols were the same, in many instances, as the protocol upon which we depended for our title; that the appearances were the same, and that the custody of the surveyor-general was the custody in which were found other instruments relating to the devolution of estates in probate matters.

We understand, of course, that it will be a matter of considerable expense to the plaintiffs to put these things in, but that consideration has never been allowed to stand in the way of a presentation of the full and exact bill of exceptions for the purpose of demonstration to the court above of all the facts presented to the court below. Mr. Davis has had time to have these inserted since May, when this bill of exceptions was presented to me, and when I formally made the same objections that I do now, that these papers were not in the record, and has had since June the benefit of your ruling that though they were

with the surveyor-general they must be inserted in the record by the plaintiff in error who was presenting the case to the appellate court.

Yours, very truly,

W. A. BLOUNT.

(Inclosure.)

L.

In United States circuit court, northern district of Florida, at Pensacola. Florida McGuire and Matilda Caro *v.* William Fisher et al.

The defendants except to the bill of exceptions as presented to them September 4, 1902, for the following reasons:

Page 224. The whole of the plats, exceptions, etc., of Joseph Caro is not in the record, but should be.

Page 239. Not only were the protocols relating to Joseph Marshall and Thomas Marshall offered, but eight or ten offered, which are not, but which should be, in the bill of exceptions.

BLOUNT & BLOUNT,
Attorneys for Defendants.

M.

Judge's chambers, United States district court, northern district of Florida. Charles Swayne, judge.

GUYENCOURT, DEL., *9 Mo. 12th, 1902.*

W. A. BLOUNT, Esq., *Pensacola, Fla.*

DEAR SIR: The record in the Florida McGuire case came on 8th, just as I was leaving for Asbury Park; also your letter. I returned record to Mr. Davis by next mail with instructions to insert the plats and protocols before using it. I trust he will be able to get it ready in time, for I believe it will save all parties much trouble if the court of appeals can pass on the matter now.

Very truly, yours, CHAS. SWAYNE.

(Indorsed:) No. 1202. Florida McGuire et al. *v.* Wm. A. Blount et al. Affidavit of W. A. Blount on motion to strike bill of exceptions, United States circuit court of appeals. Filed January 2, 1902. Charles H. Lednum, clerk.

Demurrer and answer to motion to strike.

United States circuit court of appeals, fifth circuit. No. 1202. Florida McGuire et al. *v.* Wm. A. Blount et al. Filed January 20, 1903.

United States circuit court of appeals. Filed January 23, 1903.

CHARLES H. LEDRUM, *Clerk.*

United States circuit court of appeals, fifth circuit. Florida McGuire et al. *v.* Wm. A. Blount et al. No. 1202. Demurrer and answer.

Now comes the plaintiffs in error, by their undersigned attorneys, and demur to the motion of defendants in error to strike bill of exceptions from the record, and for cause of demurrer say:

First. That said motion is illegal and unauthorized by the practice of this court.

Second. That the transcript of the record from the circuit court, duly certified by the clerk, can not be contradicted, varied, or extended by affidavit in this court.

3d. That ex parte affidavits are not admissible to show falsity in the transcript.

4th. That the motion does not specify to which one of the twenty-five bills of exceptions taken by plaintiff it is directed.

5th. That the bill of exceptions, after having been signed by the presiding judge of the lower court, became a part of the record, and can *not be altered, changed,* or added to by the said judge thereafter.

6th. That the certificate of the Clerk of the lower court appended to the record is full and complete.

7th. That said motion does not state or indicate what documents have been omitted from the record, nor does it state what document or papers have been improperly included therein, or what material changes have been made in the bills of exceptions signed by the judge of the lower court and appearing in the record herein.

Wherefore they pray that this demurrer be sustained and plaintiff's motion denied, with costs.

E. HOWARD MCCALEB,
JAMES WILKINSON,
E. T. DAVIS,
Attorneys for Plaintiffs in Error.

And should said demurrer be overruled, and not otherwise, then for answer to said motion made by defendants in error, the plaintiffs in error say that the facts stated in said motion are erroneous and untrue, as will more fully appear by the affidavit of E. T. Davis, and the exhibits attached thereto, here referred to as part hereof.

That the omitted documents and papers referred to in said motion are not in the custody of the clerk of the lower court, were not marked "filed," and no certified copies thereof were left with the clerk, as appears from his statement to be found on page 344 of the printed record of this cause.

Wherefore, they pray that plaintiffs' motion may be denied, with costs.

E. HOWARD MCCALEB,
JAMES WILKINSON,
E. T. DAVIS,
Attorneys for Plaintiffs in Error.

[Indorsement:] No. 1202. U. S. circuit court of appeals, fifth circuit. Florida Maguire et al. *v.* Wm. A. Blount et al. Demurrer and answer to motion to strike. E. Howard McCaleb, Jas. Wilkinson, E. T. Davis, attorneys for plaintiffs in error. Filed Jan. 20, 1903.

CHARLES H. LEDNUM, *Clerk.*

Motion to dismiss bill of exceptions—Traverse of E. T. Davis.

United States circuit court of appeals, fifth circuit. No. 1202. Florida McGuire and Matilda Caro, plaintiffs in error, *v.* W. A. Blount and William Fisher et al., defendants in error. Filed January 20, 1903.

United States circuit court of appeals, filed January 23, 1903.

CHARLES H. LEDRUM, *Clerk.*

United States circuit court of appeals, fifth circuit. Florida McGuire et al., plaintiffs in error, *v.* William A. Blount et al., defendants in error. No. 1202. Error to the United States circuit court, northern district of Florida.

E. T. Davis, being duly sworn, deposes and says:

That the allegation in the first paragraph of the motion to strike out exceptions of plaintiffs in error, made by W. A. Blount, esq., attorney for defendants in error, viz: "That the bill of exceptions was placed by the Hon. Charles Swayne, judge, in the hands of E. T. Davis, one of the attorneys for the complainants, with the instructions that it should not be effective as a bill of exceptions until certain points of difference then pending between the counsel for the respective parties as to what said bill should contain should be determined by the said judge" is erroneous and a misinterpretation of the facts—as will more fully appear by a copy of the letter received by affiant from the Hon. Charles Swayne, dated the 26th day of August, 1902, herewith filed as part hereof, marked 'Exhibit A.'"

Affiant further says that after receiving the bill of exceptions and the letter marked "Exhibit A" by mail from the Hon. Charles Swayne, judge, he immediately filed the said bills of exceptions with the clerk of the circuit court of the United States for the northern district of Florida, proceed to New Orleans to get the application for a writ of error, bond, citations in error, and assignments of error from E. Howard McCaleb, esq., one of the attorneys for plaintiffs in error, who was charged with the preparation of them, and upon his return to Pensacola, Fla., received a letter from W. A. Blount, esq., and another from the Hon. Charles Swayne, and that W. A. Blount rang affiant up over the telephone and stated that Judge Swayne had requested affiant to submit the bills of exceptions to him, W. A. Blount, esq., and he asked affiant to bring the bills of exceptions to his office. Thereupon affiant, as a matter of courtesy, applied to the clerk of the United States circuit court, obtained the bills of exceptions, and took them to the office of W. A. Blount, esq.

That affiant stated to W. A. Blount, esq., that the bills of exceptions had been filed on the receipt of them from Judge Swayne, and that they could not be changed or altered after they had been settled and signed by the judge.

Affiant further says that W. A. Blount, esq., took the bills of exceptions, and, again comparing them with his objections to the bills of exceptions which were before the Hon. Charles Swayne, when he signed the same; and he, the said W. A. Blount, esq., struck out the name of "Chardon," appearing in the bills, and inserted in lieu thereof the name "Jaudon" in the documents offered by defendants in the proceedings and record in the suit of A. V. Caro *v.* Jaudon and Nathaniel Thurston for wages; and on page 84, following the name of R. L. Scarlett, he, the said W. A. Blount, esq., added "Surveyor-General of the United States," and the work [word] "claimed" was inserted for the word "proved" in the testimony of A. C. Blount, and the words "that land" were stricken out and the words "the land in controversy" were inserted, the same being in the testimony of William Fisher; that all of said corrections and insertions in said bills of exceptions were made by the said W. A. Blount, esq., and that affiant considered them immaterial and made no objection thereto.

Affiant further says that the changes made in the words were done by the said W. A. Blount, esq., and that he stated to W. A. Blount, esq., at the time that he had made up the bills of exceptions according to the stenographic notes, and that in the replication submitted by affiant to the objections urged by W. A. Blount, esq., attorney for defendants in error—all of which Judge Charles Swayne had before him in answer to the said objections to the bills of exceptions at the time he considered, settled, and signed the same—and that affiant had left it entirely with the judge to decide, as he considered them immaterial.

Affiant further says that these were all the changes made in the record, and the statement that affiant yielded to all of the contentions of the defendants in error in striking out many parts of the alleged bills of exceptions and omitting many pages which had been inserted before the said judge signed the same is erroneous, not in accordance with the facts, and untrue.

Affiant further says that no changes were made in the record whatever, except those which have been mentioned above, and these were made by W. A. Blount, esq., attorney for defendants in error, at his instigation, request, and solicitation, and without any suggestion whatever upon the part of affiant, except as above stated.

That he had left it entirely with the judge when he signed the bills of exceptions, and affiant considered them immaterial.

Affiant further says that after W. A. Blount, esq., attorney for defendants in error, had compared the bills of exceptions with his objections, that he stated to affiant that Judge Charles Swayne had requested the bills of exceptions sent back to him, and affiant replied then and there that he would not do so, or consent to their being returned to the judge, as the bills and exhibits attached had been filed, were then part of the records of the court, to which W. A. Blount, esq., then and there replied: "Tell the clerk that Judge Swayne has requested it sent back to him," which message affiant delivered when he returned the bills of exceptions to the clerk in his office.

Affiant further says that he did not return the bills of exceptions to Judge Charles Swayne, then absent from the circuit, but absolutely declined and refused so to do.

Affiant further says that on the following day W. A. Blount, esq., attorney for defendants in error, served affiant with objections—two in number—to the bills of exceptions, the same being the same objections which had by him before been made, and which objections were submitted to and were before the Hon. Charles Swayne, judge, with replication made by affiant to same, when he, the said judge, signed the bills of exceptions, the grounds of said objections and the reasons in said replication being fully set forth therein, a copy of said replication is hereto attached as part hereof and marked "Exhibit B."

Affiant further says that, upon receipt of the objections of W. A. Blount, esq., attorney for defendants in error, he ascertained that the deputy clerk had again returned the bills of exceptions to Hon. Charles Swayne.

Affiant further says that he suspected that these attempts were made by counsel for defendant in error to defeat the writ of error sued out by plaintiffs in error, and that plaintiffs in error had only a few days in which to file their application for writ of error and to obtain the necessary writ, citation, and bond, and in order to meet defendants in error on every issue, prepared a replication to the objections of W. A. Blount, esq., and forwarded the same to the Hon. Charles Swayne, judge, a copy of which replication is hereto annexed as part hereof, marked "Exhibit C."

Affiant further says that he immediately proceeded to Huntsville, Ala., with his application for writ of error, the necessary writ, citations in error, bond, etc., and had the same approved and signed by the Hon. David Shelby, United States circuit judge for the fifth circuit, who was the only judge within the circuit at the time, and that he, affiant, returned to Pensacola, Fla., and had the same, after obtaining the signature of the judge, properly filed in the United States circuit court.

Affiant further says that several days after the application for writ of error, order, writ, citation, bond, assignment of error, etc., had been filed he received a letter from the Hon. Charles Swayne to include in

the bills of exceptions the documents referred to in the objections of Messrs. Blount & Blount, attorneys for defendants in error.

Affiant further says that he, upon filing of the papers pertaining to the writ of error, insisted upon F. W. Marsh, clerk of the court, making out the transcript of the record, and he, the said Marsh, stated to affiant that he had directions from W. A. Blount, esq., and also from Judge Swayne, not to make out said transcript, and thereupon affiant stated to said Marsh that unless he did so without delay affiant would take the necessary steps to compel him so to do.

Affiant further says that on the following day he received a letter from W. A. Blount, esq., a copy of which is hereto attached and marked "Exhibit E."

Affiant further says that the direction to insert the plats and protocols referred to by Messrs. Blount & Blount, attorneys for defendants in error, in their objections, was made by the Hon. Charles Swayne, after the papers relative to the writ of error had been signed, approved and filed in this court, as well as the threatening letter of W. A. Blount, esq., to him, referred to.

Affiant further says that the bills of exceptions contained in the transcript of the record in this court are the same bills of exceptions signed by the Hon. Charles Swayne, judge of the lower court, and that the statement that "since it was signed by him it has been materially changed and altered by E. T. Davis, one of the attorneys for plaintiffs in error, by inserting therein certain material papers," is erroneous and untrue.

Affiant further says that it is not true that certain material papers have been omitted from the record, but under the most trying circumstances and attempts made to defeat affiant in making up and obtaining his bills of exceptions, he succeeded, after a long interval of five months, in finally making a complete record of the case, and that the transcript contains a true and perfect copy of the bills of exceptions, signed, sealed, and approved by the Hon. Charles Swayne, judge of the court below, and that the same have not been altered or changed in any way with the exception of the immaterial alterations made as above stated by W. A. Blount, esq., in his office.

Affiant further says that the statement that the bills of exceptions were filed without the consent of Judge Swayne is erroneous and untrue.

Affiant further says that the statement the bills of exceptions were filed against the express command of said Charles Swayne, judge, is likewise erroneous and untrue.

E. T. DAVIS.

Sworn to and subscribed before me this 20th day of January, 1903, in the city of New Orleans, La.

[SEAL.] ARTHUR B. LEOPOLD,
Notary Public.

Supplement traversing the affidavit of W. A. Blount.

STATE OF FLORIDA, *Escambia County:*

Affiant further says that it is true that, during the month of April, 1902, that he did present to W. A. Blount a bill of exceptions, and that there were many documents offered in evidence, which the said bill did not contain. The reason why it did not contain a copy of said documents was because none of the documents offered in evidence by the defendants in error at the trial were filed in the court or copies thereof filed or left as of record in said case, and that affiant was unable to obtain copies.

Affiant further says that, upon the objection of W. A. Blount to his bill of exceptions, he requested of W. A. Blount to furnish him with the documents, which had been offered by defendants in error, and the said W. A. Blount and Wm. Fisher did furnish to affiant certain documents, all of which affiant copied and included in his bill of exceptions, and upon the completion thereof, submitted the bill of exceptions to W. A. Blount.

Affiant further says that W. A. Blount kept the bill of exceptions about two weeks, and returned the same, with his objections thereto, which objections is marked "Exhibit A" in his affidavit.

Affiant further says that he made his replication to the objections and forwarded the same to the Hon. Charles Swayne, judge, at Guyencourt, Del.

Affiant further says that, on or about the 16th day of June, 1902, a hearing was had on said bill, before the Hon. Charles Swayne, judge, at Pensacola.

Affiant further says that the documents which were objected to, not being in the bill of exceptions at that time, is shown by the said Exhibit A attached to the affidavit of W. A. Blount in his motion; that none of the documents so named were filed in the court or copies thereof filed or left as of record in the case.

Affiant further says that the Hon. Charles Swayne rendered his decision, requiring affiant to include in the bill of exceptions copies of all the documents introduced in evidence by the defendants in error.

Affiant further says that he did go to Tallahassee, Fla., and obtain copies of all documents which had been introduced, though the same had not been filed, or copies thereof filed, or left as of record in the case, as the purported Spanish documents offered in evidence by the defendants had been immediately removed from the court at Pensacola without copies being left or filed as of record in the court, and return to Tallahassee, Fla.

Affiant further says that at the time of the hearing aforesaid that there were still other documents offered by the defendants in error at the time of the trial of the case in the hands of W. A. Blount and William Fisher, and for that reason a copy of those documents were not included in the bill of exceptions.

Affiant further says that after obtaining copies of all documents that were offered in evidence and of which he had been able to obtain in order to make copies from that affiant prepared his bill of exceptions and presented the same to W. A. Blount, and that W. A. Blount, after keeping the same for about two weeks, he returned the bill of exceptions with his objections, designated as "Exhibit B" in his affidavit.

Affiant further says that he took the objections and the bill of exceptions and carefully went over the same and corrected the same so far as right, but there were several documents referred to in these objections which affiant had not been able to get hold of, as the same was in the hands of the attorneys for the defendants in error.

Affiant further says that none of the documents named in these objections were filed in the court or copies thereof left or filed as of record in the case.

Affiant further says that after preparing his bill of exceptions he presented the same to W. A. Blount, and that after W. A. Blount had kept the bill of exceptions for about two weeks he returned the same with the objections, marked "Exhibit C" of his affidavit.

Affiant further says that affiant stated to W. A. Blount that the record in the suit of A. V. Caro *v.* Samuel Jaudon and Thurston and the deed from the Pensacola City Company to Charles Ahrons affiant has been unable to obtain copies of same, as their whereabouts were unknown to affiant, and upon the following day they were furnished to affiant by William Fisher.

Affiant further says that, after making copies of the same, he included them in the bill of exceptions, and compared the objections of W. A. Blount with the bill of exceptions, and as affiant was informed that W. A. Blount was out of the city, he, affiant, made replication to each and every objection made by W. A. Blount, and forwarded by mailing in the post-office, at Pensacola, the bill of exceptions, the brief as taken by the stenographers setting out the testimony and designating the name of each and every document that was offered, also the objections of W. A. Blount, and a replication to each and every objection, directing the same to Hon. Charles Swayne, judge, at Guyencourt, Del., a copy of said replication being hereto attached and marked "Exhibit B."

Affiant further says that, at the time of the making of the objections that there were no documents offered by the defendants in error on file or copies thereof filed or left as of record in the case. All other allegations are answered fully in the traverse of motion included herein.

E. T. DAVIS.

Sworn to and subscribed before me this 17th day of January, 1903.

[Seal of notary public, State of Florida.] C. J. LEVEY,
Notary Public.

EXHIBIT A.

GUYENCOURT, DEL., 8 *Mo. 26th, 1902.*

E. T. DAVIS, Esq., *Pensacola, Fla.*

DEAR SIR: I send you by this mail bill of exceptions in F. McGuire case signed. I was not able to verify all the replications, especially to Mr. Blount's exceptions Nos. 5, 13, 14, and 15, but I send the bill signed on account of your short time for writ of error. If I find in future that Mr. Blount is correct in any of his objections I shall so certify to the court of appeals.

Yours, very truly, CHARLES SWAYNE.

EXHIBIT B.

In United States circuit court for the northern district of Florida, at Pensacola. Florida McGuire and Matilda Caro *v.* Wm. Fisher and W. A. Blount et al.

The plaintiffs' replication to the exceptions of defendants to the bill of exceptions:

First. To first exception will say that the word never has been inserted.

Second. To second exception will say that the record referred to has been inserted in its proper place, coming from the hands of Mr. Wm. Fisher.

Third. To third exception will say that the bill of complaint has been inserted in its proper place.

Fourth. To the fourth exception will say that the document introduced never was a deed, but was an answer made by the Pensacola City Company, in which C. C. Younge, sr., made affidavit that he was one of the directors of the Pensacola City Company and was counsel for the company in that suit, which document is in its proper place in record of bill of exceptions.

Fifth. To the fifth exception will say the document referred to is inserted in its proper place, having come from the possession of Mr. Wm. Fisher.

Sixth. To the sixth exception will say that the statement referred to has been inserted in the record in its proper place, as agreed upon by counsels.

Seventh. To the seventh exception will say that the bill and answer referred to is in their proper places and the order appointing a receiver withdrawn and placed in its proper place in the record, simply being a mistake in placing the documents as offered.

Eighth. To eighth exception will say that the date 1873 has been stricken and the date 1783 inserted, simply being a clerical error.

Ninth. To the ninth exception will say that the proceedings of the land commissioners are in the record in its proper place.

Tenth. To the tenth exception will say that the pages referred to has been withdrawn from between two parts of the proceedings by Maria Moreno to sell the property, simply being overlooked when placed in the record.

Eleventh. To the eleventh exception will say that pages 120 and 121 being withdrawn from their position, the other pages follow in order, and the caption is stricken.

Twelfth. To the twelfth exception will say that the translation of pages from 115 to 125 has been inserted in the record in its proper place, having been overlooked.

Thirteenth. To the thirteenth exception will say that the pages referred to and as they appear in the record is a true and correct copy of the document offered in evidence.

Fourteenth. To the fourteenth exception will say that the plats referred to in this exception, that all of the plats offered and read to the jury is set out in the record in their proper place, and no other plats or explanations were offered, read, filed, or left of record in the case.

Fifteenth. To the fifteenth exception will say: The protocols relating to Thomas and Joseph Marshall are contained in the record in its proper place, and that the eight or ten others referred to in this exception are not named or designated, nor were they offered in evidence, or read to the jury, or filed of record, or left as of record in this case.

Sixteenth. To the sixteenth exception will say that the word "proved" appears in the brief of evidence as written by the stenographer.

Seventeenth. To the seventeenth exception will say that the words "that land" appear in the brief of evidence as written by the stenographer.

JAMES WILKINSON,
SIMEON BELDON, and
E. T. DAVIS,
Attorneys for Plaintiffs.

EXHIBIT C.

In United States circuit court, northern district of Florida, at Pensacola. Florida McGuire and Matilda Caro *v.* Wm. Fisher et al. Plaintiffs' replication to the defendants' exception to plaintiffs' bill of exceptions.

First. To defendants' first exception answers as follows:

The exception does not designate or name any plats made by Joseph

E. Caro which are not set out in the bill of exceptions, and that no other plats made by Joseph E. Caro were offered in evidence, read to the jury, named, or designated, or filed, or copies thereof produced, offered, filed, or left of record in this case, except the plat which was shown to the witness, read to the jury, designated by date, and offered in evidence, and is fully set forth in the bill of exceptions in its proper place, and which is a plat of this particular property in controversy, and purports to have been made by Joseph E. Caro.

Second. To defendants' second exception, answers as follows:

The protocol of Thomas and Joseph Marshall is set out in the bill of exceptions in its proper place and designated by name, over which there is no contention. The eight or ten protocols referred to in the exception are not named or designated, nor were they produced at the trial of the case, or offered in evidence, or read to the jury, or filed, or copies thereof produced, offered in evidence, or read to the jury, or filed or left as of record in this case.

Plaintiffs, further answering, says: That the exceptions made by the defendants, and which are only two in number, were fully presented to the court before the approval and signing and sealing of the bill of exceptions, by the court, and that the bill of exceptions, as it now stands, contains a full and complete record of the case, verified by the brief of evidence made and prepared by the stenographer, and that the exceptions by the court, and that the bill of exceptions, as it now been fully presented to the court, and passed upon, and the bill of exceptions approved, sealed, signed, and filed, and the defendants have a complete remedy by writ of certiorari.

JAMES WILKINSON,
SIMEON BELDON,
E. T. DAVIS,
Attorneys for Plaintiffs.

EXHIBIT E.

[Copy.]

SEPTEMBER 26, 1902.

Florida McGuire *v.* William Fisher et al.

Mr. E. T. DAVIS, *City.*

DEAR SIR: Mr. F. W. Marsh, clerk, informs me that you insist upon his making up and delivering to you the transcript of the record in this case, including a bill of exceptions which does not contain the papers which the court directed you to insert before using it. You will recollect that the bill, as it now stands, is not the bill as signed by Judge Swayne, and therefore, even though you could technically rely upon the bill of exceptions signed by him, you can not do so as it now stands. I have telegraphed the judge of your insistence, and beg to inform you that if you persist in your demands upon the clerk that I will, immediately upon the return of the judge, take proceedings to have you disbarred from practice in this court. There can be no other result of your attempt to use a paper which you know does not represent the final certificate of the judge.

Yours, very truly, W. A. BLOUNT.

(Indorsement: No. 1202. In United States circuit court of appeals, at New Orleans, La. Florida McGuire and Matilda Caro, plaintiffs in error, *v.* W. A. Blount and William Fisher, et al., defendants in error. Motion to dismiss bill of exceptions. Traverse of E. T. Davis. Filed January 20, 1903. Charles H. Lednum, clerk.)

Florida McGuire et al *v.* William A. Blount et al. No. 1202.

JANUARY 27, 1903.

On this day this cause was regularly called, and after argument by E. Howard McCaleb, esq., and E. T. Davis, esq., for plaintiffs in error, and W. A. Blount, esq., for defendants in error, was submitted to the court upon record and briefs.

Florida McGuire et al. *v.* William A. Blount et al. No. 1202.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of Florida, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court, that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed.

It is further ordered and adjudged that the plaintiffs in error, Florida McGuire and Matilda Caro, and the sureties on the writ of error bond herein, George W. Pryor, sr., and Ludwig Carlson, be condemned to pay the costs of this cause in this court, for which execution may be issued out of said circuit court.

MARCH 24, 1903.

United States circuit court of appeals, fifth circuit. Florida McGuire et al., plaintiffs in error, *v.* William A. Blount, defendants in error. No. 1202. Error to United States circuit court, northern district of Florida.

To the honorable United States circuit court of appeals for the fifth circuit:

The petition of Widow Florida McGuire and Miss Matilda Caro, plaintiffs in error herein, respectfully shows:

That they desire a rehearing from the judgment rendered in this cause on the — day of ——, by this honorable court for the reasons that the court erred in refusing to sustain the various bills of exception and specifications of error as set forth in the record and plaintiffs' briefs filed herein, pages 4 to 26, inclusive; made part of this exception for further reference. That the court especially erred in confirming the ruling of the lower court admitting the documents referred to in said bills of exception in evidence over the objections of plaintiffs. That said documents were not properly authenticated by any official seal or official certificates and were suspicious in appearance. That said court did not specifically pass upon the various exceptions and bills of exception as contained in the record, and that the court erred in refusing to sustain aforesaid bills of exception set forth specifically in plaintiffs' assignment of errors, contained on pages 4 to 13 of appellants' original brief, annexed to and made a part of this petition, for a rehearing for further reference, and as if set out in extenso herein.

Wherefore petitioners pray that a rehearing be granted to them in this cause and for all general and equitable relief, and your petitioners will further pray.

E. T. DAVIS,
SIMEON BELDEN,
JAMES WILKINSON,
Attorneys.

Petition for rehearing filed April 9, 1903.

Florida McGuire et al. *v.* William A. Blount et al. No. 1202.

APRIL 10, 1903.

Ordered that the petition for rehearing filed in this cause be, and it is hereby, denied.

United States circuit court of appeals, fifth circuit. November term, 1902. Florida McGuire et al., plaintiffs in error, *v.* William A. Blount et al., defendants in error. No. 1202. Error to the United States circuit court, northern district of Florida. Before Pardee, McCormick, and Shelby, circuit judges.

By the COURT:

On the trial of this case the trial judge directed a verdict for the defendants, and the correctness of that direction turns upon the admissibility and effect in evidence of the purported will of Gabriel Rivas, ancestor of the plaintiffs below, plaintiffs in error here, and a certain protocol and documents showing judicial proceedings before the Spanish governor of West Florida and other Spanish officials in West Florida from 1807 to 1821, all in the settlement of the estate of the said Gabriel Rivas, and showing the judicial sale of the land in controversy.

Upon consideration, and in the light of the very able arguments and briefs submitted, we are of opinion that the said will, protocol, and documents were properly admitted in evidence, and that their effect, sustained as they were by proof of corroborating facts and circumstances, is to show that the plaintiffs below, plaintiffs in error here, as the heirs and descendants of Gabriel Rivas, have no right to recover the lands in controversy.

The direction to the jury to find for the defendants was correct, and the judgment of the circuit court is affirmed.

Filed March 24, 1903.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

I, Charles H. Lednum, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 502 pages, numbered from A to 501, inclusive, contain a true copy of the proceedings, including opinion of the court, except that the original maps filed with the record are not copied therein, but are held in my custody subject to the order of the court, in the case of Florida McGuire et al. *v.* William A. Blount et al., No. 1202, as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, La., this 6th day of May, A. D. 1903.

[SEAL.] CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the fifth circuit, greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which Mrs. Florida McGuire, born Lavalette, widow of ——— McGuire, and Matilda Caro are plaintiffs in error, and William Fisher, Mrs. William Fisher, Thomas C. Watson, John Williams, William A. Blount, James W. Bullard, and Mrs. Young, widow and executrix or administratrix of the estate of C. C. Young, are defendants in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the northern district of Florida, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court as aforesaid the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, the 17th day of November, in the year of our Lord 1903.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

(Indorsed:) No. 1202. File No. 19100. Supreme Court of the United States. No. 449, October term, 1903. Florida McGuire et al. *v.* William A. Blount et al. Writ of certiorari. United States circuit court of appeals. Filed November 27, 1903. Charles H. Lednum, clerk.

UNITED STATES OF AMERICA, *Fifth Judicial Circuit:*

In obedience to the command of the within writ, and by direction of the judges of the United States circuit court of appeals for the fifth circuit, I, Charles H. Lednum, clerk of said court, as a return to, and in compliance with, said writ, do herewith transmit to the honorable, the Supreme Court of the United States, a true, full, and perfect transcript of the record and all proceedings had in said court in the cause wherein Florida McGuire et al. were plaintiffs in error and William A. Blount et al. were defendants in error, as fully and completely as the same now remains of record in my office, except the original maps filed with the record are not copied therein, but are held in my custody subject to the order of the court.

Given under my hand and the seal of said United States circuit court of appeals for the fifth circuit at the city of New Orleans, La., this 7th day of December, A. D. 1903.

[Seal United States circuit court of appeals, fifth circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

(Indorsed: File 19100. Supreme Court, U. S. October term, 1904. Term 134. Florida McGuire et al., petitioners, *v.* Wm. A. Blount et al. Writ of certiorari and return. Filed December 10, 1903.)

SUPREME COURT OF THE UNITED STATES.

I, James H. McKenney, clerk of the Supreme Court of the United States, do hereby certify that the foregoing printed pages, numbered from 1 to 490, inclusive, contain a true copy of the transcript of record in the case of Florida McGuire and Matilda Caro, petitioners, *v.* William A. Blount et al., No. 134, October term, 1904, as the same remains upon the files of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the city of Washington, this 14th day of February, A. D. 1905.

[Seal of the Supreme Court of the United States.]

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

Elza T. Davis recalled.

By Mr. Manager OLMSTED:

Question. Mr. Davis, you were sworn yesterday?

Answer. Yes, sir.

Q. You are a practicing lawyer at Pensacola?

A. I am.

Q. Do you practice in Judge Swayne's court?

A. Yes, sir.

Q. State, if you know, or state if you have seen Judge Swayne in Florida at any time when his court was not in session.

A. I do not remember that I have.

Q. Will you state, so far as you can from your own knowledge, what inconvenience, if any, has resulted to suitors or counsel from his absence from his district?

A. Well, I can speak from personal experience, that in the case of Florida McGuire and Matilda Caro *v.* W. A. Blount et al., I had a great deal of inconvenience in that case, as well as a great deal of expense was incurred, which, if Judge Swayne had been within the district would not have been incurred.

Q. Will you state how that came about?

A. Immediately after the trial of the case the records or documents which were offered in evidence were removed from the court. Some of those documents were in the possession of the defendants in the case, others were returned to Tallahassee. They purported to be——

Mr. Manager OLMSTED. Will you speak a little louder, Mr. Davis?

The WITNESS. Yes, sir. Other documents purporting to be Spanish documents were returned to Tallahassee. Immediately after the court adjourned Judge Swayne left for Guyencourt, Del., or left Pensacola. An order was granted by Judge Swayne allowing sixty days in which to file or present the bill of exceptions. When I went to make up the bill of exceptions the only document which I found in the court was the certified copy of the original grant which had been introduced by the plaintiffs. I prepared a copy of it, and with my bill of exceptions tendered it to Mr. Blount, who was counsel for the defendants in the case and who was also one of the defendants. He objected to that and furnished me with certain documents which he had introduced himself, pertaining to the property, or that part of the property which he claimed, and Mr. Fisher also furnished me with some. He was a defendant in the case. I prepared copies of those documents and copied them into the bill of exceptions, presented it to Mr. Blount, and he objected. As there were no other documents in the court or any place where I could get copies, I forwarded to Judge Swayne, at Guyencourt, Del., the bill of exceptions, Mr. Blount's objections, and my replication. Judge Swayne held the bill of exceptions until he returned some time in June. I do not remember the exact date.

Q. Just one moment. To what place did you forward those papers?

A. To Guyencourt, Del.

Q. Go ahead.

A. After he came back he heard the objections of Mr. Blount to my replication, and requested me to obtain copies of the records at Tallahassee. I went to Tallahassee and I saw the great trouble and inconvenience as well as expense that would be incurred, and I wrote Judge Swayne a letter and directed the letter to Pensacola, Fla., as I did not think that he had time to leave Pensacola before the letter would reach him. I got no reply whatever, but I did get copies of those records, and included or inserted them in the bill of exceptions. I presented the bill of exceptions to Mr. Blount. Mr. Blount made certain objections, stating that certain documents were not included. I made my replication and forwarded the bill of exceptions, with those objections and the replication, on to Judge Swayne at Guyencourt, Del. I did not hear from him for several days, and I wrote a letter to him, stating that my time was nearly out for suing out my writ of error. In a few days I received the bill of exceptions, with a letter, stating that he had signed the bill of exceptions. Soon after I received the bill of exceptions I carried them to the clerk of the court and filed them.

Some time afterwards Mr. W. A. Blount telephoned me that he objected to Judge Swayne's signing the bill of exceptions; that he had wired to him making these objections, and for me not to use the bill of exceptions until the bill of exceptions had been submitted to him and returned to Judge Swayne for approval.

Mr. McCaleb was interested with me, or he had been employed to sue out or prepare the writ of error in the case. I telephoned Mr. McCaleb immediately; and upon that I went to New Orleans. The writ of error was prepared, and I took it before Judge Shelby at Huntsville, Ala., he being the only judge within the district. I came back and I filed the writ of error. I saw Mr. Marsh, clerk of the court, and he informed me that he had received a telegram from Judge Swayne, and that he was informed by Mr. Blount not to permit me to use that bill of exceptions until after they had been submitted to him and returned to Judge Swayne. I told Mr. Marsh that as soon as he would certify to the bill of exceptions I would take the matter up before Judge Shelby. He informed me——

Q. Who was Judge Shelby?

A. He was one of the judges of the circuit court of appeals, acting as a district judge there—sitting as district judge.

Q. Where was his home?

A. In Huntsville, Ala.

Q. You went to Huntsville to see him?

A. Yes, sir.

Q. Proceed.

A. So that the next day I went to the court-house and told Mr. Marsh that I wanted him to certify to the bill of exceptions.

Mr. THURSTON. Wait a moment.

Mr. President, we object to any statement as to conversations happening between this witness and any other persons, being mere hearsay. We have no objection whatever to the witness detailing any transactions that can be stated without stating what conversations took place with third parties.

The PRESIDING OFFICER. That is all the witness can state; he should not repeat a conversation.

Mr. Manager OLMSTED. We do not care about having conversations detailed. He is only stating the direction he gave to the clerk, however.

The WITNESS. I went to Mr. Marsh in the morning, and he said to come back that afternoon; that he would speak to Mr. Blount about the matter. That afternoon I went back to the court-house, paid him his fee, and he told me that he would not deliver the bill of exceptions to me, but would forward it to the clerk of the circuit court of appeals in New Orleans. I told Mr. Marsh that I would go to New Orleans that night, and I would expect that bill of exceptions there by the next morning. So that I went to New Orleans and the bill of exceptions came in. Mr. Blount prepared a motion to dismiss the bill of exceptions.

Q. A motion in the circuit court of appeals?

A. In the circuit court of appeals. And we made our answer; he setting out in an affidavit what had occurred, and also attaching the certificate of Judge Swayne, as well as attaching certain letters. I made my answer to the affidavit, and attached the letter which I had received from Judge Swayne from Guyencourt, Del., at the time the bill of exceptions was forwarded to him at Pensacola. After that was done and filed, Mr. Blount withdrew the bill of exceptions and the case proceeded to trial before the circuit court of appeals.

Q. He withdrew the motion?

A. Withdrew the motion.

Q. Now, will you state, Mr. Davis, what delay, what expense, and what inconvenience resulted from the absence of Judge Swayne. In the first place, what delay?

A. Well, sir, I think we were delayed at least four months. If Judge Swayne had been within the district during the sixty days which were allowed to make up the bill of exceptions, I think the whole matter could have been settled then and there during those sixty days.

Q. State whether or not that loss of four months in getting your bill of exceptions settled resulted in your losing a term in the circuit court of appeals?

A. Yes, sir; I think so.

Q. Then what would you say was the final delay in getting your case disposed of in the circuit court of appeals resulting from the absence of Judge Swayne from his district?

The WITNESS. You mean the time?

Mr. Manager OLMSTED. Yes.

A. I should say at least four or five months.

Q. How far apart are the terms of the circuit court of appeals?

A. Five months, I believe it is.

Q. Well, did you lose any time in getting into the circuit court of appeals?

A. Yes, sir. The time that we lost was if we had been able to have filed out bill of exceptions there in the circuit court of appeals, it could have come up at the following term or been heard during that term——

Q. When was that?

A. Otherwise it passed over the entire term and was filed at the next term of court—the October term.

Q. What additional time did the absence of Judge Swayne from his district impose upon you as counsel? What additional time were you required to expend upon the case in getting your bill of exceptions settled?

A. Well, my absence at Tallahassee in getting copies of the records there, and also it necessitated my making one trip to New Orleans in reference to this motion to dismiss.

Q. And to Huntsville?

A. And to Huntsville.

Q. Well, would those trips have been unnecessary had the judge been at home to adjust this bill of exceptions?

A. Yes, sir.

Q. Now, how many days of this time were involved in those things?

A. I was at Tallahassee more than two weeks.

Q. How long upon the trip to Huntsville and New Orleans?

A. At Huntsville—I was there from the time I left Pensacola until I returned, about four days—between three and four days.

Q. How long on the trip to New Orleans?

A. I was there three days.

Q. That would be twenty-one days of your time?

A. Yes, sir.

Q. I do not want to inquire into any delicate professional matters between you and your client, but I assume that your bill for professional services was not reduced on account of that extra time?

A. No, sir.

Q. Will you state what additional expense you or your client incurred in the matter outside of your professional services?

A. The expense to Huntsville, I think, was between $35 and $37—the total expense—the expense to Tallahassee was the railroad fare, which was seventeen dollars and something, I believe, and my board there at $2 a day. Besides I employed a clerk to assist me in taking tracings of the Spanish documents, for which I paid $35.

Q. Then your trip to New Orleans?

A. Yes, sir.

Q. You were speaking of the trip to Tallahassee?

A. Yes, sir.

Q. Now, how much expense was involved in the New Orleans trip?

A. My expense to New Orleans was about $22.

Q. Now, what additional expense, if any, was involved in the matter of printing in the circuit court of the United States by reason of this motion to strike off the bill of exceptions?

A. I think that was $64, including the brief.

Q. Then these items which you have mentioned—these items of expense in addition to your increased charge for professional services you say—do you, or do you not, say resulted from the absence of Judge Swayne from his district?

A. Yes, sir.

Q. When was Judge Swayne last in Pensacola?

The WITNESS. Do you mean this year?

Q. Any time.

A. I think it has been eight or ten months.

Mr. Manager OLMSTED. That is all.

Mr. McCUMBER. Mr. President, I want to direct the attention of the Presiding Officer to a matter in the way of an inquiry for information. I understand that the pleadings of this case do make an issuable fact possibly of the question of inconvenience; but what I wish to ask the Chair is this: When the law itself provides that it shall be unlawful for a judge to reside outside of his district, with no question whatever of convenience or inconvenience, whether the time of the Senate could properly be taken up upon an issue which, to my mind, is in nowise involved in the case. I call the Chair's attention to the law, which is very specific.

> Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.

If the question, it seems to me, Mr. President, of convenience or inconvenience is a question at all, it is precluded by the statute itself, which presumes that it will be convenient, or more convenient. if the judge resides there, or less convenient if he does not.

I do not know how many witnesses the managers on the part of the House may have on this subject, but it seems to me that the Chair, sitting as a judge, would necessarily have to rule that all this matter was wholly immaterial. The simple question is, Was he or was he not a resident? And I submit to the Chair whether it should be gone into, and, if so, the limit that should be allowed, taking the position myself that under the statute it can not be an issuable fact.

I may say to the Chair that we might take up a week on this subject, and then every Senator and attorney might concur in the opinion that the question of convenience or inconvenience would not affect it in the least.

Mr. Manager PERKINS. Mr. President, if I may make a suggestion to the Presiding Officer in reference to the suggestion made by the Senator from North Dakota, I will say that the suggestion just made entirely corresponds with what I suggested yesterday, when I asked a somewhat similar question of one of the witnesses. It is the view of the managers, as it is of the Senator, that this evidence is immaterial. The statute says, as the Senator has properly stated, that if the judge does residé within his district it shall be a high misdemeanor, and whether convenience or inconvenience resulted is, in our judgment, wholly immaterial.

However, in the answer of the respondent it is alleged that in his belief his absence from his district caused no inconvenience to suitors. To meet that, not knowing what the views of the Senate might be; not knowing but that some one might say, "Ah, well, this judge was absent, but it did no harm, and there was no inconvenience and no suitors suffered," we thought it might be well to offer some evidence on this subject.

But we are entirely content to take the ruling of the Chair that the evidence is immaterial and to offer no more of it, although we have other witnesses whom we could call. As the Senator has suggested, this is a branch on which indefinite evidence might be given if we saw fit to subpœna a sufficient number of lawyers.

Mr. THURSTON. Mr. President, counsel for the respondent fully agree with the position stated by the Senator from North Dakota [Mr. McCUMBER] and also the position as acquiesced in by the managers. We do not believe this testimony is material or relevant. We did, however, in framing our answer have in mind the fact that before the committee of the House great stress had apparently been laid in the examination of witnesses upon testimony which they claimed tended to show that Judge Swayne's temporary absences from Florida had caused inconvenience to suitors and attorneys. Therefore we thought we were compelled to meet what had appeared in a previous investigation to be, in the theory of the managers, material. We do not believe it is.

We believe that the question of fact before the court is this, and only this: Did Judge Swayne have a residence in the district for which he was appointed? And that question of fact is in nowise changed or modified by reason of any further situation which may involve the convenience or the inconvenience of suitors or of attorneys.

We did not object to the introduction of this testimony because we did not conceive at first that the honorable managers would present, and are astonished now to learn that they have presented, to the Senate a line of testimony which they did not in the first instance conceive to be material to the issue. We now heartily acquiesce in their admission, and agree with them that this testimony is irrelevant and immaterial, and we move to strike it out.

Mr. Manager PALMER. Oh, no.

Mr. NELSON. Mr. President, this testimony is not irrelevant or immaterial upon the issue of residence. It has a bearing upon the question whether Judge Swayne resided in his judicial district or in the State of Delaware or elsewhere, and to that extent it ought to remain in the record and ought not to be stricken out.

Mr. Manager OLMSTED. And, Mr. President, I think, if I may be permitted an additional suggestion, it is directly in response to the averment of the honorable counsel for the respondent, who are now taking a position which they did not assume in their answer.

The PRESIDING OFFICER. Unless some Senator desires to have the matter submitted to the Senate, the Presiding Officer thinks that this testimony has some bearing upon the question of residence; that so far as the question of inconvenience is concerned, that it is not material to the issue.

Mr. Manager OLMSTED (to counsel for respondent). Do you wish to cross-examine the witness, gentlemen?

Mr. HIGGINS. Mr. President, I desire to say that under the ruling just made by the Chair I assume it would not be in order for me to direct any questions to this witness affecting the subject of inconvenience, but I trust no member of the court will permit the cause of the respondent to be prejudiced in his mind because of the testimony of the witness in that regard, when I have not had the opportunity of eliciting the facts which I expected to adduce upon cross-examination.

Q. (By Mr. HIGGINS.) What year was this, Mr. Davis?

A. 1902.

Q. When did you try your case?

A. In March.

Q. It arose out of certain documents——

A. Yes, sir.

Q. That you did not put in the bill of exceptions?

A. Yes, sir.

Q. It got into a tangle?
A. Yes, sir. You mean the trial of the case?
Mr. HIGGINS. No; I mean the bill of exceptions.
A. Yes, sir; that is correct.
Q. And you had to go to Tallahassee to find the papers?
A. Yes, sir.
Q. They were Spanish papers there?
A. They purported to be.
Q. You say this was in 1902?
A. Yes, sir.
Mr. HIGGINS. That is all.
Mr. SPOONER. I wish to submit a question.
The PRESIDING OFFICER. The Senator from Wisconsin propounds a question which will be read by the Secretary.
The Secretary read as follows:

Q. Was your visit to and sojourn at Tallahassee to secure copies of documents to be incorporated in the bill of exceptions attributable to the absence of Judge Swayne from the district? If so, why?

A. Because the documents were introduced in the court. Under the rules of practice, where the original documents are offered, it devolves upon the party offering the document to file certified copies. In this case, as the documents were brought from Tallahassee by an order or direction of this court, they could have been permitted to remain there in order to obtain copies from them.

Reexamined by Mr. HIGGINS:

Q. I will ask if you could not have obtained that order from the judge at the time of the trial?
A. Yes, sir.
Q. Did you make application for such an order?
A. I did not, from the fact that I had no reason to believe the documents would ever be returned without certified copies being left, or our having the right to use the original document for the purpose of getting copies made.
Q. Did you not know those were the original Spanish documents that are properly kept in care at Tallahassee in the record office there?
A. Yes, sir.
Q. And that they could not remain in this court unless they were impounded by the court?
A. Yes, sir.
Q. Was there any rule by which you could get copies unless they were made at your own expense or on your own motion?
A. If they were permitted to remain in the court or by an order of the court, I could have gotten them.
Q. Then would they have to go back to Tallahassee unless you got such an order from the court?
A. Yes, sir.
Q. And you did not ask for it?
A. No, sir.
The PRESIDING OFFICER. The Presiding Officer does not think that the evidence in relation to the inconvenience of this witness by reason of the absence of Judge Swayne from Florida or Pensacola is material or even admissible, but that so much of his testimony as proves the fact that the judge was absent from Florida at Guyencourt, Del., at certain times is admissible for what it is worth.
Mr. HIGGINS. We have no other questions.
Mr. Manager OLMSTED. That is all.
Mr. President, in obedience to the rule of the court, we refrain from calling other witnesses upon the question of inconvenience.
Mr. Manager CLAYTON. Call Mr. Dearborn.

Eugene C. Dearborn was sworn.

Mr. Manager CLAYTON. Mr. President, I have talked with this witness, and I learn that he is suffering from some temporary throat affection, and I am quite sure he will be unable to make himself heard in the Senate Chamber. I, therefore, ask that one of the clerks repeat the witness's answers to my questions.
The PRESIDING OFFICER. If there be no objection, that course will be pursued.
The answers of the witness were all repeated to the Senate by the Chief Clerk.

By Mr. Manager CLAYTON:

Question. Where is your residence?
Answer. Miami, Fla.
Q. How long have you resided there?
A. About eight years.
Q. Where did you reside before you moved to Miami?
A. Jacksonville, Fla.
Q. What is your occupation now?
A. Clerk of the circuit court of Dade County.
Q. What was your occupation when you resided at Jacksonville, Fla.?
A. Conductor on the Jacksonville, Tampa and Key West Railroad.
Q. Did you ever, in obedience to the instruction of the receiver or his subordinate officers, they being your superiors, accompany the private car of that railroad company on a trip to Guyencourt, Del.?
A. I did.
Q. When was that?
A. We left Jacksonville on October 30, 1893.
Q. Pursuant to whose instructions?
A. Mr. Spencer, who was train master of the road, under Mr. Durkee.
Q. Who is Mr. Durkee?
A. He was the receiver of the road.
Q. What road?
A. The Jacksonville, Tampa and Key West Railroad.
Q. And when was it you took this trip to Guyencourt, Del., in obedience to such instructions?
A. We left Jacksonville October 30, 1893, and arrived in Guyencourt on November 1, 1893.
Q. For what purpose did you take the car to Guyencourt, Del.?
A. My instructions were to go there and get Judge Swayne and family and bring them back to St. Augustine.
Q. What kind of a car was it that you took to Guyencourt, Del.?
A. It was a private car of the Jacksonville, Tampa and Key West Railroad, No. 30.
Q. In whose possession and control was the car?
A. It was in the possession of the Jacksonville, Tampa and Key West Railroad, under Mr. Durkee, who was receiver at that time.
Q. Who provisioned the car for the trip to Guyencourt, Del., and return?
A. I suppose it was provisioned by the company.
Mr. THURSTON. We object to the supposition of the witness.
Mr. Manager CLAYTON. I did not call for his supposition. I now admonish the witness not to give me suppositions.
Mr. THURSTON. If the witness does not know of his own knowledge, it is a fact that can be proved by some one who does, and we think he ought not to state any understanding he may have had or what he was told by anyone else.
Mr. Manager CLAYTON (to the witness). You will not state your supposition.
The PRESIDING OFFICER. The Presiding Officer thinks the portion of the answer which the Clerk has not repeated was all right.
Mr. Manager CLAYTON. Then I will ask him the question again. [To the witness.] At whose instance was the car provisioned for the trip to and from Guyencourt, Del.?
A. The car was provisioned when I took it; when I started.
Q. Do you know who provisioned it?
A. I do not know.
Q. Do you know by whose direction it was provisioned?
A. No, sir.
Q. Did Judge Swayne provision it?
A. No, sir.
Q. Was Judge Swayne in Jacksonville at the time the car started on that trip?
A. No, sir.
Q. Was there any rule or custom of the receiver or the railroad in regard to the provisioning of this car of the receiver?
A. I do not understand the question.
Q. Was this car generally kept provisioned?
A. Yes, sir.
Q. At whose expense was it so kept provisioned?
A. The railroad's.
Q. You mean the railroad in the hands of Major Durkee as receiver—the Jacksonville, Tampa and Key West Railroad?
A. Yes, sir.
Q. Who was operating that railroad and this car at that time?
A. Major Durkee was the receiver.
Q. And was he the gentleman who was so operating this railroad and that car at that time?
A. Yes, sir.
Q. Do you know by what court he was appointed such receiver?
A. By the United States court.
Q. Do you know by what judge or judges?
A. I do not.
Q. Did you ever hear from Judge Swayne while you were on the Guyencourt, Del., trip, of a trip that he had taken in the same car to the Pacific coast?
A. I heard him mention his trip to the Pacific coast, but I do not know whether he went in that car or in a F. C. and P. car.
Q. What did he say about his trip to the Pacific coast?

A. He only said he had a pleasant trip, and was talking of the country.

Q. Do you know how long his Pacific-coast trip was anterior to the Guyencourt, Del., trip?

A. I do not.

Q. What lines of railroad did you take with this private car in going from Jacksonville, Fla., to Guyencourt, Del.?

A. We took the Plant system, or the S., F. and W., to Charleston. From Charleston to Richmond, the Atlantic Coast Line, the R., F. and P., and the Washington Southern, I think it is, from Richmond to Washington.

Q. That is the Richmond, Fredericksburg and Potomac Railroad?

A. Yes, sir. From Washington we took the Pennsylvania to Guyencourt.

Q. Who furnished you transportation over these various lines for this car and for the passengers?

A. Mr. Spencer gave me the passes for the car and party.

Q. Please state again who Mr. Spencer was—what official position he held with the Jacksonville, Tampa and Key West Railroad.

A. He was train master.

Q. In whose name were those passes for the passengers that you proposed to bring, and did afterwards bring, on the car to Florida?

A. I am not certain whether the passes were in Major Durkee's name or just in the name of the J., T. and K. W. car No. 30 and party.

Q. You went with this car and these passes, or this transportation, to Guyencourt, Del.?

A. I did.

Q. What day was it that you started to Guyencourt, Del.?

A. I do not know what day of the week it was; it was October 30.

Q. When did you arrive at Guyencourt, Del.?

A. On the morning of November 1, about 8 o'clock.

Q. Whom did you take aboard the car at Guyencourt, Del.?

A. Judge Swayne; Mrs. Swayne; I think his mother, who only went as far as Wilmington, I think, and a colored servant.

Q. While en route did you pick up anybody else on your trip to Florida?

A. Mr. and Mrs. Shoemaker got on at Washington.

Q. Who were Mr. and Mrs. Shoemaker, and at whose instance did they come aboard and travel upon the car?

A. That would be a supposition, and I hardly know how to answer.

Q. Did you invite them and offer them the privilege of traveling on the car?

A. I did not.

Q. Who did?

A. I do not know.

Q. Were they friends or relatives of Judge Swayne?

A. Mrs. Shoemaker, I think, is a niece of Judge Swayne.

Q. Now, then, taking Judge Swayne and his immediate family—you left his mother at Wilmington, I understood you to say?

A. I think so.

Q. Then you brought the rest of his immediate family on to Washington, and here Mr. and Mrs. Shoemaker came aboard the car. To what place did you take the party?

A. To St. Augustine, Fla.

Q. Then what became of you and the car?

A. I went back with the car to Jacksonville the following morning.

Q. Jacksonville was the place of headquarters for that car?

A. Yes, sir.

Q. And you left Judge Swayne and his family at St. Augustine?

A. Yes, sir.

Q. When you started on the trip to Guyencourt, Del., you have said that the car was provisioned?

A. Yes, sir.

Q. Was any money furnished you to buy green groceries or perishable groceries while the car was en route?

A. Yes, sir.

Q. Who furnished you that money?

A. Mr. Spencer gave it to me.

Q. How much was it?

A. I think it was $29.

Q. The Mr. Spencer you now refer to is the same Mr. Spencer whom you described a little while ago?

A. He is.

Q. Have you a memorandum book to refresh your memory as to the amount of money furnished you for that purpose?

A. Yes, sir.

Q. And you have consulted it?

A. Yes, sir.

Q. How much of the $29 did you spend for the purpose for which it was intrusted to you?

A. I do not remember. I returned some of it, with an itemized account of what I had spent.

Q. Can you approximate the amount which you did not so expend, but returned?

A. I can not.

Q. Who else went on that car with you and helped to compose this crew?

A. No one but the porter.

Q. Who paid you your wages, compensation, or salary for making that trip to Guyencourt, Del.?

A. The Jacksonville, Tampa and Key West Railroad.

Q. Who paid the wages or hire or compensation of the porter and cook on that car?

A. The J. T. and K. W. Railroad.

Q. What were your wages per month?

A. Ninety dollars.

Q. What were the wages of the cook and porter per month.

A. I do not know.

Q. Did Judge Swayne pay for any part of the provisions or service of that car?

A. No, sir; not that I know of.

Q. I believe you said that you left Jacksonville on October the 30th and reached Guyencourt November the 1st and left there on November the 2d. Am I correct in that?

A. Yes, sir.

Q. And when did you get to St. Augustine?

A. On November the 4th, about 5 or 6 o'clock in the evening.

Mr. Manager CLAYTON. The respondent's counsel can examine the witness.

Cross-examined by Mr. THURSTON:

Q. You were a regular conductor on the railroad you have spoken of?

A. Yes, sir.

Q. Employed by the month?

A. Yes, sir.

Q. Your wages went along by the month, no matter what you did?

A. As long as I worked; yes.

Q. But it did not depend upon the number of days that you ran trains?

A. Not altogether.

Q. Where did you start from with that car?

A. Jacksonville.

Q. Who started with you?

A. Mr. Coffin, the general superintendent, went as far as Washington.

Q. Then your general superintendent took that car out of Jacksonville and came to Washington with it?

A. No, sir; he came in the car. I had charge of the transportation.

Q. What was that transportation—passes?

A. Passes; yes, sir.

Q. Exchange trip passes from the different connecting lines?

A. Yes, sir.

Q. What you call "free" passes?

A. I suppose they are free passes.

Q. You have had a good deal of experience as a conductor. Do you not know that it is the custom of the different railroad companies to give free transportation to the private cars of other lines and those who occupy them?

A. Yes, sir.

Q. This transportation was not made out in the name of Judge Swayne, was it?

A. No, sir.

Q. But either to an officer of your road or to the car and party?

A. Yes, sir.

Q. You left Guyencourt on November 2?

A. Yes, sir.

Q. At what hour?

A. About 6 o'clock, I think.

Q. Did you have any meals served on that car that night?

A. I am not certain. I think we had supper.

Q. How many meals were served on that car to Judge Swayne and his party?

A. As near as I can recollect we had five or six meals. I can not recollect exactly now.

Q. When did you get to Washington on your return trip?

A. I think it was about 10 o'clock that night.

Q. Did the party remain on the car that night or did they——

The PRESIDING OFFICER. Perhaps the witness did not understand the counsel. You said on the return trip.

Mr. THURSTON. Yes; he understands it. [To the witness.] Did the party remain on the car that night?

A. Yes, sir.

Q. When did you leave Washington for the South?

A. I think it was about 4 or half past in the morning.

Q. Did you run all that day?

A. Yes; we went right through then.

Q. What point had you reached when night came on?

A. I do not remember now.

Q. Did it take you all of those two days to run from Washington to St. Augustine?

A. We left Washington in the morning of the 3d and reached Jacksonville about 2 o'clock the next afternoon and laid there for an hour or two and then went on to St. Augustine.

Q. How many were in the party of Judge Swayne altogether—the number?

A. From Washington or Guyencourt?

Q. Well, from Washington?

A. Mr. and Mrs. Swayne, Mr. and Mrs. Shoemaker, and the colored servant.

Q. That is five; and those five people actually ate up out of the supplies of that railroad company four or five meals on that trip, did they?

A. As near as I can recollect.

Q. And you do not think they paid for them?

A. No, sir.

Reexamined by Mr. Manager CLAYTON:

Q. Were you a regular conductor on the Jacksonville, Tampa and Key West Railroad at the time this trip was made to Guyencourt, Del.

A. Yes, sir.

Q. Were you or not taken off of your regular run as passenger conductor and instructed and required to make this special trip on this private car to Guyencourt and back?

A. Yes, sir.

Q. How long did your car remain at Guyencourt, Del., waiting for Judge Swayne?

A. We got there on the morning of the 1st and left there on the evening of the 2d.

Q. You reached Washington at what time?

A. About 10 o'clock that evening.

Q. At what time did you reach St. Augustine?

A. On the evening of the 4th.

Q. Did you go up to Judge Swayne's house while you were at Guyencourt, Del.?

A. Yes, sir.

Q. What kind of a place was it?

A. It was a small house, apparently.

Q. His residence, was it?

A. Yes, sir.

Mr. Manager CLAYTON. The witness may be excused.

Mr. THURSTON. That is all.

Mr. Manager PALMER (to Mr. Thurston). Will you need him any more?

Mr. THURSTON. No.

Mr. Manager PALMER. He is sick and wants to go home.

Mr. Manager CLAYTON. The Sergeant-at-Arms may discharge him altogether. I will call Major Durkee.

Joseph H. Durkee sworn and examined.

The PRESIDING OFFICER. The witness asks that he may be allowed to be seated. He may sit if there is no objection. The witness will please raise his voice and answer all questions so as to be heard all over the Chamber.

By Mr. Manager CLAYTON:

Question. Where is your place of residence?

Answer. Jacksonville, Fla.

Q. How long have you resided there?

A. Thirty-nine years.

Q. What is your business or occupation?

A. I do not know that I have any.

Q. What was it in 1893?

A. I was receiver of the Jacksonville, Tampa and Key West Railroad.

Q. Who appointed you receiver of the Jacksonville, Tampa and Key West Railroad?

A. The order of my appointment was signed by Don A. Pardee, circuit judge of the fifth circuit, and Charles Swayne, district judge of the northern district of Florida.

Q. When was that appointment made?

A. If my recollection serves me, early in April, 1893.

Q. By your permission or consent or direction was a private car, known as private car No. 30, devoted to the making of a trip from Jacksonville, Fla., to Guyencourt, Del., and back to St. Augustine, Fla.?

A. What is the first part of your question?

Q. By your permission, or your instruction, or your consent, was a private car, known as car No. 30, belonging to the Jacksonville, Tampa and Key West Railroad, devoted to or used in making a trip from Jacksonville, Fla., to Guyencourt, in the State of Delaware, and back to St. Augustine, Fla.?

A. To the best of my recollection it was.

Q. Who paid the expenses of that car for that trip?

A. I do not know. I presume they were charged to the corporate property.

Q. Did you pay those expenses out of your own private or personal funds?

A. No, sir.

Q. Do you know of anybody else who paid the expenses of that trip out of their private or personal funds?

A. I do not.

Q. Then I ask you again the direct question: Were not the expenses for that trip of that car, including the hire of the porter and the hire of the conductor, borne by the railroad then in your hands as receiver?

A. I presume it was. The fact that this car was used had escaped my memory, until I looked over some of the testimony taken in this cause. I did not remember of its being used.

Q. Can you imagine—I put it that strong—anyone who paid the expenses of that car except that railroad in your hands?

A. I have no doubt it was paid by the railroad, by the receivers. I do not know.

Mr. Manager CLAYTON (to counsel for the respondent). You may examine him.

Cross-examined by Mr. THURSTON:

Q. Major, were you appointed as receiver for that railroad by the circuit court sitting in the northern district of Florida by the circuit judge, Pardee, and by the district judge, Swayne?

A. Yes, sir.

Q. You entered upon the possession of the railroad properties and commenced to manage them?

A. Yes, sir.

Q. When you did so, did you find among the properties of that railroad a private car?

A. Yes, sir.

Q. Was that car designed, or had it been used, or is it the custom to use such cars as a part of the general passenger equipment of the road?

A. That car was for the use of the person, whoever it might be, in charge of the property of the company.

Q. Not a car kept for hire?

A. No, sir.

Q. And not a car used in conveying passengers for hire from one point to another?

A. No, sir.

Q. It was the officers' car of the road?

A. Yes, sir.

Q. On that car you had employed, did you not, a porter who also acted as cook when the car was en route?

A. Yes, sir.

Q. Was he employed by the year or the month?

A. By the month.

Q. His compensation, then, was paid him just the same, whether the car was on the road or at home?

A. Yes, sir.

Q. Now, when that car was started out on a trip it was stocked, I suppose, to some extent with provisions?

A. Undoubtedly.

Q. You have no personal recollection in this case?

A. Certainly not.

Q. And you can not state. But you presume it was?

A. I do, sir.

Q. Do you remember that any officer of your road started out with that car and went as far as Washington?

A. I think the superintendent. I think I was asking him about it two or three days ago. I think he came to some rate making or something or other in Washington in that car at that time.

Q. Then he occupied the car in a matter of his transportation to his official duties as far as Washington?

A. That had escaped my memory until it was called to my attention.

Q. What was his name?

A. William B. Coffin.

Q. The car was sent out on what kind of transportation?

A. I presume it was on transportation obtained by me over connecting roads for the passenger cars.

Q. Is it the custom, or is it not, or was it at that time and has generally prevailed since, for different railroads of the country and in that section of the country, upon application to furnish passes, free passes, for official cars and their occupants of one road over the road of another?

A. It was quite the custom, especially in roads in the South, West, and Northwest, to grant the courtesies of the passage of a private car to the officers of roads or to those occupying the car.

Q. Was any charge ever made by any connecting line for this transportation of the car occupied by Judge Swayne's party?

A. No, sir.

Q. Did the transportation of your car over the lines of other railroads depend upon or have any relation to the amount of exchange courtesies tendered by your road to the cars of other companies?

A. No, sir.

Mr. THURSTON. That is all, Major.

Reexamined by Mr. Manager CLAYTON:

Q. Major, when that porter upon this car was not on the car and the car not in running service, what was his business or employment?

A. He was about headquarters offices.

Q. Doing other work?

A. Whatever he was told to do.

Q. Then if he had not gone on this Guyencourt, Del., trip he would have been about the headquarters of the office, engaged in other business?

A. Unquestionably.

Q. What about the conductor upon this car when that car was not in operation? What was his business?

A. He was a passenger conductor.

Q. Engaged in running another train?

A. Yes, sir.

Q. And in the service of the company otherwise?

A. Yes, sir.

Mr. CLAYTON. The witness may go.

Mr. THURSTON. Major, just one or two additional questions.

The PRESIDING OFFICER. The Presiding Officer will inquire now whether either side desire that this witness shall remain after his examination is concluded.

Mr. Manager PALMER. No, sir; we do not desire it.

Mr. HIGGINS. We may want him.

Mr. THURSTON. We may desire him on the question of the California trip, which the managers have not gone into.

Reexamined by Mr. THURSTON:

Q. Major, your porter on the car being paid by monthly account, when he was absent on a trip was any other man employed to do any of the duties around headquarters that he would have been doing if he had remained there?

A. No, sir.

Q. So that his absence on a trip resulted in no additional expense to your railroad?

A. No, sir.

Q. Was the conductor also paid in the same way?

A. Yes, sir.

Q. Now, Major, did or could that portion of the salaries of these two men covering the period on which they took that trip appear as such in any account that you rendered to the court as receiver?

A. No, sir; they were paid on regular pay rolls.

Q. And could this small amount of provisions, stock, in the car, on a little trip like that, appear separately, or did it appear separately and independently on any account you have rendered as receiver?

A. It is very difficult to say. These matters occurred nearly twelve years ago. Every official document connected with that receivership in my possession was burned in the fire of May, 1901. The only records existing are the reports on file in court and my vouchers on file. In all matters of that kind the expense was charged just what it was and the voucher made for it. I do not know whether in this individual instance it was charged. If the car was used for any other purpose that month the other charges would go into the same bill. I am unable to say anything about the matter.

Q. That is, in all probability there would be, from month to month, if the car was used at all on one or more trips, a monthly charge for the stocking of the car?

A. Certainly.

Q. Were any exceptions ever taken to any of the accounts you rendered while in possession of that railroad as receiver by any of the stockholders or creditors of the company?

A. No, sir.

Mr. THURSTON. That is all.

Mr. Manager CLAYTON. The witness may be excused.

The PRESIDING OFFICER. The next witness.

Mr. Manager CLAYTON. Mr. President, that is all the witnesses I desire to examine at this time on this particular line of the inquiry.

Mr. Manager PALMER. Mr. President, I wish to make an offer in support of the same article.

The managers offer to prove that the respondent on the 28th day of November, 1904, at the city of Washington, D. C., voluntarily appeared before a subcommittee of the House Judiciary Committee, not having been summoned as a witness or otherwise, and voluntarily made the following statement.

Mr. THURSTON. Mr. President——

Mr. Manager PALMER. I do not care to have the statement read unless counsel for the respondent object.

Mr. THURSTON. We object to reading the statement. I suppose the offer is to prove——

Mr. Manager PALMER. I will hand it to the court and let the court pass upon it after we discuss it. I think the court have a right to hear the statement.

Mr. BAILEY. Mr. President, while the Presiding Officer passes on such questions in the first instance, Senators must pass upon it finally, and they know what is offered before they can vote intelligently upon the question. It is unprecedented to say that the court shall not be permitted to hear what is offered before passing upon the admissibility of it.

Mr. THURSTON. Mr. President, standing here as objecting to this offer, I repeat what I said a few days since about this attempt to present to this court the statements made by Judge Swayne while he was a witness before a committee of the House of Representatives. The offer to prove what he said before that committee is all that, under any rule of practice that has ever prevailed in any court, can be made. It has never been held that in offering to prove what a witness had said somewhere else a statement could be made in the offer of what he had said somewhere else, because that would, by indirection and by pettifogging, Mr. President, present to the court, the judge, or the jury the statement of what the evidence would show when it was really admitted, if at all, and evidently in the expectation——

Mr. PETTUS. Mr. President, I object to the word "pettifogging" being used in this court.

The PRESIDING OFFICER. The Presiding Officer thinks that the word ought not to have been used.

Mr. THURSTON. I apologize for the use of that word. I was not using it with reference to this offer. I was saying that it was a common custom in some courts to attempt to show by a statement of this kind what a witness had said somewhere else, when the attorney making the offer knew and understood perfectly well that the statement itself would not be proper evidence to be introduced in the case, and that an offer of this kind was and is an attempt to present to a court evidence known to be improper, prohibited by the statutes of the United States, and its reading to the court in an offer must necessarily be, and can only be, an attempt by indirection to place in the record and before the judges testimony that they know is not legal testimony and ought not to be considered.

Now, Mr. President, the statute in this respect is very plain.

Mr. Manager PALMER. Please read it.

Mr. THURSTON. I will read it. You will find it in the rules of the Senate. Section 859 of the Revised Statutes reads:

> No testimony given by a witness before either House, or before any committee of either House of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony.

Now, Mr. President, I do not wish to reflect—and if I have made any reflections upon these honorable managers I withdraw them—I do not wish to reflect upon them in this case, but I do say that in other cases and in other courts where offers of this kind have been made they have been necessarily made with the express desire to place in the record and before the court and the jury a line of evidence that is prohibited by the law of the land from being presented. We object both to the offer to introduce the testimony and to the offer to read the proposed testimony to this court. Mr. President, we also protest against this manner of presenting evidence by an offer to prove something.

The only proper way, in our judgment, if the managers wish to produce this testimony and have this court pass upon its competency, is to put a witness on the stand or to offer the

record, to ask the question, or let the record be objected to, and pass upon that. I do not think it is proper for us, Mr. President—and the occasion may arise in this case where it would be most desirable for us, if it were proper—to offer to prove a certain statement of fact that we do not believe can be introduced in evidence if objected to upon the other side. But, sir, feeling our responsibility here, we will not attempt to offer before this court a statement of anything, nor will we attempt to offer in this court to prove facts setting it forth. What facts we have to prove we will prove by records, or we will prove them by questions directed to the witnesses presented in the court, and let the objections, if any there be, be taken in the regular way and upon legal lines.

Mr. BAILEY. Mr. President, before the manager begins, other members of the court may have heard exactly what was said by the honorable manager for the House, but I did not, though I infer that all of this relates to the introduction of some testimony, the admissibility of which the counsel for the respondent deny; but, for my own guidance, I would like to know exactly the question before the court.

The PRESIDING OFFICER. It is in writing. The managers offer to prove that the respondent on the 28th day of November, 1904, at the city of Washington, D. C., voluntarily appeared before a subcommittee of the House Judiciary Committee, not having been summoned as a witness or otherwise, and voluntarily made the following statement. Then the statement is recited.

Mr. BAILEY. Now, Mr. President, I would like to inquire if there is any controversy as to whether or not this appearance was voluntary?

Mr. THURSTON. Mr. President, we will very frankly state there is no controversy on that subject. Judge Swayne did appear; he was examined and cross-examined, and, speaking a little outside of the record, I know that these questions the managers propose to ask him relate mostly, if not wholly, to his answers made on his cross-examination. But, Mr. President, the law of Congress does not distinguish between a man who comes before Congress or a committee of his own volition and a man who is haled there by process. The prohibition of the statute is as broad as human language can make it. It was designed for a wise and beneficent purpose, and no thought, in our judgment, ought to be had here by the managers in this case against our objection of attempting to override that statute of the Congress of the United States.

Mr. HOPKINS. Mr. President, I ask that the statute that is referred to by the learned counsel may be read.

The PRESIDING OFFICER. The manager is about to reply, and undoubtedly he will read the statute.

Mr. Manager PALMER. This is the statute, Mr. President, on which the objection is based:

SEC. 859. No testimony given by a witness before either House, or before any committee of either House of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony. But an official paper or record produced by him is not within the said privilege.

The offer is to prove that Judge Swayne voluntarily appeared before a subcommittee of the House Judiciary Committee and made a voluntary statement in his own defense. He was not a witness; he was not summoned; and his statement was entirely voluntary.

Mr. HOPKINS. Mr. President, I should like to know if, on the occasion as to which the managers propose to use the admissions, the respondent was examined by counsel and cross-examined?

Mr. Manager PALMER. In answer to the Senator, I will say this: That on this occasion he read a typewritten statement, which occupies thirteen pages of the record. After his statement was read certain questions were asked him based on allegations that were made in his statement, and the questions that were asked him, that we now offer to prove, were based on suggestions made in his statement. The questions were asked by members of the committee to clear up some things that Judge Swayne had stated in his written statement. Now, we offer this testimony in entire good faith.

Mr. HIGGINS. Mr. President, I would beg to call the attention of the learned manager to the record, in which it is said, on page 578:

Charles Swayne, having been recalled, testified as follows.

The PRESIDING OFFICER. The Presiding Officer thinks that this argument ought to proceed in form——

Mr. HIGGINS. I beg to say that this was in answer to the question of the Senator from Illinois [Mr. HOPKINS]. That is all.

The PRESIDING OFFICER. And it would be very much better if the manager be not interrupted by Senators, and that the manager on one side and the counsel on the other have an opportunity to present their arguments to the Senate without interruption.

Mr. Manager PALMER. I say we offered this testimony in entire good faith. We are not pettifogging; we are not endeavoring to get before the Senate testimony which is not testimony; but we offer it because we believe it is testimony, because it is competent testimony, and because it is the admission of the respondent here, a judge of a Federal court, who, in his own defense, made a voluntary statement, and he ought not to be objecting to it now here, as we believe.

Mr. MORGAN. Was that statement under oath?

Mr. Manager PALMER. No, sir; it was not under oath. To state the fact exactly as it is, Judge Swayne appeared before the committee, and this conversation occurred. On a previous occasion this testimony was given, or at least this statement was made on the last hearing that was had. On a previous hearing, several months before, Judge Swayne appeared and raised some question about some testimony that was given as to his residence. It was said to him by a member of the committee, "There is one man in the United States who knows all about this subject," and Judge Swayne said: "Do you mean me?" The committeeman said: "Yes; I mean you." Judge Swayne said: "Do you wish to have me sworn?" It was said to him: "That is entirely voluntarily with you; you can be sworn if you desire to be sworn." Then he held up his hand, and was sworn. That was at the hearing some months before. At the last hearing he appeared and read this typewritten statement, which, I say, occupies thirteen pages of the record, and that statement led to the inquiry made by a committeeman, which elicited the information which we now ask to give here. He was not sworn at that time. He had been sworn some months before on a different proposition at his own request or on his own volition.

Now, the reason for this statute is plain. It protects a witness who is compelled to testify to matters which might criminate him. In this case the offer is to show that Judge Swayne appeared voluntarily before the committee—and that is admitted—that he was not a witness summoned to appear, but that he appeared voluntarily, and made a statement and argument in his own defense. Something he said in that argument attracted the attention of a member of the committee who interrogated him, and elicited the matter contained in the offer.

The statement is evidence here, first, because this is not a criminal proceeding against the respondent. If he has committed any crime, he can be punished for it in another proceeding. This is a proceeding in which, if Judge Swayne were convicted, he would not be punished as for a crime, but the extent of the punishment would be removal from office. It is a proceeding calculated to keep the judiciary unsullied and pure. It is the only method by which a judge who violates the tenure on which his office is held can be removed. His commission runs that he is to hold this office "during good behavior;" and the only tribunal on earth in which that question can be settled is this august tribunal.

We are here to ascertain whether Judge Swayne has behaved himself well, and whether he is fit to hold this office. This is not a criminal trial; it is not a criminal prosecution; it is not followed by a sentence of any court. All that you can do under the Constitution is to deprive him of his office. If he has committed any offense the Constitution provides that he can be tried for that in another proceeding, and punished if he is found guilty.

The second reason why this is evidence is because he was not summoned to testify before the House committee, but appeared voluntarily to make a statement in his own defense.

Mr. THURSTON. Mr. President, just a word or two in reference to this last suggestion, which is one which I had not expected to hear—that this trial is not a criminal proceeding. What is it, Mr. President? It has been held through all the history of impeachment trials to be in accordance with trials of persons charged with crimes. The verdict to be rendered in the case is one of "Guilty" or "Not guilty"—a verdict which is only appropriate in a criminal proceeding. Punishment is not of life, or limb, or liberty, but, sir, it is a far graver one, in my judgment, than any of those would be. It is a punishment of so grave a character that it can only be inflicted, under the Constitution of the United States, on being found guilty of high crimes or misdemeanors, and yet the gentleman says, with apparent sincerity, that this is not a criminal proceeding. You are trying this man here on a charge that he is guilty of a high crime or a high misdemeanor, and yet you say it is not a criminal proceeding.

Now, Mr. President, Charles Swayne, as the record shows, appeared before the House subcommittee and was sworn as a witness, and testified there. Afterwards, at another session of the committee, he again appeared, and was again examined

and cross-examined before the same tribunal on another day. Did you ever hear in any court of justice the theory, when a man had been sworn as a witness on one day, that you needed to swear him again on the next day in the same case? Why, Mr. President, if this testimony had been given in a court and Judge Swayne had been sworn on one day to testify to the truth, the whole truth, and nothing but the truth, and an adjournment of that case had taken place for a day or a week or a year, and he had come back on the witness stand, would the honorable managers pretend to tell this court that if he had testified falsely on that second appearance he could not have been prosecuted and punished for perjury because he had not renewed the oath?

Mr. President, this is not a question of what the managers are about to prove. We are not objecting here because we fear for its effect. We are standing here, as under our oaths as his counsel we are bound to do, to insist upon his legal rights. The statute of the United States was not designed simply to protect a man from incriminating himself in a hearing before Congress. It was framed on a broader policy, that every man when he went before a committee of either House of Congress could understand that in no wise, by nobody, in no court, could what he said be used against him there in a criminal prosecution.

Mr. President, we submit this matter to the judgment of the court.

Mr. Manager PALMER. Mr. President, I wish to call attention to the section of the Constitution of the United States under which this proceeding is had. I said that this was not a criminal prosecution. Did anybody ever hear that a man could be twice tried and convicted for the same offense? If the first trial is a criminal prosecution, then, of course, he could not be tried and convicted again. The provision of the Constitution is this:

> Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Now, I say that is an amazing proposition that this judge, who appeared and made a voluntary statement in his own defense, should be objecting here now on the ground that it might tend to criminate him. If there was no other reason for saying that he is not fit to sit as a judge of a Federal court or any other court, it seems to me that the objections of his counsel here on this occasion would be sufficient.

Mr. THURSTON. Mr. President, I wish to make a statement. We are not objecting here on the ground that anything Judge Swayne said would tend to criminate him. We are objecting, under the broad provisions of the statute, that it is not evidence.

Mr. BAILEY. If the court please, my own opinion is that this is such an important matter—and it is one that is apt to arise in other impeachment proceedings—that I would like to have the judgment of the Senate pronounced deliberately upon it. If it is entirely agreeable to others, I would move that the Senate retire to consider and decide this point.

The PRESIDING OFFICER. The Senator from Texas moves that the Senate retire to its consulting room——

Mr. BAILEY. If the court please, it is suggested to me that we might decide it here and now without retiring, and that is agreeable to me if it can be done.

The PRESIDING OFFICER. The Presiding Officer is entirely ready to rule upon this question, but if the Senator desires that it shall be submitted to the Senate the Presiding Officer prefers that that course shall be taken.

Mr. FORAKER. Mr. President, I suggest that under the rules applicable to the trial of impeachments it is the duty of the Presiding Officer, in the first instance, to make a ruling as to the admissibility of evidence that may be objected to; and then, if any Senator so desires, he may have the question submitted to the Senate. I call the attention of the Senator to Rule VII.

Mr. BAILEY. I have no question about the rule, and I have no question about the propriety, and if the Presiding Officer is ready to decide it, and decides it as I think he will, I shall not, of course, desire an adjournment.

The PRESIDING OFFICER. The general proposition that the admissions of a defendant may be proved does not seem to the Presiding Officer to apply to this case. The statute is that—

> No testimony given by a witness before either House, or before any committee of either House of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony.

Now, without deciding technically whether this is testimony which was given by a witness before a committee, or whether it is proposed to use it in a criminal proceeding, or in a court, the Presiding Officer thinks that the intention of the statute is such as to make this evidence inadmissible.

Mr. BAILEY. Mr. President, I desire that question submitted to the Senate, and I shall ask that the court adjourn, if it is necessary, in order that Senators may state their views about it. If it is permissible to make a motion that the Senate adjourn as a court and resume its session in the Chamber as a Senate, I will submit that motion.

Mr. SPOONER. Mr. President, may I inquire of the Senator when he proposes that this question should be considered? Not in legislative session, certainly.

Mr. BAILEY. No. I imagine that we would retire to consult as a court, just as any court in banc, which might disagree with the decision of its presiding judge, could move that they retire to their consultation chamber. I imagine if a question of practice necessary to be determined at the time should arise before the Supreme Court of the United States, and the Chief Justice of that court should rule on it, any member of that court might very properly ask for a consultation.

Mr. SPOONER. Mr. President, the rule clearly provides that the Senator from Texas, or any other Senator, shall have what he now desires. The proper course would seem to be for the Senate sitting as a court of impeachment not to adjourn, but to retire for the consideration of the question.

Mr. BAILEY. I am aware of that rule, but, if the court please, I did not care to inconvenience the Senate by retiring to some other place. I will obviate that inconvenience, if I may be permitted to state my objections here——

The PRESIDING OFFICER. In the opinion of the Presiding Officer, the matter can be discussed in the Senate upon the appeal and the vote be taken here, or the Senate can, if it so desires, retire to its conference chamber for discussion. Either course may be pursued, according to the wish of the Senate.

Mr. BAILEY. I have no desire to ask that the Senate retire, and I shall occupy but a moment on this question.

If the court please, section 103 of the Revised Statutes provides that—

> No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined by either House of Congress, or by any committee of either House, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous. (See sec. 859.)

Plainly the purpose of that statute was to enable the committees of either House, or either House itself, to compel the attendance and the testimony of any witness, and it provides, contrary to the rule of law obtaining in the courts, that the witness shall not be permitted to decline to testify upon the ground that it might disgrace him or tend to render him infamous. Having deprived him of the privilege which he would enjoy before the courts of this country, and having compelled him to testify before its committees, even to his own infamy or disgrace, Congress very wisely then provided that such testimony should not be adduced against him in any criminal proceeding in any court.

But, Mr. President, this is not a criminal proceeding within that statute, and this, in my opinion, is not a court within the meaning of that statute. The Constitution may seem to contemplate that we shall sit as a court when we try the President, because it provides that the Chief Justice of the United States shall preside at such a trial. Whether that was intended, as has been suggested by some, to protect the President against the rulings of the Vice-President, who might succeed to the Presidency in the event of the President's conviction and removal, or whether it was intended, as has been suggested by others, to secure a more certain and a more correct interpretation of the law, I do not undertake at this time to decide.

My own opinion is that the reason which prevailed upon the framers of the Constitution to provide that the Chief Justice shall preside over the Senate when it tries the President on impeachment charges was that the Vice-President might be suspected of having a deep and peculiar personal interest in the result of such a trial. But whether one or the other was the reason, it can not be successfully contended that this is a court within the meaning of section 859, or if it shall be held that this is a court, then it can not be contended that this is a criminal proceeding within that section.

The very provision of the Constitution under which we are proceeding negatives the idea that this is a criminal action, because it expressly provides that no matter what our judgment may be, it only excludes the incumbent against whom it may be pronounced from the honorable office which he holds, and it leaves to the ordinary administration of the criminal jurisprudence of the country the punishment for his criminal acts.

Mr. FULTON. May I ask the Senator from Texas a question?

Mr. BAILEY. Certainly.

Mr. FULTON. I draw the Senator's attention to section 3——

Mr. BACON. Mr. President, I am compelled to call the honorable Senator's attention, through the Chair, to the fact that the rule expressly prohibits colloquies between Senators.

Mr. FULTON. I may be out of order. I simply wanted to ask a question for information.

The PRESIDING OFFICER. The order adopted by the Senate for the trial of this case prohibits colloquies between Senators.

Mr. BAILEY. Mr. President, a judge, in my opinion, may be impeached without being guilty of a crime. He holds his office by a different tenure from that under which other civil officers of the Government enjoy their places. He holds his office during good behavior, and more than one of the charges in this very case are not a crime. No penalty is denounced against the violation of that provision of the statute which provides that a judge shall reside in the district for which he is appointed, and that his failure to do so shall be a high misdemeanor.

That term is new in legal vernacular. I know of no law books which furnish a distinction between a misdemeanor and a high misdemeanor. Certainly the Constitution does not. Congress has not seen fit to affix a penalty of any criminal nature to this very provision itself, and obviously the whole purpose that Congress had in mind when it declared that a failure to reside in the district for which the judge had been appointed was a high misdemeanor—was that his failure to do so should be an impeachable offense.

I put this case to the court and all the honorable members of it. Suppose there should be nothing before this body but the naked question, Does the honorable judge reside in his district? The law says that if he does not, he is guilty of a high misdemeanor. Does any member of the court doubt that if counsel for the respondent or the respondent himself were to rise in this court and say, "I do not reside in my district," there would be the slightest hesitancy in finding him guilty on that charge? Yet, sir, that charge is not a crime, and no Senator will contend that he could be prosecuted in the courts and punished for his failure to reside in his district. It is declared by law, it is true, to be a high misdemeanor, but it is not a crime, because there is no penalty attached to it by the law. Again, sir, suppose a judge should arbitrarily and maliciously disbar an attorney, does any Senator doubt that he could be, and ought to be impeached? And yet, sir, there is no criminal statute in that behalf provided.

The respondent was not a witness, within the meaning of the statute, when examined before the committee of the House. As has well been suggested by my learned brother near me, whenever a party to a proceeding voluntarily takes the stand, he must be presumed to know the nature of it, and when he volunteers his testimony everything he says can be used. There are States under whose system of criminal jurisprudence the defendant himself may testify. He can not be called by the State; he can not be compelled to take the witness stand in his own behalf, and if he fails or refuses to do so it is error, and reversible error, for the prosecuting attorney to refer to that fact. But when the accused does take the witness stand in his own behalf, then he is not simply permitted to testify to what he thinks may be to his own benefit. He can be cross-examined, and all he says must be received and considered by the jury as testimony in the case.

When the respondent in this case voluntarily appeared before a committee of the House, with a full knowledge of the nature of its inquiry, and proceeded to state any of the facts it was within the power and duty of that committee to interrogate him as to all the facts, and when he had made his statement there it does not lie with him to claim immunity under this statute.

I believe that the protection afforded by section 859 was made necessary and proper by section 103.

Having deprived the witness of a privilege as ancient almost as courts of justice, it was just and proper that he should not be exposed to prosecution and conviction upon his own testimony, which he had been compelled to give.

I believe, further, that this is not a court within the meaning of that statute. I am sure that this is not a criminal proceeding within the meaning of the statute, because the respondent might be found guilty on a charge that would terminate his office, although he were guilty of no crime.

I am further sure that the respondent in delivering his testimony before the committee of the House was not a witness within the reason or the protection of the statute, and I am still more certain that if he shall be deemed a witness he must be treated as a witness who came voluntarily to testify and whose testimony may be used against him.

Mr. BACON. Mr. President, I apprehend that unless I am mistaken in its construction there has been overlooked a provision of Rule XXIII——

Mr. TELLER. Will the Senator from Georgia allow me? I rise to a question of order.

Mr. BACON. That is exactly what I am on now.

Mr. TELLER. Oh, excuse me.

Mr. BACON. I am on a question of order. I do not think that under Rule XXIII any debate is in order.

Mr. TELLER. That is what I wanted to suggest.

Mr. BACON. I will either read the rule myself——

Mr. TELLER. Read it.

Mr. BACON. It is Rule XXIII, on page 177 of our Manual.

RULES FOR IMPEACHMENT TRIALS.

All the orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, and without debate, subject, however, to the operation of Rule VII, except when the doors shall be closed for deliberation, and in that case no member shall speak more than once on one question, and for not more than ten minutes on an interlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate.

That is, with closed doors. The rule is peremptory that except when the doors are closed there must be no debate, short or long. Rule VII, which is referred to in Rule XXIII, is in these words:

The Presiding Officer of the Senate shall direct all necessary preparations in the Senate Chamber, and the Presiding Officer on the trial shall direct all the forms of proceedings while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. And the Presiding Officer on the trial may rule all questions of evidence and incidental questions, which ruling shall stand as the judgment of the Senate unless some Member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may at his option, in the first instance, submit any such question to a vote of the Members of the Senate. Upon all such questions the vote shall be without a division, unless the yeas and nays be demanded by one-fifth of the Members present, when the same shall be taken.

I read Rule VII to show that Rule XXIII does not in any manner modify the provision of Rule VII as to debate except when the Senate is in secret session; "when the doors shall have been closed," in the language of the rule. I do not think that debate upon any question which may arise is in order. Senators will perceive necessarily that a contrary rule would in its operation protract the session of a court of impeachment beyond the possibility of any practical termination.

The PRESIDING OFFICER. The Presiding Officer is of opinion that the point of order taken by the Senator from Georgia is well taken, and that the only exception is that contained in Rule VII. Rule XXIII provides:

All orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, and without debate, subject, however, to the operation of Rule VII, except when the doors shall be closed for deliberation.

The exception in Rule VII is that upon all such questions the vote shall be without a division. But Rule XXIII provides that all orders and decisions shall be by yeas and nays. The exception referred to in Rule VII is upon questions relating to the introduction of evidence and incidental questions; if the vote of the Senate is asked, it may be decided without a division, unless the yeas and nays are demanded.

The Presiding Officer thinks the point is well taken.

Mr. BAILEY. If the court please, I was rather of that impression myself, and I did not proceed to deliver my opinion in respect of this matter until it was suggested that it was in order. I have no desire, of course, to transgress the rules, but every desire to respect them.

The PRESIDING OFFICER. If there was any error it was the error of the Presiding Officer in permitting the matter to be discussed.

Mr. BAILEY. It is very generous of the Presiding Officer to acknowledge it.

Mr. BACON. I desire to state that I did not call the Senator from Texas to order and interrupt him, because he had the permission of the Chair to proceed.

Mr. TELLER. I move that the doors be closed for the deliberation of the Senate under Rule XXIII.

The PRESIDING OFFICER. Does the Senator desire that the doors shall be closed and all but the Senate excluded——

Mr. TELLER. I think it is more convenient to the Senate, and I think we should consult our own convenience in this case.

Mr. SCOTT. Let us have a vote on that.

Mr. HOPKINS. Under the rule what number of Senators does it require to go into secret session when we are sitting as a court?

The PRESIDING OFFICER. A majority vote. The Senator from Colorado moves——

Mr. TELLER. If there is any disposition to go on with this trial in the irregular way in which it has been proceeding, I will withdraw the motion, if it is going to inconvenience the Senate or delay the matter. But I insist that this whole pro-

ceeding has been contrary to the rule and not well calculated to bring it to a speedy conclusion.

The PRESIDING OFFICER. Does the Senator from Colorado insist upon his motion?

Mr. TELLER. I withdraw it.

The PRESIDING OFFICER. The motion is withdrawn.

Mr. MORGAN. Mr. President, I desire to have the Presiding Officer state what is the question now before the court.

The PRESIDING OFFICER. Objection was made to the introduction of certain evidence. The offer on the part of the managers of the House to prove what Judge Swayne stated before a committee of the House when he appeared voluntarily before that committee was objected to by counsel for the respondent. The Presiding Officer ruled that without inquiring technically whether it was testimony which Judge Swayne gave, or technically whether this was a criminal court, that the intention of the statute referred to was such as made it proper to exclude the testimony; and from that the Senator from Texas took an appeal.

Mr. MORGAN. The question of the appeal is before the court?

The PRESIDING OFFICER. The question on appeal is before the Senate.

Mr. MORGAN. I wish to ask some of the gentlemen who have made themselves familiar with this matter whether there is any provision in the rule affecting the decision of appeals in the manner we are now proceeding to do?

The PRESIDING OFFICER. The appeal under Rule VII may be decided without division, unless the yeas and nays are demanded, in which case they will be ordered by a second.

Mr. FORAKER. Mr. President, I submit it is not technically correct to call it an appeal. The rule provides that when the Chair has ruled, it may, if any Senator so requests, submit the question to the Senate. I understand this is simply a request that the question be submitted to the Senate.

Mr. BACON. I understand, in pursuance of what the Senator from Ohio has just said, that the question will not be upon sustaining the ruling, but the question in its original form will be submitted to the Senate, whether the evidence is or is not admissible.

Mr. MORGAN. That is exactly what I was trying to get at.

The PRESIDING OFFICER. The Presiding Officer, then, will submit to the Senate the question whether the proposed evidence is admissible.

Mr. FORAKER. The question submitted to the Senate should be whether or not the objection of counsel for the respondent shall be sustained. So an affirmative vote would sustain the objection.

Mr. DANIEL. The Senator from Ohio can not be heard here. We would be glad if he would repeat his statement.

Mr. FORAKER. I was merely suggesting to the Presiding Officer that the question to be submitted should be whether or not the objection of counsel for the respondent shall be sustained.

Several SENATORS. Oh no.

Mr. FORAKER. That would be the form, I should think, of the submission. It is important only that we may know which way to vote.

The PRESIDING OFFICER. This is the rule:

And the Presiding Officer on the trial may rule [on] all questions of evidence and incidental questions, which ruling shall stand as the judgment of the Senate, unless some member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision; or he may, at his option, in the first instance, submit any such question to a vote of the members of the Senate.

The Presiding Officer was of opinion that the question was whether the evidence was admissible.

Mr. BLACKBURN. That is the question.

Mr. HOPKINS. Would not the form under that rule then be as to whether the decision of the Chair shall stand as the judgment of the court?

Several SENATORS. No.

The PRESIDING OFFICER. The Presiding Officer thinks the question is whether the evidence offered is admissible.

Mr. CULLOM. In support of the ruling of the Presiding Officer, I desire to read a paragraph from the trial of the President of the United States years ago:

The CHIEF JUSTICE. Senators, the Chief Justice is unable to determine the precise extent to which the Senate regards its own decisions as applicable. He has understood the decision to be that, for the purpose of showing intent, evidence may be given of conversations with the President at or near the time of the transaction. It is said that this evidence is distinguishable from that which has been already introduced. The Chief Justice is not able to distinguish it, but he will submit directly to the Senate the question whether it is admissible or not.

The PRESIDING OFFICER. The Presiding Officer then submits to the Senate the question whether the evidence offered by the managers on the part of the House is admissible.

Mr. BLACKBURN. That is the question.

Mr. FORAKER. An affirmative vote admits the testimony and a negative vote excludes it.

Mr. BLACKBURN. That is right.

Mr. FORAKER. It is presented in that form.

Mr. BAILEY. I should like to have the yeas and nays.

The yeas and nays were ordered; and having been taken, resulted—yeas 28, nays 45, as follows:

YEAS—28.

Allison	Clark, Mont.	Gibson	Morgan
Bailey	Clarke, Ark.	Latimer	Overman
Bard	Clay	Long	Simmons
Bate	Crane	McEnery	Spooner
Berry	Daniel	McLaurin	Stone
Blackburn	Dietrich	Mallory	Taliaferro
Carmack	Foster, La.	Martin	Teller

NAYS—45.

Alger	Dryden	Hopkins	Pettus
Allee	Dubois	Kean	Platt, N. Y.
Ankeny	Fairbanks	Kearns	Proctor
Bacon	Foraker	Kittredge	Quarles
Ball	Frye	Lodge	Scott
Burnham	Fulton	McComas	Smoot
Burrows	Gallinger	McCreary	Stewart
Clapp	Gamble	McCumber	Warren
Culberson	Gorman	Millard	Wetmore
Cullom	Hale	Nelson	
Dick	Hansbrough	Patterson	
Dillingham	Heyburn	Perkins	

NOT VOTING—12.

Beveridge	Depew	Foster, Wash.	Newlands
Clark, Wyo.	Dolliver	Knox	Penrose
Cockrell	Elkins	Money	Platt, Conn.

The PRESIDING OFFICER. On the question whether the evidence offered by the managers for the House is admissible the yeas are 28, the nays 45. So the Senate decides that the evidence is not admissible. Are there further witnesses?

Mr. Manager POWERS. Mr. President, I have evidence largely of a documentary character in support of the twelfth, or last article, but it is already so late that I had assumed perhaps the court would not care to receive it at this time in the day. I am perfectly content to proceed if the court so desires.

Mr. HIGGINS. On the part of the respondent we wish to interpose no objection to going on as long and as late and as rapidly as we can to advance this trial.

Mr. Manager POWERS. Mr. President, I offer in evidence a certified transcript of the record in what is known as the "O'Neal case."

Mr. BACON. Mr. President, it is impossible for us to hear anything that is being said, on account of confusion in the Chamber.

The PRESIDING OFFICER. The Senate will please be in order, and Senators will cease conversation.

Mr. Manager POWERS. I offer in evidence, Mr. President, a certified copy of the court record in what is known as the "O'Neal case." This record is made up of what is known as the complaint upon which the order of attachment in this contempt case was issued, and also a demurrer to the original complaint, which appears to have been disposed of, and also the affidavit of the respondent, which is an answer to the complaint, together with other documents showing the disposition of that case.

It has been agreed between counsel for the respondent and the managers that this record may go into evidence without being read before the court. It is very long and would occupy possibly an entire session if it were read. But I assume, Mr. President, in order to have it go into evidence without being read, it is necessary that we should have the permission of the court to do so. So I tender this record with the request that it become a part of the evidence in this case and be printed as such without first being read to the court.

The PRESIDING OFFICER. If there be no objection, it will be entered without reading.

The transcript referred to is as follows:

In the United States district court in and for the northern district of Florida. The United States *v.* W. C. O'Neal.

Be it remembered, that on the 10th day of November, A. D. 1902, one Adolph Greenhut, of the city of Pensacola, came into court and filed therein an affidavit in regard to certain acts of one W. C. O'Neal, and on the same day the court made an order in the said matter, which affidavit and order are in the words and figures following, to wit:

"In the United States district court, northern district of Florida, at Pensacola. In the matter of Scarritt Moreno, bankrupt. No. 3.

"UNITED STATES OF AMERICA,
"Northern District of Florida, City of Pensacola, ss:

"Adolph Greenhut, of the city of Pensacola, in the district aforesaid, being duly sworn according to law, on his oath, doth depose and say:

"That heretofore, to wit, on the 29th day of August, 1902, one Scarritt Moreno filed in the honorable the district court of the United States in and for the northern district of Florida, at Pensacola, his petition to

be adjudicated a bankrupt and to obtain the benefits of the acts of Congress of the United States relating to bankruptcy. That thereafter such proceedings were had upon said petition in said United States district court, that on September 15th, 1902, affiant was duly appointed trustee of the estate of the above-named Scarritt Moreno, bankrupt, which said appointment of deponent as trustee was then and there approved by the said court.

"That thereafter, to-wit, on the day and year last aforesaid, affiant accepted said appointment and filed his bond as such trustee, which said bond was duly approved by E. K. Nichols, esq., referee in bankruptcy, and at the same time dependent took the oath of office as required by law, and thereupon he became charged with the duties and clothed with the authority appertaining to a trustee in bankruptcy under the laws of the United States, and from thence hitherto has occupied and is now occupying said trusteeship, amenable to and subject to the orders of the said the honorable district court of the United States in and for the northern district of Florida.

"That affiant was, by his counsel, advised that it was his duty, as trustee of the estate of said Scarritt Moreno as aforesaid, to institute a certain suit or action in equity for the purpose of having certain property purchased by the said Scarritt Moreno, bankrupt, the title to which was taken by the said Scarritt Moreno in the name of his wife, brought into the said United States district court as a part of the estate of said bankrupt, to be there administered as required by law, and for the further purpose of having certain mortgages on said property decreed and declared to be null, void, and of no effect. That thereupon, in the afternoon of Saturday, the 18th day of October, 1902, through his counsel, he, as trustee as aforesaid, and in the performance of his duty as aforesaid as an officer of the said United States district court, caused to be filed in the circuit court of Escambia County, State of Florida, his certain bill of complaint, therein and thereby, among other things seeking the relief above referred to.

"That, by the advice of his counsel, Scarritt Moreno, Susie R. Moreno, his wife, the American National Bank of Pensacola, the Citizens' National Bank of Pensacola, and others, were made parties defendant in and to said bill of complaint, and that upon the filing of the said bill of complaint suit was commenced against the defendants named in said bill of complaint. That all of the proceedings above referred to were taken and had by affiant as an officer of the district court of the United States in and for the northern district of Florida, and in the due, proper, and faithful performance of his duty as such officer, and were necessarily had and taken under the law and his oath of office.

"That on Monday, the 20th day of October, A. D. 1902, between the hours of nine and ten o'clock a. m., affiant was standing in the door of the office of the store owned and conducted by him, situated at No. —— East Government street, in the city of Pensacola aforesaid, which said office was occupied by deponent, among other things, for the purpose of performing the duties devolving upon him as trustee as aforesaid, and in which said office this deponent kept and had the custody of the papers, books, etc., relating to and connected with the estate of said Scarritt Moreno, bankrupt, in deponent's hands as trustee as aforesaid. That at the said time deponent was engaged in conversation with one Alex. Lischkoff, when one, W. C. O'Neal, who was at the said time president of said American National Bank, of Pensacola, one of the defendants in the action or suit heretofore referred to, approached to where affiant was standing and conversing as aforesaid and stated to affiant that as soon as he, affiant, was at liberty, he, said O'Neal, desired to speak to him; thereupon affiant stated in effect that said O'Neal could speak to him then, and affiant entered his said office and stood alongside of a standing desk about five feet from the door of said office.

"Said O'Neal followed affiant into said office and stood opposite to affiant, and distant only a few feet. That thereupon said O'Neal, in effect, asked this affiant why he, affiant, had brought the name of his, the American National Bank, into the Moreno suit (meaning thereby the suit above referred to, brought by affiant, as trustee, against Scarritt Moreno and others); that affiant replied that he, O'Neal, could see his, affiant's, attorneys in relation thereto; that said O'Neal made some remark to the effect that he would not do so, and stated to affiant that he, affiant, was no gentleman; that affiant thereupon said that he, affiant, was as much of a gentleman as he, the said O'Neal, was; that thereupon said O'Neal said, we'll settle the matter, and turned about as if he intended to leave the premises of deponent, walking towards the door of said office and out upon the sidewalk.

"That affiant had no thought, idea, or suspicion that said O'Neal intended any personal violence toward him, and quietly started forward from where he was so standing, as aforesaid, towards the door of said office leading into the street. That affiant barely reached the doorway of said office when said O'Neal, without any provocation, without any notice to deponent of his murderous intention, turned and wheeled suddenly about with his knife in his hand, and with intent to kill and murder deponent, struck at his, deponent's, throat with said knife, and cut deponent at a point behind the left ear, cutting through lower portion of said left ear, then across the left cheek, ending at left corner of mouth, and immediately thereafter said O'Neal cut and stabbed deponent four further times: (1) on left side over lower ribs; (2) upon left hip; (3) on left elbow; and (4) on right hand. That the cuts, wounds, and stabs so inflicted by said O'Neal upon deponent were of a serious and dangerous character, and from said time to the present deponent has been unable to attend to and perform his duties as trustee as aforesaid, and has been confined to his home, except for a few hours on two or three different days, and has ever since been, and is now, under the care and treatment of a physician, who is attending to said wounds.

"That said assault and attempt to murder was committed by said O'Neal, as aforesaid, solely because and for the reason that affiant, as an officer of the United States district court, in and for the northern district of Florida, had instituted the suit above set forth against the said American National Bank, and others, and to interfere with and prevent deponent from executing and performing his duties as such officer of said court, and the said O'Neal did, by the said murderous assault, interfere with the management of the said trust by deponent as an officer of the said court, and did for a long period of time, to wit, from the said 20th day of October, 1902, up to the present time, by reason of the injuries inflicted by him upon deponent as aforesaid, prevent and deter deponent from performing the duties incumbent upon him, deponent, as such officer, and did thereby interfere with the management by deponent as such officer of the estate of the said Scarritt Moreno, bankrupt.

"A. GREENHUT.

"Sworn to and subscribed before me this 7th day of November, A. D. 1902.

"E. K. NICHOLS,
"Referee in Bankruptcy."

United States district court, northern district of Florida, at Pensacola.
In the matter of Scarritt Moreno, bankrupt.

Upon reading and filing the affidavit of Adolph Greenhut, trustee,

It is ordered, That W. C. O'Neal show cause before this court on the 17th day of November, A. D. 1902, at 10 o'clock a. m., why he, the said W. C. O'Neal, should not be adjudged guilty of contempt of this court on account of the matters and things set forth and alleged in said affidavit; and,

It is further ordered, That a copy of this order, together with a copy of the said affidavit, be served upon the said W. C. O'Neal forty-eight hours before the time at which this order is hade returnable. And I hereby appoint B. C. Tunison, esq., special counsel to represent the court in the prosecution hereof.

Done and ordered this 10th day of November, A. D. 1902.

CHAS. SWAYNE, *Judge.*

(Endorsements: U. S. dist. ct. North. dist. Fla. In re Scarritt Moreno, bankrupt. Affidavit and order on W. C. O'Neal. Filed November 10, 1902. F. W. Marsh, clerk. By H. P. Holmes, D. C. Tunison & Loftin, Pensacola, Fla.)

And thereafter, to wit, on the 17th day of November, A. D. 1902, the respondent to said rule, by his attorneys, came into court and filed therein a demurrer to the said rule, which demurrer is in the words and figures following, to wit:

"In the United States district court, northern district of Florida.

"In the matter of rule upon W. C. O'Neal to show cause why he should not be committed for contempt.

"The said W. C. O'Neal, respondent to said rule, demurs to the said rule, and the affidavit thereto attached upon the following grounds, to wit:

"1. That the affidavit of A. Greenhut attached to the rule to show cause does not show that the respondent has committed any offense of which this court has jurisdiction in this proceeding.

"2. That said affidavit does not show that the respondent has done any act punishable by this court as a contempt thereof.

"3. That said affidavit does not show the commission by the respondent of any act of contempt against this court.

"BLOUNT & BLOUNT,
"Attorneys for Respondent.

"I, Wm. A. Blount, of counsel for respondent, certify that in my opinion the foregoing demurrer is well founded in point of law and make oath that it is not interposed for delay.

"W. A. BLOUNT.

"Sworn to and subscribed before me this 15th day of November, A. D. 1902.

"[SEAL.] A. C. BINKLEY, *Notary Public.*

"(Endorsements: In re rule to W. C. O'Neal to show cause, etc. Demurrer to rule. Filed at 10 o'clock a. m. November 17th, 1902. F. W. Marsh, clerk. Blount & Blount, attys.)"

And thereafter, to wit, on the 21st day of November, A. D. 1902, the following order was made and entered of record in the said cause, to wit:

"United States district court, northern district of Florida. In the matter of Scarritt Moreno, bankrupt. On rule, etc., *v.* W. C. O'Neal.

"This cause coming on to be heard upon demurrer to rule filed by respondent, and the same having been argued by counsel, it is ordered that the said demurrer be, and the same is hereby, overruled, and said respondent is granted leave to file answer, which answer is to be filed on or before November 22, 1902.

"To which ruling respondent duly excepted.

"Done and ordered this 21st day of November, 1902.

"CHAS. SWAYNE, *Judge.*

"(Indorsements: In re W. C. O'Neal. Contempt. Filed at 11 o'clock a. m. November 21st, 1902. F. W. Marsh, clerk.)"

No. 4.

And thereafter, and on the said day, to wit, on the 22d day of November, A. D. 1902, the following answer was filed in the said cause by the respondent therein, to wit:

"In United States district court, northern district of Florida, at Pensacola. In re rule upon W. C. O'Neal to show cause why he should not be punished for contempt upon the statement set forth in the rule and the affidavit of A. Greenhut thereto attached.

"Respondent for answer to the rule and to the said affidavit says:

"1. That he knows in part and presumes in part that the allegations of the first paragraph of the said affidavit are true.

"2. That he knows in part and presumes in part that the allegations of the second paragraph of the said affidavit are true.

"3. That the statements in the third paragraph of said affidavit are in part true and in part untrue, and that the following statement of the facts leading up to, accompanying, and surrounding the affray between himself and the said Greenhut on October 20, 1902, are true.

"That the said Greenhut had been from the organization of the American National Bank of Pensacola in October, 1900, a stockholder and director thereof; that while he was such stockholder and director the said bank received from the said Scarritt Moreno a certain mortgage for the sum of $13,000 to secure certain indebtedness due or to become due by the said Moreno to the said bank; that the said transaction was an honest and bona fide transaction, and that the said Scarritt Moreno was and became indebted to the said bank in a large sum of money secured by the said mortgage; that the said Greenhut was cognizant of the whole of said transaction and knew of its bona fides and honesty, as he did of the subsequent bona fide transfer thereof to Alex McGowan, S. J. Foshee, and H. L. Covington for a large consideration paid by them to the said bank, and that the bill filed by the said Greenhut as trustee as aforesaid was filed to declare the said mortgage and transfer null and void, although the said Greenhut knew them to have been entirely honest, straight, and valid transactions.

"That prior to the said 20th of October, said A. Greenhut became indorser upon certain negotiable paper of the said Scarritt Moreno to the said bank to an amount of about $1,500; that the said Greenhut refused to make good his said indorsement, or to pay to the said bank the money due upon said paper at its maturity or thereafter, and before the said 20th day of October the said bank had been compelled to sue him in the circuit court of Escambia County, Fla., upon said paper, and that in the said suit the said Greenhut interposed a defense which this respondent believed and believes to be untrue, and known to the said Greenhut to be untrue.

"That on the morning of the 20th of October, 1902, respondent was

proceeding from his residence to his office in the said bank, in the direct and usual path pursued by him, and he saw the said Greenhut standing at the door of his said store office upon the said path of respondent, and it suddenly occurred to respondent to reproach the said Greenhut with having brought the suit mentioned in his affidavit against the said bank when he, the said Greenhut, knew, as aforesaid, that there was no foundation therefor; and thereupon the respondent stated to the said Greenhut that he wished to speak to him as soon as he was at liberty, he then being engaged in a conversation with one A. Lischkoff.

"The said Greenhut answered that respondent could speak to him then, and both he and respondent stepped to the rear of the said Greenhut's office, when the respondent reproached the said Greenhut with his attitude toward the bank of which he had been a stockholder and director, both in his refusal to pay the negotiable paper hereinbefore mentioned and in the bringing of an unfounded suit against it. The conversation, however, concerning chiefly the bringing of the said suit against the said bank, hot words passed between the said respondent and said Greenhut, during which the said Greenhut said that he would "do respondent up," to which respondent answered that he did not come to have a disturbance and would not fight in his office except in self-defense, but that if he had to fight he would do so if the said Greenhut would come out upon the street.

"When the respondent turned to leave the office and when he had nearly reached the door, he turned and said to the said Greenhut, 'Well, you know you lied about the Moreno acceptance, for you said that you would pay it,' the Moreno acceptance being the negotiable paper hereinbefore mentioned. As respondent turned, saying this, he noticed that the said Greenhut was following him, and as he said it, the said Greenhut (who was short, stout, heavily built, and apparently much more muscular than respondent) struck the respondent (who is thin and feeble) and forced him against the railing in the said office. The respondent shoved the said Greenhut a little away from him, but he, the said Greenhut, instantly recovered and rushed at respondent with his arm uplifted to strike, when respondent drew from his pocket a small pocketknife, and opened it in order to protect himself, and upon said Greenhut rushing upon him, cut him therewith, while the said Greenhut was still following and endeavoring to strike him.

"That it is not true that the respondent at any time said to the said Greenhut that he, respondent, would settle the matter, but the facts are as hereinbefore stated; that respondent does not know how many or where located were all the wounds inflicted with the said knife, and hence he is unable to admit or deny the allegations of the said affidavit relating thereto; that it is not true that the use of the said knife was with the intent to kill and murder the said Greenhut, or to do him any bodily harm, but respondent avers that it was entirely from the instinctive desire of respondent to defend himself from the attack of a larger and more powerful man.

"That it is not true that the assault charged in the said affidavit was committed by the respondent solely because and for the reason that the said Greenhut had instituted the suit aforesaid against the said American National Bank, or to interfere with and prevent him, the said Greenhut, from exercising and performing his duties as an officer of this court. That in truth the respondent never contemplated at any time any interference with the said Greenhut as trustee as aforesaid, or contemplated any affray with the said Greenhut, or any personal conflict with him until he saw the threatening attitude of the said Greenhut toward him, the respondent, as hereinbefore set forth, and that so far as respondent can determine from the actions of the said Greenhut, who was the aggressor as aforesaid, the cause of the said affray was the remark of respondent to the said Greenhut concerning the said Greenhut's action in repudiating his obligation to pay the said acceptance.

"And respondent disclaims the existence on his part at any time of any intent to interfere with, prevent, impede, or delay the said Greenhut in the prosecution of the said suit against the said bank, or to interfere with or impede or prevent him in any wise in the execution or performance of any of his duties as such trustee; and specially disclaims any intent to do any act which might savor in the slightest degree of contempt of this honorable court.

"W. C. O'NEAL.

"W. C. O'Neal, being duly sworn, says that he has read the foregoing answer and that the statements therein made are true.

"W. C. O'NEAL.

"Sworn to and subscribed before me this 18th day of November, A. D. 1902.

"[SEAL.] "JNO. PFEIFFER,
"*Notary Public.*

"BLOUNT & BLOUNT,
"*Attorneys for Respondent.*

"(Endorsements: In re rule upon W. C. O'Neal. Answer of respondent. Filed November 22nd, 1902. F. W. Marsh, clerk. Blount & Blount, Pensacola, Fla.)"

And on the 4th day of December, A. D. 1902, the following order was made and entered of record in the foregoing cause, to wit:

"United States district court, northern district of Florida, at Pensacola. United States of America *v.* W. C. O'Neal. Contempt.

"It is ordered that the clerk issue and the marshal serve, at the cost of the United States, process of subpœna ad test., directed to A. L. Rettinger, R. A. Hyer, Lep. Mayer, A. Lischkoff, F. G. Renshaw, W. J. Forbes, F. C. Brent, Donald McClellan, Rev. P. H. Whaley, William E. Anderson, L. Hilton Green, William Fisher, Boyken Jones, John W. Frater, and Jacob Kryger, witnesses on behalf of the United States, returnable December 8, 1902, at 10 o'clock a. m.

"CHAS. SWAYNE, *Judge.*

"DECEMBER 3, 1902.

"(Indorsed: The United States *v.* W. C. O'Neal. Order for witnesses. Filed December 4, 1902. F. W. Marsh, clerk.)"

No. 5.

And afterwards, to wit, on the 9th day of December, A. D. 1902, the following proceedings were had in open court, to wit:

"In the matter of the rule upon W. C. O'Neal to show cause why he should not be punished for contempt of this court as to the matters and things set forth in the affidavit of Adolph Greenhut.

"This cause coming on to be heard at this time on the affidavit of Adolph Greenhut, in the matter of the bankruptcy proceedings in the estate of Scarritt Moreno, and upon the rule to show cause why he should not be punished for contempt of this court, issued thereon by this court, against W. C. O'Neal, and upon the answer of the said respondent, W. C. O'Neal, to the said rule and affidavit, and the court having heard the testimony and the witnesses for the prosecution and for the respondent, and after argument of counsel and consideration by the court, and the court being advised in the premises, the court doth find as follows:

"That the affidavit of Adolph Greenhut, upon which this rule was granted, is true, and that the respondent is guilty of the acts and things set forth therein, in the manner and form therein alleged, and that the same constitute and are a substantial contempt of this court; and it is therefore

"*Ordered, adjudged, and directed,* That the said respondent, W. C. O'Neal, be taken hence to the county jail of Escambia County, at Pensacola, in the State of Florida, and there confined for and during the period of sixty days, and that he stand committed until the terms of this sentence be complied with, or until he be discharged by due process of law.

"And the said respondent, W. C. O'Neal, at this time having sued out his writ of error to the Supreme Court of the United States, and made and entered into a bond and undertaking, conditioned as required by law and duly approved by this court, it is therefore ordered that the said writ of error be and operate as a supersedeas to the judgment heretofore rendered in this cause."

And afterwards, to wit, on the 9th day of December, A. D. 1902, the following petition and order thereon were filed in the foregoing cause, to wit:

"In the United States district court, northern district of Florida, Pensacola. W. C. O'Neal, plaintiff in error, *v.* The United States of America, defendant in error.

"Proceeding on the rule upon the said W. C. O'Neal to show cause why he should not be punished for contempt in assaulting A. Greenhut, a trustee in bankruptcy in said court:

"The said W. C. O'Neal, defendant, feeling aggrieved at the judgment and sentence of the said court rendered in above cause on the 9th day of December, A. D. 1902, prays an allowance of a writ of error therefrom the Supreme Court of the United States for the purpose of a review of the judgment heretofore rendered in said cause in favor of plaintiff, and against the defendant, overruling the demurrer of the defendant (to the rule and affidavit thereto attached), asserting the want of jurisdiction of this court to render any judgment of contempt against the defendant upon the facts and other causes set forth in the said affidavit, this court holding and deciding that it had such jurisdiction, and that a transcript of the record and pleadings of the said cause, duly authenticated, sufficient to present to the said Supreme Court on said action of jurisdiction shall be sent to the said court.

"C. H. LANEY,
"BLOUNT & BLOUNT,
"*Attorneys for W. C. O'Neal.*

"In the United States district court, northern district of Florida, Pensacola. W. C. O'Neal, plaintiff in error, *v.* The United States of America, defendant in error.

"The defendant, W. C. O'Neal, considering himself aggrieved by the rule of this court in said cause in which final judgment was rendered on the 9th day of December, A. D. 1902, holding upon demurrer to the rule and affidavit attached, that it had jurisdiction upon the facts stated in said affidavit to try and sentence said defendant for contempt of this court, having on this day filed in this court his assignment of errors, and his petition praying for a writ of error to the judgment and proceedings in said cause to the Supreme Court of the United States upon the said question of jurisdiction, and that a transcript of the proceedings as therein prayed may be made and sent to the Supreme Court:

"Now, on this 9th day of December, A. D. 1902, it is ordered and considered by the court that the said writ of error is to be allowed and awarded upon the said question of jurisdiction alone, as prayed for. And this court thus certifies to the Supreme Court for its decision the question of jurisdiction alone of this court over this cause, as follows:

"Did this court have jurisdiction to try and punish the said defendant for contempt thereof upon the facts and for the causes stated in the said rule and affidavit?

"CHAS. SWAYNE,
"*Judge District Court of the United States,*
"*Northern District of Florida.*

"(Endorsements: W. C. O'Neal *vs.* The United States of America. Petition and order allowing writ of error. Filed December 9th, 1902. F. W. Marsh, clerk. Blount & Blount, Pensacola, Fla.)"

And on the same day, to wit, on the 9th day of December, A. D. 1902, the following assignment of errors was duly filed in the foregoing cause, to wit:

"In the United States district court, northern district of Florida. W. C. O'Neal, plaintiff in error, *v.* United States of America, defendant in error.

"Proceeding upon the rule upon the said W. C. O'Neal to show cause why he should not be punished for contempt in assaulting A. Greenhut, a trustee in bankruptcy of the said court.

"The plaintiff in error assigns as error in the record and proceedings below in the foregoing cause:

"1. The overruling by the said district court of that portion of the demurrer of the defendant to the rule and affidavit asserting that the court did not have jurisdiction; asserting that such rule and affidavit did not show that the respondent had committed any offense of which the said court had jurisdiction in the said proceeding; and the holding of the court in overruling such demurrer, that it did have such jurisdiction.

"2. The further assertion by the said district court of jurisdiction in the cause by the rendition of judgment, adjudging the plaintiff in error guilty of contempt, as alleged in the rule and affidavit, and imposing punishment therefor.

"C. H. LANEY,
"BLOUNT & BLOUNT,
"*Attorneys for Plaintiff in Error.*

"(Endorsements: W. C. O'Neal *vs.* The United States of America. Assignment of errors. Filed December 9th, 1902. F. W. Marsh, clerk.)"

And on the same day, to wit, on the 9th day of December, A. D. 1902, the following citation issued out of the said court and was duly served upon the said defendant in error, to wit:

"*To the United States of America:*

"You are hereby cited and admonished to be and appear at a term of the United States Supreme Court to be holden at the city of Washington, District of Columbia, on the 6th day of January, A. D. 1903, pursuant to a writ of error filed in the clerk's office of the district

court of the United States for the northern district of Florida, at Pensacola, wherein W. C. O'Neal is plaintiff in error, and you are defendant in error, and show cause, if any there be, why the judgment and sentence mentioned in said writ of error should not be corrected and speedy justice done to the parties in that behalf.

"Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 9th day of December, in the year of our Lord one thousand nine hundred and

"Signed this 9th day of December, A. D. 1902.

"CHAS. SWAYNE, *Judge.*

"Service of the foregoing citation acknowledged this 9th day of December, 1902.

"B. C. TUNISON,
"Sp'Vy Appointed Atty. for Prosecution.

"JOHN EAGAN,
"United States Attorney for Northern District of Florida.

"(Endorsements: W. C. O'Neal *v.* The United States of America. Citation. Filed December 9th, 1902. F. W. Marsh, clerk.)"

And on the same day, to wit, on December 9, 1902, the following bond was entered into and filed in the said cause by the said plaintiff in error, to wit:

"*Know all men by these presents:*

"That we, W. C. O'Neal, as principal, and H. L. Covington and W. J. Hannah, as sureties, are held and firmly bound unto the United States of America, in the full and just sum of one thousand dollars ($1,000.00), to be paid to the said United States of America, which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

"Signed and sealed this 9th day of December, A. D. 1902.

"Whereas lately, at the November term, A. D. 1902, of district court of the United States for the northern district of Florida, in a suit pending in the said court between the United States of America, plaintiff, and the said W. C. O'Neal, defendant, the same being a proceeding upon a rule upon the said W. C. O'Neal to show cause why he should not be punished for contempt for an assault upon A. Greenhut, trustee, in Pensacola (of the said district court), and a judgment and sentence was rendered against the said W. C. O'Neal, and he has obtained a writ of error from the United States Supreme Court to reverse the judgment and sentence in the aforesaid suit, a citation directed to the United States of America citing and admonishing the United States of America to be and appear in the United States Supreme Court at the city of Washington, District of Columbia, thirty (30) days after the date of this citation, which citation has been duly served.

"Now, the condition of the above obligation is such that if the said W. C. O'Neal shall appear in the United States Supreme Court at a term thereof to be held in the city of Washington, District of Columbia, on the 6th day of Jany., A. D. 1903, and from time to time thereafter during said term, and from term to term and from time to time until finally discharged therefrom, and shall abide and obey all orders made by the United States Supreme Court in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence by the said district court made, shall be affirmed by the said United States court, then the above obligation shall be void, else to remain in full force and virtue.

"W. C. O'NEAL. [SEAL.]
"H. L. COVINGTON. [SEAL.]
"WM. J. HANNAH. [SEAL.]

"Taken and approved this 9th day of December, 1902.

"CHAS. SWAYNE, *Judge.*

"Indorsements: W. C. O'Neal *v.* The United States of America. Supersedeas bond. Filed December 9, 1902. F. W. Marsh, clerk. Blount & Blount, Pensacola, Fla."

Whereupon, on the 9th day of December, A. D. 1902, the following writ of error was issued out of the said court and duly served upon the defendant in error, to wit:

"*The United States of America:*

"The President of the United States to the honorable the judge of the district court of the United States for the northern district of Florida, greeting:

"Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, between the United States of America and W. C. O'Neal, a manifest error hath happened, to the great damage of the said defendant, W. C. O'Neal, as by his complaint appears. We being willing that error, if any hath been, shall be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you if judgment therein be given, that then, under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Columbia, on the 6th day of January, 1903, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the customs and laws of the United States should be done.

"Witness, the Hon. Melville W. Fuller, Chief Justice of the said Supreme Court, this 9th day of December, in the year of our Lord one thousand nine hundred and two.

"[SEAL.] F. W. MARSH,
"Clerk of the District Court for the Northern District of Florida.

"A true copy of the original as issued this day.

"F. W. MARSH, *Clerk.*

"(Indorsements: W. C. O'Neal *v.* The United States of America.)
"Writ of error: filed December 9, 1902. F. W. Marsh, clerk."

And thereafter, to wit, on the 11th day of June, A. D. 1903, the following mandate was received and filed in the foregoing cause, to wit:

"UNITED STATES OF AMERICA, *ss:*

"*The President of the United States of America to the honorable the judge of the district court of the United States for the northern district of Florida, greeting:*

"Whereas lately in the district court of the United States for the northern district of Florida, before you, in a cause entitled 'In the matter of the rule upon W. C. O'Neal to show cause why he should not be punished for contempt as to the matters and things set forth in the affidavit of Adolph Greenhut,' wherein the order of the said district court, entered in said cause on the 9th day of December, A. D. 1902, was against the said W. C. O'Neal, as by the inspection of the transcript of the record of the said district court, which was brought into the Supreme Court of the United States by virtue of a writ of error sued out by W. C. O'Neal, whereon the United States was made the party defendant in error, agreeably to the act of Congress in such case made and provided, fully and at large appears.

"And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and two, the said cause came on to be heard before the said Supreme Court on the said transcript of record, and on a motion to dismiss, which was argued by counsel.

"On consideration whereof it is now here ordered and adjudged by this court that the writ of error in this cause be, and the same is hereby, dismissed for the want of jurisdiction. June 1, 1903.

"You, therefore, are hereby commanded that such proceedings be had in said cause, as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

"Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the fourth day of June, in the year of our Lord one thousand nine hundred and three.

"JAMES H. MCKENNEY,
"Clerk of the Supreme Court of the United States.

"(Endorsements: Supreme Court of the United States. No. 534, October term, 1902. W. C. O'Neal vs. The United States Mandate. Filed June 11th, 1903. F. W. Marsh, clerk.)"

And thereafter, to wit, on the 12th day of June, A. D. 1903, there issued out of the clerk's office of the said court a warrant of sentence of the said defendant, directed to the marshal of the said district, which was thereupon delivered to him and was by him executed and returned into the said clerk's office with his return indorsed thereon, which writ, together with the said return, is in the words and figures following, to wit:

"United States of America, district court of the United States, northern district of Florida.

"*The President of the United States to the marshal of the United States for the northern district of Florida, greeting:*

"Whereas at a session of the district court of the United States for the northern district of Florida, held at the city of Pensacola, in said district, on the tenth day of November, A. D. 1902, a rule to show cause why he should not be punished for contempt of the said court was duly made and entered by the said court against W. C. O'Neal, for making an assault upon one Adolph Greenhut, who was then and there, at the time of said assault, an officer of said court, to wit, a trustee in bankruptcy in the matter of the petition of Scarritt Moreno to be adjudged a voluntary bankrupt, and then and there cutting, wounding, stabbing the said Adolph Greenhut, trustee as aforesaid, in performing his duties as trustee as aforesaid, appointed as aforesaid such a manner as to prevent the said trustee from attending to and under the order of said court, and that the said assault and attempt to murder was committed by the said W. C. O'Neal, as aforesaid, solely because and for the reason that the said Adolph Greenhut, as an officer of the United States district court in and for the northern district of Florida, had instituted a suit, set forth in an affidavit in said cause, and to interfere with and prevent the said trustee from executing and performing his duties as such officer of said court, and that said W. C. O'Neal did, by the said murderous assault, interfere with the management of said trust by the said Adolph Greenhut, trustee as aforesaid of said court, and did, for a long period of time, by reason of the injuries inflicted upon the said trustee as aforesaid, prevent and deter the said trustee from performing the duties incumbent upon him as such officer, and did thereby interfere with the management by said trustee, as such officer, of the estate of the said bankrupt, which charges were in violation of the dignity and good order of the said court and a contempt thereof.

"And afterwards, to wit, on the 9th day of December, in the year of our Lord one thousand nine hundred and two, the said defendant, W. C. O'Neal, having been duly served with an order to show cause why he should not be punished for the alleged contempt aforesaid, which order was made returnable before said district court of the United States, was duly tried upon his demurrer, answer, and the evidence of the witnesses on the charge aforesaid, in said rule and affidavit preferred, and a finding of guilty was duly rendered by the said court against the said defendant, W. C. O'Neal.

"And afterwards, on the same day, our said court, by reason of the finding aforesaid of the said court, did duly sentence the said W. C. O'Neal to be imprisoned in the county jail of Escambia County, in the State of Florida, for and during the term and period of sixty days, and that he stand committed until the terms of said sentence be complied with, or until he be discharged by due process of law; the said jail being the place duly selected for the imprisonment of persons convicted of offences against the laws of the United States in the courts thereof in said northern district of Florida.

"And the said W. C. O'Neal, defendant as aforesaid, having taken an appeal to the Supreme Court of the United States from the said finding and sentence aforesaid, and a supersedeas having been granted by the said district court pending the said appeal, and the said appeal having been dismissed by the Supreme Court of the United States, as evidenced by its mandate this day filed in the said district court of the United States for the northern district of Florida;

"Therefore, in compliance with the said sentence and of the mandate of the Supreme Court of the United States, you, the said marshal of the United States for the northern district of Florida, are hereby commanded to convey to the said county jail of Escambia County, in the State of Florida, at Pensacola, the body of the said W. C. O'Neal and deliver him to the keeper thereof.

"And you, the said keeper, in the name of the President of the United States of America, are hereby commanded to receive the body of the said W. C. O'Neal, the person aforesaid, into your custody, and him, the said W. C. O'Neal, safely keep in the said jail of Escambia County, in the State of Florida, at Pensacola, for the full term and period of sixty days or until he be discharged by due course of law.

"Herein fail not at your peril; and make due return of what you shall do in the premises and of this writ.

"Witness the honorable Charles Swayne, United States district judge for the northern district of Florida, and the seal of this court, at the city of Pensacola, in said district, this 12th day of June, A. D. 1903.

"A copy.
"[SEAL.] F. W. MARSH, *Clerk.*"

"In the district court of the United States, northern district of Florida. In re W. C. O'Neal, contempt of court.

"I have to report to the said court that upon receipt of the warrant of sentence, a copy of which is hereto annexed, I made diligent search,

and have continued to this date to search diligently within the said northern district of Florida, for the said defendant, W. C. O'Neal, and have been unable to find him within the limits thereof. That I have also made diligent search for H. L. Covington and W. J. Hannah, the sureties on a certain supersedeas bond, filed in the said cause, for the purpose of demanding of them the surrender and production of the body of the said defendant, W. C. O'Neal, and have been unable to find them or either of them within the said northern district of Florida.

"That the said W. C. O'Neal, and anyone on his behalf, have not surrendered the body of the said W. C. O'Neal in execution of the judgment and sentence evidenced in the attached warrant of sentence, and which was appealed from by the said W. C. O'Neal, as evidenced by his writ of error to the Supreme Court of the United States, sued out from the district court aforesaid, and in the matter of which appeal and writ of error he made, executed, and caused to be filed of record a certain supersedeas bond, in which the said H. L. Covington and W. J. Hannah were sureties, conditioned that he, the said W. C. O'Neal, should surrender himself in execution of said judgment and sentence appealed from as said court may direct, and the said Supreme Court having by its mandate directed that the said district court proceed according to law, the said writ of error notwithstanding, and the said conditions having thereupon become operative, as appears from inspection of the record in said cause, the original writ of warrant of sentence is hereby retained for further proceedings and execution in the premises.

"Dated this June 15th, A. D. 1903.

"T. F. McGOURIN,
"*U. S. Marshal, Northern District of Florida.*
"By H. WOLF,
"*Chief Office Deputy.*

"(Endorsed: In re W. C. O'Neal, contempt of court. Special return & report of U. S. marshal. Filed June 15th, 1903. F. W. Marsh, clerk.)

"And afterwards, to wit, on the 24th day of June, A. D. 1903, the following return was made by the marshal on the foregoing writ:

"Marshal's return.

"Received the within warrant of sentence at Pensacola, Fla., on the 12th day of June, A. D. 1903, and executed the same by taking the body of W. C. O'Neal into my custody and delivering the same to the keeper of the Escambia County jail at Pensacola, Fla., on the 24th day of June, A. D. 1903, together with a certified copy of the within warrant of sentence.

"T. F. McGOURIN,
U. S. Marshal.
"By H. WOLF,
"*Chief Office Deputy.*

"Entered and filed June 24, 1903.

"F. W. MARSH, *Clerk.*"

UNITED STATES OF AMERICA, *Northern District of Florida:*

I, F. W. Marsh, clerk of the district court of the United States for the northern district of Florida, hereby certify that the foregoing pages, numbered from 1 to 11, both inclusive, and in printing, constitute a full, true, and complete transcript of the record and proceedings in said court in the matter of the rule upon W. C. O'Neal to show cause why he should not be punished for contempt of said court, as the same remains of record and on file in said court.

Witness my hand and the seal of said court at the city of Pensacola, in said district, this 28th day of January, A. D. 1905.

[SEAL.] F. W. MARSH, *Clerk.*

Mr. Manager POWERS. Mr. President, I now offer in evidence a certified copy of all the evidence which was taken at the trial of what is known as the "O'Neal case," the first paper which I have offered being a certified transcript of the record of the court in which all the papers appear. This certified record which I have in my hand is the evidence which was offered at the time of the hearing of the contempt case. It consists of all the evidence before the court, and it also includes the opinion which was rendered by the respondent in the O'Neal case, which is under the twelfth article presented to the court.

I assume that some portion of this evidence may not be very material to the issue, but I will ask that it be received in evidence and printed, as it is already certified to by the clerk of the court as being the evidence which was offered at the trial. I ask that it be received and printed without first being read. With the consent of the court, I ask that it be not read, but go in as evidence and be treated as such.

The PRESIDING OFFICER. Unless the reading is called for, that course will be taken.

The record referred to is as follows:

In the United States district court, northern district of Florida, at Pensacola. In re matter of contempt W. C. O'Neal.

This cause coming on for a hearing before Judge Charles Swayne on December 8, 1902, the following proceedings were had:

Counsel for prosecution offered in evidence the petition of Scarritt Moreno, heretofore filed in this court, seeking to obtain the benefit of the bankruptcy law, the document belonging to the files of this court.

Counsel for respondent makes no objection to its introduction.

Counsel for prosecution offers in evidence the order made by the clerk of the court referring the petition which has been offered in evidence to the referee.

Counsel for respondent makes no objection to its introduction.

Counsel for prosecution offers in evidence the order made by the referee adjudicating Scarritt Moreno a bankrupt.

Counsel for respondent makes no objection to its introduction.

Counsel for prosecution offers in evidence the affidavit made by A. Greenhut, as trustee.

COUNSEL FOR RESPONDENT. Are you going to offer his appointment as trustee?

COUNSEL FOR PROSECUTION. That is his oath as trustee.

COUNSEL FOR RESPONDENT. Was there an appointment?

COUNSEL FOR PROSECUTION. There was an order and approval of the bond.

COUNSEL FOR RESPONDENT. Are you going to offer those?

COUNSEL FOR PROSECUTION. Yes, sir.

COUNSEL FOR RESPONDENT. We have no objection to them.

COUNSEL FOR PROSECUTION. I now offer the bond of the trustee.

COUNSEL FOR RESPONDENT. We have no objection.

COUNSEL FOR PROSECUTION. I now offer the petition of the trustee, filed on October 9, 1902.

COUNSEL FOR RESPONDENT. We object to this petition, may it please the court. It is a petition of A. Greenhut, trustee, in which he asks that he be allowed to compensate Tunison & Loftin as attorneys for certain services rendered or to be rendered by them in the conduct of the business of this bankruptcy estate and representation of the trustee. I assume that the purpose of this offer is to get in evidence before the court the fact that Tunison & Loftin were engaged in the preparation of the bill of complaint, whereby it is sought to subject the property purchased by the said Scarritt Moreno, the said bankrupt, in the name of his wife, to the payment of debts provable in this bankruptcy proceeding, and for the intention of following this by a granting of the prayer of this petition so as to show that Mr. Greenhut at that time was acting under the order of the court, or if there was no direct order upon the ratification of the court of the action which he was doing. We object to that on the ground that there is no allegation in the petition which covers any such evidence. The allegation is that he was an officer of the court and that he was proceeding under the advice of his attorney to do this, and there is absolutely no intimation by the court that he was then acting under or by virtue of any order of the court. If this evidence be not for that purpose, then it is entirely irrelevant and immaterial. If it be for that purpose it is bolstering up a petition which does not contain an allegation of that kind.

COUNSEL FOR PROSECUTION. If your honor please, Mr. Blount has properly supposed that the offer of that paper in evidence is for the purpose of showing a ratification by the court of the trustee's action in bringing this bill. It was not necessary under the law for the trustee to secure ratification or such direction.

The COURT. This matter of evidence having been argued on demurrer, the court having seen and passed upon all this matter on this ground, it is hardly worth while to take up the time of the court to argue it. I will give you an exception. The court is entirely familiar with the purpose for which they are offered.

COUNSEL FOR RESPONDENT. We note an exception.

COUNSEL FOR PROSECUTION. I now, if your honor please, offer in evidence the order made by the referee in the absence of your honor upon the petition, that has just been offered.

COUNSEL FOR RESPONDENT. We object to the introduction of this paper in evidence upon the ground that if it be offered for the purpose of showing an order of the court under which the trustee was acting or a ratification of the action of the trustee in bringing this bill, it is founded upon no allegation in the petition and that if it be not for this purpose, it is immaterial and irrelevant to any issue made in this cause.

The COURT. The court admits the last two papers because in the opinion of the court they show that the trustee in this cause was acting at the time not only as an officer of the court, but that they also show that his action in regard to the bringing of the suit in question of which the affidavit and the answer both speak, was ratified by those papers.

COUNSEL FOR RESPONDENT. We note an exception to the ruling of the court.

Thereupon the prosecutor called Adolph Greenhut, who, being duly sworn, testified as follows, to wit:

Direct examination by B. C. TUNISON, esq.:

Q. What is your name?—A. Adolph Greenhut.

Q. Where do you reside, Mr. Greenhut?—A. Pensacola, Fla.

Q. What is your age?—A. I was 51 last August.

Q. How long, Mr. Greenhut, have you resided in Pensacola?—A. I came here in July, 1886.

Q. Before that time, Mr. Greenhut, where did you reside?—A. Greenville, Ala., from 1873 to 1886.

Q. What is your business?—A. I am a wholesale grocery merchant.

Q. Where?—A. On Government street, in this city.

Q. Doing business in what name?—A. A. Greenhut & Co.

Q. Mr. Greenhut, were you or are you the trustee of the estate of Scarritt Moreno, bankrupt?—A. I am, sir.

Q. Do you know when you were appointed as such trustee, about when?—A. I think, as near as I can recollect, in September. I have forgot the date.

Q. Mr. Greenhut, look at that paper, and state, if you know, what it is.—A. I think it is a bill filed in the chancery court of this county.

Q. A bill filed by you as trustee?—A. Yes, sir.

COUNSEL FOR PROSECUTION. I offer in evidence, if your honor please, the bill of complaint in the cause pending in the circuit court of Escambia County, Fla., between Adolph Greenhut, trustee of the estate of Scarritt Moreno, bankrupt, complainant, *v.* Scarritt Moreno, Susis R. Moreno, his wife, Mansfield Moreno, the American National Bank, of Pensacola, S. J. Forshee, Alex McGowin, jr., C. M. Covington, and the Citizens' National Bank, of Pensacola, filed in the office of the clerk of Escambia County circuit court on October 18, 1902, and I ask leave to withdraw the original bill and place in lieu thereof an exemplified copy thereof.

COUNSEL FOR RESPONDENT. We have no objection, may it please the court, to the filing of a certified copy in the place of this, and really have no objection to the bill, except that there is no issue made upon those facts, and that the purpose of the bill is set forth very distinctly in the affidavit, and it would expedite the cause not to encumber the record with long papers of this kind. We state that we admit in part and presume in part that it was true, so that it made no issue whatever upon it.

The COURT. It will be admitted.

Q. Mr. Greenhut, do you know what day of the week the bill that has just been offered in evidence was filed and the suit commenced?—A. I think it was on the 18th day of October, 1902.

Q. Do you know what day of the week that was?—A. On Saturday.

Q. Do you know what time of day on Saturday that bill was filed?—A. I do not know the exact hour; no, sir; I could not tell that.

Q. Mr. Greenhut, by whose advice was that bill which has been offered in evidence filed?—A. My attorney, sir.

Q. Who was your attorney?—A. B. C. Tunison.

Q. Mr. Tunison, did you say? Do you know W. C. O'Neal?—A. I do, sir.

Q. How long have you known him?—A. Possibly a month or two before October two years.

Q. Before the past October two years?—A. Yes, sir.

Q. Do you know whether or not he occupies or at the time of the filing of this bill whether he did occupy any position with the American National Bank?—A. He was president of the American National Bank.

Q. Was he president at that time?—A. I think so.
Q. Did you see Mr. O'Neal on the Monday following the commencement of this suit?—A. Yes, sir.
Q. At what time of day, Mr. Greenhut, did you see him?—A. A little after 9 o'clock in the morning.
Q. Where did you see him?—A. I think I seen him coming out of what we call the "bucket shop" and coming down the street.
Q. Coming out of——A. I think he was just coming out of there, and I seen him coming down the street from that direction.
Q. The bucket shop you say?—A. The stock exchange.
Q. That is on what street?—A. Government street.
Q. West of your store, is it not?—A. Yes, sir.
Q. Where were you at that time?—A. At my store, standing in front of the store.
Q. With whom?—A. A. Lischkoff.
Q. Did you only see Mr. O'Neal there at the bucket shop or the exchange?—A. There may have been some other people on the street, but I do not recollect them.
Q. Did you see him after seeing him at the bucket shop?—A. He came down the street. I first saw him coming out of there and he came down the street toward my office.
Q. Mr. Greenhut, at that time did you have a coat and vest on?—A. I had no coat on.
Q. You had on a vest?—A. Yes, sir.
Q. You were in your shirt sleeves, were you?—A. Yes, sir.
Q. Did Mr. O'Neal come down the street toward your store?—A. He came toward me.
Q. And where were you at that time?—A. I was standing right in front of my store next to A. Lischkoff. For instance, this is the post; he was standing outside and I was standing right next to him.
Q. Right in your doorway?—A. Not in the doorway. We were just sideways.
Q. Did Mr. O'Neal speak to you at that time?—A. He addressed me.
Q. What did he do?—A. Said he would like to speak to me when I was through.
Q. What reply did you make to him?—A. I told him I was through.
Q. What was then done?—A. Mr. Lischkoff passed off and I went in the office, facing the desk with my back toward the west, and he standing right in front of me.
Q. How far from the office door did you go?—A. I do not know; I expect it was four or five feet, possibly six; not exceeding six feet.
Q. You were standing there next to the desk, you say?—A. Near the desk. There was a desk, then a safe, and I was standing right along there, right in front of the desk.
Q. With your back toward the desk and the safe, that was on the westerly side of your office?—A. Yes, sir.
Q. What did Mr. O'Neal do?—A. Standing right in front of me, and he says, "I see you brought the American National Bank into that suit"——
Q. What suit?—A. The Morenos. That is the only suit that was mentioned. I says, "Yes; the Citizens' National Bank is in there, too." He says, "Well, I do not care anything about that." He says, "Why did you do that?" I says, "My counsel says it was necessary." He says, "Well, don't you know I offered you that property?" I says, "Yes." He says, "Well, don't you know these parties paid for it," and I says, "I do not know."
Q. What then, Mr. Greenhut?—A. He says, "You are no gentleman." I says, "Mr. O'Neal, I am as much of a gentleman as you are."
Q. Just state after that what took place.—A. He hesitated there a little, and I thought he had started, and he says, "Well, we will settle that," and he was then passing out, starting out of the west side. I was on the other side, and just as he got about to the door he wheeled with a knife. He had a knife in his hands or his pocket, and just wheeled around and lunged at me. I was perfectly horror-struck, and tried to grab it, and he grabbed around me and stabbed me twice in here and in there and in there, and he dragged me out toward the street. He had perfect control over me. I was horror-struck from loss of blood and from the idea of being cut up.
Q. Will you just show the court that first cut?
Witness thereupon exhibits to the court the first cut.
Q. Where was the next cut, Mr. Greenhut?—A. I could not possibly say, because I was at such a loss——
Q. What other cut did he inflict upon you?—A. A cut right in my arm, two in my body, and in my right hand.
Q. What part of the body was the two cuts?—A. Right here.
Q. Mr. Greenhut, what is that [exhibiting bundle to the witness]?—A. That is the vest I had on.
Q. What is that, Mr. Greenhut [exhibiting to the witness another bundle]?—A. That is a cut.
Q. And what is that color?—A. That is blood.
Q. This is what [exhibiting to witness another bundle]?—A. That is the shirt I had on.
Q. And what is this?—A. That is a cut.
Q. Mr. Greenhut, where did you keep the books, papers, etc., relative to your trusteeship?—A. They were in a separate safe in my office.
Q. At the same office where Mr. O'Neal visited?—A. Yes, sir.
Q. Mr. Greenhut, did the conduct of Mr. O'Neal in any way interfere with your management of the Moreno estate?—A. I certainly think it did, because I have not been able to do anything for several weeks afterwards, for I was in bed.
Q. Was there any work that you were—anything to be done by you as trustee that you were advised shortly before the cutting it was necessary for you to do pretty soon?—A. Settle matters up; wanted to make a report to the referee what we had done. We learned that there was some thousands of feet of lumber at Bagdad at Simpson & Co., which we thought as trustee I was entitled to, and contemplated taking, and wanted to proceed to seeing about the household fixtures and furniture of Scarritt Moreno. We discovered some land that Scarritt Moreno had bought that was under mortgage and wanted to sell some rights and interest that he might have in the Moreno mill down here.
Q. Have you been able since the attack on you made by Mr. O'Neal to attend to any of this business?—A. I have not attended to no business at all for two or three weeks, and since that time I am so unnerved I do not do anything except a little clerical work.
Q. Did you have any medical attendance?—A. Yes, sir.
Q. Or attention?—A. Yes, sir.
Q. From whom?—A. Dr. F. G. Renshaw.

Cross-examination by W. A. BLOUNT, Esq.:

We move to strike out from this testimony that portion which relates to the business of the trust that Mr. Greenhut was then carrying on, and as to any prevention of him from carrying on that business except so far as the particular bill filed against Scarritt Moreno and the American National Bank is concerned, upon the ground that there is no showing in the evidence that any act or obstruction of the administration of justice done by Mr. O'Neal was done in the presence of the court or so here thereto as to obstruct the administration of justice, and upon the further ground that the work which Mr. Greenhut testifies to is not testified to have been done under any mandate, order, rule, process, or command of this court, and therefore that Mr. O'Neal was not in disobedience of or obstructing any such order, rule, command, mandate, or process of the court.

COUNSEL FOR PROSECUTION. That is the same question that you have passed upon in the demurrer and was overruled.

The COURT. It is a broader question, but the court thinks that it is all admissible under the allegations of the affidavit and under the several features which is in the answer. I will give you an exception.

Counsel for respondent noted exception to the ruling of the court.

Q. You say that this matter occurred about 9 o'clock in the morning of October 20?—A. After 9 o'clock.
Q. Your office, your store door is on the East Government street, is it not?—A. Yes, sir.
Q. On the north side?—A. Yes, sir.
Q. Is that or not in the line of the path that would be pursued by Mr. O'Neal in coming from the stock exchange to his office?—A. Very often he comes that way.
Q. So that that morning he was pursuing a frequent route used by him?—A. I suppose so. Sometimes I have seen him come that way and seen him go another.
Q. Now, your bill had been filed, I believe you stated, on October 18?—A. Yes, sir; I think so.
Q. And that was on October 20?—A. Yes, sir.
Q. When Mr. O'Neal spoke to you, at the door of your store, did he say anything further than that he wanted to see you when you were at leisure?—A. That is what he said.
Q. And you told him, in effect, that you were at leisure at that time?—A. Yes, sir.
Q. And you went into your office?—A. Yes, sir.
Q. During that conversation in your office was there any other subject of conversation except the fact that you had brought this bill against Scarritt Moreno and others involving the American National Bank?—A. Nothing except what I stated.
Q. Was there anything said to you about an indebtedness which the American National Bank claimed against you because of your indorsement of a note of Scarritt Moreno—an acceptance of Moreno's?—A. Not a single word.
Q. Now, then, as I recollect, according to your testimony, the last words that passed between you and Mr. O'Neal were that you said that Mr. O'Neal said you were no gentleman, and you said "I am as much a gentleman as you?"—A. Yes, sir.
Q. And then he said "We will settle that," and that followed immediately after the words that I have mentioned?—A. He hesitated, possibly a second or two.
Q. So that there were no words or other conversation intervening between what you and he said?—A. None that I recollect.
Q. And then, after that, he started to go out of the door?—A. He did not go out.
Q. He started to go out, I said.—A. Yes, sir.
Q. And you followed on behind him?—A. No, sir; I didn't.
Q. What did you do?—A. I crossed over to the other side.
Q. What is it you did, Mr. Greenhut?—A. He started toward the right-hand side of the door, and I started out slowly on the other side. I didn't even go out at all.
Q. The right-hand side of the door; in which direction were you going when you started to go out?—A. Toward the south.
Q. In which direction was he going?—A. He was going toward the south also, and I crossed over slowly, going to the left of the door facing the street.
Q. You and he were going both toward the same door. Do I understand that he was going to the right side of the door and you to the left side of the door?—A. Yes, sir.
Q. Both going south?—A. Yes, sir.
Q. Well, how far had you proceeded when he turned upon you, as you said?—A. Only a few feet.
Q. You had been back into the office, as I understand you to say, some 6 or 7 feet?—A. Yes, sir; about that—that is, from the door, not back in the office.
Q. Did you not strike Mr. O'Neal?—A. No, sir.
Q. At no time?—A. No, sir.
Q. Did you or not offer to strike him?—A. No, sir.
Q. You say, Mr. Greenhut, that at that time you had in view the doing of certain things for the trust?—A. Yes, sir.
Q. Involving among some other things the sale of an interest in the Jordan & Brosnaham mill?—A. Yes, sir.
Q. Was that completed before you were hurt?—A. I do not think it was.
Q. It was completed afterwards, was it not?—A. I think I done some work——
Q. Was it completed by you or by your counsel?—A. By my counsel.
Q. So that you were not obstructed in that particular?—A. Had partly agreed on the prices that he could get for it, and I think it was afterwards consummated.
Q. Was there anything that was obstructed, to your knowledge, by the fact that you were injured by this affray?—A. I was not able to do anything until I got up, and in the meantime there had been a sale of an interest in the Jordan & Brosnaham mill property that I could not attend to, and a sale of some lumber had to be arranged for and I could not consult with my attorneys about the suit.
Q. Has not, as a matter of fact, during the time that you say you have been unable to do anything all of the steps that you speak of been done with reference to endeavoring to get at the furniture and fixtures of Mr. Moreno?—A. Not during my sickness that I know of, but possibly since. I do not think it was done during the time I was laid up.
Q. Have you done anything yourself about it; has it not all been done by your counsel?—A. That was done by my counsel but with my consent; we have consulted together.
Q. It was simply a question of consultation?—A. I do not think it was necessary for me to do it; I trust him in all things.
Q. Mr. Greenhut, do you know whether Mr. O'Neal knew at the time that this occurrence took place that you had in your safe in your store any of the books and papers appertaining to your office as trustee?—A. I could not tell what he knew.
Q. You do not know?—A. No.
Q. Do you know whether Mr. O'Neal knew at the time that you had

any authority or ratification from this court or its referee of his filing this bill against Scarritt Moreno?—A. That he knew of that?

Q. Yes, sir.—A. I could not swear that he knew it.

Q. Did you not tell him at that time that you were acting under any order of the court or any authority of the court?—A. I told him that morning?

Q. Yes, sir.—A. I told him that I was acting under the advice of counsel.

Q. So you did not tell him that you had any authority from the court to do it?—A. I did not think it was necessary to do that.

Redirect examination by B. C. TUNISON, Esq.:

Q. Mr. Greenhut, did you see Mr. O'Neal at any time between the time that the suit was commenced in the circuit court and the time when the assault was made?—A. What suit do you refer to?

Q. The suit that was commenced in the circuit court against Scarritt Moreno and others.—A. No, sir; not until that morning.

Q. That was the first time you saw him between the time of the filing of that suit——A. Yes, sir.

Q. Or after the filing of the suit?—A. Yes, sir.

Q. That is all.

Thereupon F. G. Renshaw was called upon behalf of the prosecution, and, being duly sworn, testified as follows:

Direct examination by B. C. TUNISON, Esq.:

Q. Your name is Dr. Frank G. Renshaw?—A. Yes, sir.

Q. You are a practicing physician in Pensacola?—A. Yes, sir.

Q. Doctor, were you called in professionally to attend to Mr. Greenhut on or about the 20th day of October last?—A. I was.

Q. Where was Mr. Greenhut at that time?—A. I first saw him at Cushman's drug store.

Q. In Cushman's drug store?—A. Yes, sir.

Q. Cushman's drug store adjoins Mr. Greenhut's store immediately on the west side, does it not?—A. It does.

Q. For what were you called upon to attend him?—A. For cuts, injuries.

Q. State, Doctor, the character of those cuts and injuries.—A. They were incised wounds; wounds made with a sharp instrument—a knife.

Q. Where were they located?—A. One was over the left cheek.

Q. Extending from what point to what point?—A. From behind the ear to the inner corner of the mouth.

Q. Did that cut his ear also?—A. Yes, sir.

Q. Did it cut the lower lobe of his ear off?—A. Partially.

Q. You sewed up that ear?—A. I did.

Q. And sewed up the wound on the left cheek?—A. I did.

Q. What other wounds or cuts, Doctor, did you see?—A. He had a triangular-shaped cut or stab—combination stab and incised wound—above the left elbow joint; then the lower margin ribs on the left side, a very superficial wound incised about 2 inches possibly in length.

Q. What else?—A. There was another injury between the thumb and index finger—the web of the hand.

Q. Which hand?—A. The right hand, I think.

Q. Was there any other?—A. I do not remember of any other.

Q. Was there no one on the left side of the back that you have not described?—A. I mentioned the one under the lower ribs.

Q. Well, what portion of the body?—A. I think it was on the left side.

By Mr. BLOUNT:

Q. That was the superficial one you spoke of?—A. Yes, sir.

By Mr. TUNISON:

Q. Not on the back?—A. I can not say positively. I have mentioned four.

Q. What portion of the left side was the wound?—A. Well, on the left.

Q. Well, on what portion of the side?—A. About the lower ribs.

Q. Right directly on the side or was it or not toward the back?—A. It was on the side posterially, slightly, I believe.

No questions by respondent.

Thereupon the prosecution called F. C. Brent, who, being duly sworn, testified as follows:

Direct examination by B. C. TUNISON, Esq.:

Q. Mr. Brent, where do you reside?—A. Pensacola.

Q. Are you acquainted with Mr. A. Greenhut?—A. I am.

Q. Are you acquainted with his reputation for peace and quiet?

(Counsel for respondent objects to question upon the ground that his character for peace and quiet can not be put in evidence until it is attacked.)

COUNSEL FOR PROSECUTION. If your honor please, as we understand it the answer in this case charges acts on the part of the prosecutor that in our judgment do attack his character for peace and quiet.

The COURT. I understand that to be the character of the defendant's defense is that he was attacked by a stronger and more powerful man, and one of his excuses set up in his defense. The question is whether it will be offered at this time or later?

COUNSEL FOR RESPONDENT. It does not make any difference now whether it is to be offered now or later. I had just as leave take my exception now. We make another objection to this testimony, may it please the court, upon the ground that there is no issue made of the general character of Mr. Greenhut for peace and quiet, and that character of any kind can not be offered in evidence unless it has been attacked or impeached by the opposing side. We understand that your honor overrules it and we save the exception.

COUNSEL FOR PROSECUTION. For the purpose of saving time, Mr. Blount consents, subject, of course, to his exception to your Honor's ruling as in this witness that the other character witnesses who have been summoned here will testify that they each know the reputation of Mr. Greenhut for peace and quietude, and that they would testify to the same and will testify that his reputation is that of a peaceable and quiet citizen.

Those witnesses are: F. C. Brent, W. J. Forbes, Rev. P. H. Whaley, William E. Anderson, L. H. Green, John W. Frater, Jacob Kryger, Boykin Jones, and William Fisher.

Prosecution rests.

Thereupon the respondent, W. C. O'Neal, was duly sworn, and testified as follows:

Direct examination by W. A. BLOUNT, Esq.:

Q. You are the W. C. O'Neal against whom this proceeding has been taken?—A. Yes, sir.

Q. Mr. O'Neal, will you please state to the court the circumstances attending—not leading up to at that time—but the circumstances attending the affray between you and Mr. A. Greenhut? Where had you been; [where] were you coming from that morning?—A. I was coming from home.

Q. Where did you stop on East Government street?—A. I stopped there in front of Mr. Greenhut's place of business.

Q. He spoke of your stopping in front of the bucket shop. What place was that?—A. I do not remember whether I stopped there or not. I might have done it—at the Pensacola Stock Exchange.

Q. For what purpose did you stop?—A. I stopped there to see the quotations on cotton.

Q. Now, then, you proceeded until you came to Mr. Greenhut's, did you?—A. Yes, sir.

Q. Then state what occurred—exactly what occurred thereafter, anything and everything from the moment that you addressed him until the time that you were finally taken apart.—A. I passed down the street, and I saw Mr. Greenhut and Mr. Lischkoff talking. I spoke to both. I says, "Good morning," and I says, "Mr. Greenhut, I would like to see you when you are at leisure," and Mr. Greenhut said, "I am at leisure now," and I says to Mr. Greenhut, "Don't let me interrupt you; any time during the day will do," and Mr. Lischkoff says, "I am through," and he left or started to turn to go back up the street toward his place of business, and Mr. Greenhut says, "Come in." He stepped back into the back part of his office there and I went on (in), and I asked him why he had sued us. He says, "Well, I do not know anything about it; you will have to see my lawyer about it." I says, "Mr. Greenhut, I think you do know something about it. I think you were a director of the American National Bank when this paper that I am sued on was sold and transferred," and I says, "We did not sue you when we had to sue you without seeing you about it or without talking to you about it. We did everything we could to avoid the suit; we did everything we could to get a settlement of that before we sued you," and I talked on with him regarding this matter in that way, and I reminded him of the fact that Mr. Eagan had tried to get a settlement with him before we sued him on the $1,500 debt, and I found out after talking with him it seemed it was impossible to get a settlement with him that way, and I says to him—I finally told him that I thought that if he had been a gentleman he would not have done it, and he said, "I am as much a gentleman as you are"—being a director in the bank and refusing to pay a paper and letting us sue him on it and he says he was as much of a gentleman as I am. I says, "Mr. Greenhut, I won't dispute that with you on that point. I do not want any trouble with you," and when I said that to him, why, he made a motion that way, like he would strike me with his fist, and says, "If you fool with me I will do you up here," and I says, "No, I reckon not," and I stood there for a moment hesitating, and I turned to go out. He come on following me and he said something to me. I do not know what he said, and when he said that I told him that he lied to me about the Moreno paper, and as I told him that I turned around, and Mr. Greenhut he struck me here, and I struck him with my left fist, and then I shoved him off, and when I shoved him back he kind of stumbled back like—he looked to me like he almost fell down; then he come forward at me and I pulled out my knife and cut him, and we fought on out on the street there, and I made several lunges for him and he hit me several licks with his fist, and finally he caught hold of my arm here with his right hand, and after he caught my arms I reached around and caught hold of his other arm out in the streets, and then I holloed to old man Hyer to come there and get him——

Q. Which old man Hyer was that?—A. Mr. Hyer of the firm of J. E. Stillman & Co.

Q. Copartner with J. E. Stillman & Co.?—A. Yes, sir.

Q. Now, Mr. O'Neal, during this conversation in the back of the office you say that you talked to him about having brought this suit and about his conduct in not paying the Moreno acceptance?—A. Yes, sir.

Q. State to the court what you mean by the Moreno acceptance.—A. The Moreno acceptance is a $1,500 acceptance which was accepted by Baars, Dunwody & Co., and indorsed by Scarritt Moreno and A. Greenhut.

Q. Had that been due for any length of time?—A. Yes, sir; it had been past due several months.

Q. Had you requested Mr. Greenhut to pay it?—A. Yes, sir.

Q. Did he pay it?—A. No, sir.

Q. What course had you taken with reference to procuring payment from him?—A. We brought suit against him.

Q. Was that suit then pending?—A. Yes, sir.

Q. Is it still pending?—A. Yes, sir.

Q. And as I understand, the subject-matter of your conversation in the back part of the office was relating to both these suits—this suit which he had brought against the bank in connection with the subjection of Scarritt Moreno's property and also the suit the bank had brought against him to recover on this $1,500 acceptance?—A. Yes, sir; we talked about both suits.

The COURT. When was the suit against Mr. Greenhut commenced?

COUNSEL FOR RESPONDENT. A month or two before.

COUNSEL FOR PROSECUTION. A plea was filed on the rule day in October; the 6th day of October.

Q. Then, as I understand, after discussing these matters you told him that he would not have done as he had done with reference to them if he had been a gentleman?—A. Yes, sir; I told him that.

Q. And he answered that he was as much of a gentleman as you are?—A. Yes, sir.

Q. And then you hesitated a moment and turned off?—A. Yes, sir.

Q. Did anything occur after that before you saw him in the attitude that you say of striking at you—I mean before you said to him that he had lied to you about the Moreno acceptance?—A. He said something to me just as I turned. I do not remember what he said; he spoke to me just as I turned. When he spoke he was right near to me, and I turned then——

Q. He spoke to you and you turned?—A. Yes, sir.

Q. And said to him as you turned that he had lied about the Moreno acceptance?—A. Yes, sir.

Q. And then he struck you and you struck him back?—A. Yes, sir.

Q. And he advanced to strike you again?—A. Yes, sir.

Q. And you drew your knife and used it; is that what I understand?—A. Yes, sir.

Q. Where did he strike you; what part of the person?—A. He struck me on the left side.

Q. Was there any indication of that stroke after this occurrence?—A. Yes, sir.

Q. Did you subject it to any treatment by any physician or ask any physician about it?—A. Yes, sir.

Q. Who?—A. Doctor Hannah.

Q. Have you the knife, Mr. O'Neal, that you used?—A. Yes, sir.

Q. Show it to the court, please. [Knife here exhibited to the court.]

Q. How long had you had that knife at that time?—A. Something like a year, I think.
Q. You had it in your pocket?—A. Yes, sir.
Q. Do you carry it in your pocket?—A. Yes, sir.
Q. At what time did you open that knife?—A. I opened the knife when I shoved him back.
Q. You shoved him back and then opened the knife?—A. Yes, sir.
Q. At the time that this occurred, did you have any knowledge as to where Mr. Greenhut kept the books and papers relating to his trust matter?—A. I did not.
Q. Did you have any knowledge of any order of the court, or any order of the court or its referree, either authorizing or ratifying the bringing of this suit by Mr. Greenhut?—A. I did not.
Q. Did you or not have in contemplation any effect that your action at that time would have upon Mr. Greenhut's execution of the trust which he had in hand?—A. I did not.
Q. It is alleged here that your intention was to impede and obstruct the execution of his trust. Did you or not have any such intention?—A. I did not.
Q. Had you considered in anywise the effect of your action upon his trust?—A. No; I had not thought of it.
Q. Did you consider it during this affray that you had?—A. No, sir.
Q. Do you know whether Mr. Greenhut had known prior to the bringing of his suit to subject this mortgaged property and attacking the mortgage of the American National Bank as to whether that transaction was or was not a bona fide transaction?—A. He knew that it was.
Q. He knew that it was?—A. Yes, sir.
Q. What position was he in in connection with the bank at the time of that transaction?—A. He was one of the directors.
Q. Do you know whether he knew that that mortgage had been transferred to Foshee, McGowan & Covington, and that the bank had no longer any interest in it?—A. I offered him the mortgage for $10,000 before I sold it to the other people.
Q. That is, you offered to sell him the same mortgage?—A. Yes, sir.
Q. And then you afterwards sold it to Foshee, McGowan & Covington?—A. Yes, sir.
Q. Now, then, do you know of your own knowledge whether he knew of the sale to these three gentlemen and the payment of the consideration by them?—A. I told him that I had traded with them.
Q. You do not know except in that way?—A. No, sir; I do not know whether he saw the papers or not after they were transferred.

Cross-examination by B. C. TUNISON, Esq.:

Q. You say, Mr. O'Neal, that Mr. Greenhut knew that all your transactions in relation to that mortgage was bona fide?—A. Yes, sir.
Q. How did he know it?—A. He passed on it; was in the bank and discussed it.
Q. Passed upon what?—A. The paper that was secured by that mortgage.
Q. Did he pass upon the mortgage?—A. Yes, sir.
Q. When?—A. About the time we took it, about a year before that.
Q. You say that he passed upon it; what do you mean when you say he passed upon it?—A. I mean that he was one of the finance committee and the finance committee examined all of the bank loans and discounts.
Q. Do you know that as a member of that finance committee he examined that identical loan?—A. I know that he handled the Baars, Dunwody & Co. paper, and the mortgage was there in the bank.
Q. But you do not know whether or not he ever examined that mortgage, do you?—A. The mortgage—examined the mortgage?
Q. Yes, sir.—A. I do not know that he ever read the mortgage.
Q. Then you do not know whether he knew that the mortgage was bona fide or not, do you?—A. It was there and we discussed the mortgage and had Mr. Eagan's opinion as to whether or not it was bona fide.
Q. What did you discuss about that mortgage with Mr. Greenhut?—A. We discussed as to whether the property, as mortgage covered, was worth the money or not.
Q. Worth what money?—A. The $13,000; and we discussed as to whether or not Mrs. Moreno could make the American National Bank—whether the mortgage for $13,000 transferred to us—as to whether or not she could make the mortgage under the laws of the State of Florida.
Q. You say that you discussed all of those matters with Mr. Greenhut?—A. I informed the finance committee that Mr. Eagan said that that could be done.
Q. Was Mr. Greenhut present at the time that you so informed the finance committee?—A. Yes, sir.
Q. You are sure of that?—Yes, sir.
Q. When was that?—A. About the time we took the mortgage; it has been something like a year and a half ago.
Q. That is all the knowledge that Mr. Greenhut had in relation to that mortgage, was it?—A. All the knowledge that he had of the mortgage?
Q. Yes, sir.—A. I do not know. I think he understood something about what property it covered, but I do not know if he ever examined the property itself.
Q. You say that you consulted with him about the value of the property covered by the mortgage?—A. I know that Mr. McDavid was the man who examined the property. We discussed it—that is, the finance committee.
Q. At a finance committee meeting at which Mr. Greenhut was present?—A. Yes, sir.
Q. And you found the property to be worth how much?—A. We sold the mortgage for $10,000.
Q. What value did the finance committee put upon that property?—A. Mr. McDavid said, when he took the mortgage, that it might be worth $13,000.
Q. Was that the verdict of the finance committee that it was worth $13,000?—A. The finance committee passed the loan on that statement.
Q. Of how much money?—A. The loan was to secure an acceptance of Baars, Dunwody & Co., indorsed by Moreno, and the mortgage was given to better secure that paper.
Q. You say that you disposed of that $13,000 mortgage?—A. Yes, sir.
Q. For how much money?—A. $10,000.
Q. To whom?—A. To Foshee, McGowan & Covington.
Q. The mortgage was for $13,000, was it?—A. Yes, sir.
Q. And you disposed of it to Foshee, McGowan & Covington?—A. Yes, sir.
Q. Do they occupy any position with your bank?—A. Yes, sir.
Q. What position?—A. Directors.
Q. One of them is vice-president of the bank, is he not?—A. Yes, sir.
Q. Mr. O'Neal, you have stated that Mr. Greenhut was an indorser upon a $1,500 piece of paper held by you which he refused to pay, did you not?—A. Yes, sir.
Q. And the maker of that paper and the other indorser had gone into bankruptcy?—A. Yes, sir.
Q. How much other paper did your bank hold at the time of the failure of Messrs. Baars, Dunwody & Co., upon which Mr. Greenhut was an indorser?—A. On account of the failure of Baars, Dunwody & Co.?
Q. Yes, sir.—A. About $15,000; I am not sure as to the amount, but think it was about that.
Q. Mr. Greenhut was only liable on that paper as indorser, was he not?—A. Yes, sir; I think so.
Q. He paid all the paper upon which he was indorser except the $1,500, did he not?—A. I think we have some of his indorsement now.
Q. He protected his indorsement in every instance, did he not?—A. Yes, sir.
Q. You say that you have some with his indorsement now?—A. I think so.
Q. Made by whom?—A. By the Stanton Mercantile Co.
Q. That is due?—A. No; it is not due.
Q. What is the amount of it?—A. I do not remember; it is a small bill.
Q. About how much?—A. I think it is—I guess Mr. Greenhut could inform you of the amount. I suppose $100.
Q. But all the other paper, the other $15,000 that Mr. Greenhut was liable on as indorser has been paid by him, has it not, except fifteen hundred dollars?—A. Yes, sir.
Q. Mr. Greenhut has been claiming to you right along that you were to protect him in that?—A. No, sir; never made any such claim.
Q. Didn't he ever say that you had agreed to protect him in the matter?—A. No, sir.
Q. What reason did he give you for not paying that indorsement?—A. He said that he thought we could make the money out of Baars, Dunwody & Co.'s assets.
v. Why did he think the bank could; did he give you any reason?—A. He said he thought the property would bring enough to pay it all.
Q. How and for what reason does he look to that property?—A. For what reason? The mortgage recited that it was to secure any paper executed by or indorsed by Scarritt Moreno, and this paper was indorsed by Scarritt Moreno.
Q. The other paper, the balance of the $15,000, was indorsed by Scarritt Moreno, too, was it not, that you held?—A. No, sir.
Q. Most of it was, was it not?—A. There was some of it accepted by Scarritt Moreno. I do not remember any part of it that was indorsed by him.
Q. All of that paper, the $15,000, Scarritt Moreno was primarily liable for, was he not?—A. On practically all of the $15,000? I do not think he was; he was liable on something like half of it.
Q. And then on that half of it——
(Counsel for respondent objects to line of testimony, as it appears that it is the purpose of the prosecution to get the information for other matters and not with reference to this suit, and there is no bearing as to how much Scarritt Moreno owed or anything else. The only important feature is, which Greenhut denied, that there was any controversy between them relating to the transaction.
COUNSEL FOR PROSECUTION. The respondent in his answer here has set up that the prosecutor here refused to honor a certain indorsement made by him on a certain negotiable instrument; that it was held by the American National Bank. The respondent here in his answer sworn to says that Mr. Greenhut, the prosecutor in this case, interposed a plea in the suit at law brought by the bank that it was false and untrue, and I want to show by this witness that that allegation of his answer is false.
COUNSEL FOR RESPONDENT. The allegation was that he believed it to be false, and still believes it, as I recollect it.
The COURT. I realized when the answer was read that several things in that answer were going to broaden the investigation considerably. I do not see how to avoid it. You may go on with it. It may or may not cut very much figure in this investigation, but like many other things that might be brought under that and some of the other allegations of the answer, the main bearing may be to enable the court to judge of the veracity of the one party or the other, or they may not be worth much for anything else. In that view they may be admissible. I can not say that the main issue here is as contended by the respondent's counsel, but inasmuch as the respondent has set these matters up as a matter of defense in his answer I do not see how we can avoid going into a reply to them.)
Q. Mr. O'Neal, with the other notes and negotiable papers held by your bank upon which Scarritt Moreno was primarily liable, and upon which Mr. Greenhut was the indorser, did Mr. Greenhut tell you to look to the real estate and look to this mortgage for the payment of them?—A. No, sir.
Q. He did not?—A. No, sir.
Q. It was only—he only wanted you to look to the real estate for the payment of this one specific piece of paper?—A. Yes, sir.
Q. Mr. O'Neal, you said in your affidavit that the plea interposed by Mr. Greenhut to the suit of the American National Bank against him was false, and you believed that he knew it to be false. What was that plea, do you know?—A. I think we went over the plea at the time, but——
Q. I am just asking you now if you know what that plea was?—A. I could not undertake to state the plea now. I remember going over the plea, though.
Q. Do you know what the nature of the plea was?—A. I could not tell you about the plea, but I remember going over the papers at the time.
Q. Where did you go over the pleas?—A. Mr. Blount and I went over the pleas together.
Q. Do you know who prepared the plea for Mr. Greenhut?—A. Blount & Blount.
Q. Mr. W. A. Blount?—A. I do not know. I think Blount & Blount prepared it.
Q. I will hand you the plea filed in that case, and which you say is false, and I will ask you to point out there what is false and what you believe was known by Mr. Greenhut to be false.—A. You want me to read the plea and state——
Q. Just point out what is false; you may read the plea if you desire.—A. That the defendant indorsed the acceptance sued on as a surety and that before the maturity of the said acceptance the plaintiff was the holder of certain collateral securities of large value, much exceeding the amount of the acceptance sued on, deposited with it by the corporation of Baars, Dunwody & Co. to secure all such indebtednesses or liabilites of any kind.
Q. Is that true or false?—A. That is incorrect.

Q. In what particular?—A. The securities that we held for Baars, Dunwody & Co. were deposited by Baars, Dunwody & Co. to secure loans made to Baars, Dunwody & Co.

Q. And made directly to Baars, Dunwody & Co.?—A. Yes, sir.

Q. Didn't the securities that you held there cover any paper that might come into your possession upon which Baars, Dunwody & Co. were primarily liable?—A. You mean securities that we held for Baars, Dunwody & Co.?

Q. Yes, sir.—A. I think not.

Q. You had a regular form of hypothecation note, did you not?—A. A regular form?

Q. Yes, sir.—A. Some we did and some we did not.

Q. Can you produce the hypothecation that the American National Bank had from Baars, Dunwody & Co. at the time?—A. No, sir.

Q. You can not?—A. No, sir.

Q. Will you state upon your oath that the hypothecation by Baars, Dunwody & Co. did not cover any indebtedness that might be due to the bank from Baars, Dunwody & Co.?—A. I will state under oath that the only collateral I know of was deposited by Baars were deposited to secure loans made direct to Baars, Dunwody & Co.

Q. When were those securities deposited?—A. At the time we made the loan.

Q. When were those loans made?—A. They were made previous to the failure of Baars, Dunwody & Co.

Q. How long before the failure of Baars, Dunwody & Co.?—A. How long before the failure of Baars, Dunwody & Co.?

Q. Yes, sir.—A. I do not remember; we loaned them money from time to time, along ever since we have been in the business.

Q. Were they not made within ten days before the failure of Baars, Dunwody & Co.?—A. I do not know.

Q. You say that these securities were not hypothecated with you on the regular form of hypothecation note?—A. I say they were hypothecated to secure loans that we made; some were hypothecated that way and some were not.

Q. What securities were hypothecated for the purpose of securing any indebtedness that you might hold against Baars, Dunwody & Co. to cover any indebtedness of Baars, Dunwody & Co. that might be due to you or to the American National Bank?—A. The hypothecations were specified to secure specified loans. There was a provision, I think, in some of the papers that would secure any indebtedness that might be due to the bank.

Q. What securities did you have hypothecated with you covering the last feature that you have referred to that would cover any indebtedness that might be due to the bank; what did you have at that time?—A. Any indebtedness due to the bank?

Q. Yes, sir.—A. What securities that we had?

Q. Yes, sir.—A. I do not remember.

Q. Did you at the time that that note became due have any of those securities in your possession?—A. Baars, Dunwody & Co.?

Q. Yes, sir.—A. We had some of Baars, Dunwody & Co. at that time.

Q. Did you have some securities generally to cover, to secure, any indebtedness that might be due to you?—A. No, sir. All the hypothecations were specified and for the amounts stated in the notes.

Q. And for only that?—A. There might have been, as I said before, and I think was a part of the paper clause in the notes saying that it would be good to us for any other amount of money that they might owe the bank.

Q. Then Baars, Dunwody & Co. owed you the amount of that note, did they?—A. Baars, Dunwody & Co.?

Q. Yes, sir.—A. Yes, sir.

Q. They accepted it?—A. Yes, sir.

Q. And you had securities covering just such indebtedness from Baars, Dunwody & Co. to your bank?—A. I do not think I did.

Q. A moment ago you did say you had some hypothecations that covered any indebtedness that might be due by Baars, Dunwody & Co.?—A. Yes, sir.

Q. Didn't that cover that $1,500?—A. No, sir.

Q. Why not?—A. It was not sufficient amount to pay them.

Q. What was the amount of them?—A. The amount of the securities?

Q. Yes, sir.—A. The value of the collateral that we had from Baars, Dunwody & Co. worth about $1,500.

Q. In this case, when you say that Mr. Greenhut has testified falsely, the defendant says that you were the holder of certain collateral securities of a large value, much exceeding the amount of the acceptance sued on. Is that so?—A. Which is that, the acceptance that was sued on, the $1,500?

Q. Yes, sir. You held securities exceeding that?—A. Yes, sir.

Q. That was deposited with your bank by the corporation of Baars, Dunwody & Co. to secure all such indebtedness or liability of any kind as were or might become due to the plaintiff—that is, to the bank—from Baars, Dunwody & Co. That is true, is it not?—A. No, sir. Those collaterals were deposited to secure specific loans.

Q. You said that some were deposited to secure any indebtedness?—A. No, sir.

Q. You did not say so?—A. I said there was a clause in probably one of the notes that stated that any excess of the collateral was applicable to any other claim.

Q. What was the amount of any one note that contained that clause?—A. I do not remember as to those amounts.

Q. Well, was—did it amount to the sum of $15,000?—A. Which, that note?

Q. Yes, sir.—A. My recollection was $20,000.

Q. And the collateral in that note was worth more than $1,500?—A. Yes, sir.

Q. Now, point out where the falsity of that plea is?—A. To secure all such indebtedness as that acceptance.

Q. Just read the whole clause there. You said that you had $20,000 of securities there that was hypothecated to you generally to cover any indebtedness due to you?—A. No, sir. I said that I thought that we had a note for $20,000 with that clause in the note stating that any excess of this collateral should be applicable to any other claim.

Q. Then you held collateral that would cover and protect that note?—A. No; I did not.

Q. Would not that collateral that you held, that $20,000, protect that?—A. No; was not enough to protect the $20,000 and that.

Q. Mr. Greenhut in his plea, does he say there was? Does he allege there was sufficient to pay the amount for which this hypothecation was made and this?—A. I think Mr. Greenhut says here in the plea that I was holder of certain collateral securities of large value, much exceeding the amount of the acceptance sued on deposited with it by the corporation of Baars, Dunwody & Co.

Q. He says, does he not, that the note was deposited with you to secure such debts as may accrue to you, and the property was worth—the securities were worth—a great deal more than the $1,500? Is that not all he says?—A. I do not think so.

Q. Mr. O'Neal, do you know Donald McLellan, jr.?—A. I know a young man named McLellan here in town; I do not remember his given name.

Q. He is in the court room [McLellan here called forward].—A. Yes; I recognize Mr. McLellan.

Q. Did you on the day of this affray between yourself and Mr. Greenhut have any conversation with Mr. McLellan?—A. Yes, sir.

Q. Where at?—A. In the bank.

Q. Mr. O'Neal, what time of day was that?—A. I think it was about—I do not know; I guess it must have been about 11 or 10 o'clock.

Q. It was very shortly after the cutting, was it not?—A. No; I think it was an hour or two afterwards.

Q. Now, Mr. O'Neal, did you not tell Mr. McLellan that you came down the street—down the side of the street on which Mr. Greenhut was; that Mr. Greenhut called you in; that in talking over a business matter he called you a liar; that you resented this by striking him?—A. No, sir; I did not. I do not think I told him that.

Q. You do not think you told him that. Did you not tell him that?—A. I did not tell him that.

Q. You did not?—A. No, sir.

Q. Did you tell him what the business matter was that you and Mr. Greenhut had been discussing?—A. I do not think I did. I think I told him it was some litigation between us.

Q. Didn't you tell him on that occasion that the trouble emanated from the suit that was commenced by Mr. Greenhut, as trustee, against Scarritt Moreno, the American National Bank, and others on the preceding Saturday?—A. I do not think so. I think I told him—I told him that the trouble was caused by the bankruptcy of Moreno, Baars, or something of that kind.

Q. Mr. O'Neal, have you ever been convicted of any crime?

Counsel for respondent objects to the question.

The COURT. It has always been the practice here that any witness, including himself, can be asked questions in the criminal docket. In the prosecution of the criminal docket here—trial of criminal cases—it is a very common question, of which I can cite a dozen or more instances, whether or not the witness, does not matter what witness, any witness, has not been convicted of this or that or the other offense, not for the purpose of trying him for any other offense at all, but under the rules for the purpose of striking at his credibility. I will give you an exception.

Counsel for respondent notes exception to ruling of the court.

A. I was convicted once for shooting across the public road out in Covington County.

Q. At Andelusia?—A. Yes, sir.

Q. Mr. Stallings prosecuted you for that crime, did he not?—A. I do not think he did. I plead guilty to it.

Q. Were you indicted at that time for shooting across the public road?—A. Yes, sir.

Q. Were you not indicted at that time for shooting across the public road from the court-house in Andelusia to Bradway's barroom at Lewis Harrison?—A. I was not indicted for shooting Lewis Harrison.

Q. Shooting at him across the public road, at Lewis Harrison?—A. I was not indicted for shooting across the road at him.

Q. What other times have you been convicted, if any?—A. I was convicted in Covington County once for carrying concealed weapons—a pistol.

Q. When was that?—A. That was some time while Stallings was solicitor.

Q. What else?—A. I do not remember to ever having been indicted for anything else.

Q. You say you were convicted for carrying concealed weapons in Covington County?—A. I think so, yes.

Q. Where else, Mr. O'Neal, have you been convicted?—A. I do not remember having been convicted of anything else.

Q. Don't you recollect having been convicted in Henry County?—A. No, sir.

Q. You were not convicted in Henry County for carrying concealed weapons?—A. I do not think I was.

Q. Didn't you plead guilty to a charge of carrying concealed weapons there about two years ago?—A. I don't think so; yes, I was.

Q. You were convicted there?—A. I plead guilty to it, yes.

Q. Well, what other times, Mr. O'Neal, have you been convicted?—A. I do not think of any others.

Q. Were you not charged in Henry County with having made a murderous assault upon one Simonton with a claw hammer?

Counsel for respondent objects to question.

Counsel for prosecution withdraws question.

Q. Mr. O'Neal, you were sued civilly for assault made by you upon one Mr. Simonton, were you not?

Counsel for respondent objects to question.

The COURT. If the question is to be followed up, it will be admitted. The question by itself is not admissible.

COUNSEL FOR PROSECUTION. It will be followed up.

COUNSEL FOR RESPONDENT. Note exception to the ruling of the court.

Q. Was there or was not there a judgment recovered against you in Henry County for a murderous assault made by you upon one Simonton?

Counsel for respondent objects to question as showing result of the suit and proving a judgment that is a matter of record. Objection overruled and exception noted by counsel for respondent.

A. He sued me—Mr. Simonton sued me and recovered $50.

Q. Sued you for what?—A. For damages about a fight we had. He and I had a fight.

Q. The allegation was that you had struck him with a claw hammer, was it not?—A. Yes, sir.

Q. Do you know what became of Mr. Simonton after that?—A. Yes, sir.

Q. What?—A. He is in Pensacola now.

Q. He is?—A. Yes, sir.

Q. What time of day was it that you went to Mr. Greenhut's store on October 20?—A. That is, the day of the difficulty?

Q. Yes, sir.—A. It was about 9 o'clock in the morning; maybe a little afterwards.

Q. You were—how long were you in his store?—A. I do not know. I guess I must have been in there something like five minutes.

Q. What part of the store were you in?—A. We were in the back part of the office.

Q. How far from the front entrance?—A. I suppose we were 6 or 8 feet.

Q. Do you call that the back part of the office, 6 or 8 feet?—A. Yes, sir; I think it was.

Q. What is the size of the office?—A. I do not know how long the office is.

Q. About how long?—A. I suppose it is about 12 feet; maybe longer; it might be 14.

Q. On which side of the office was Mr. Greenhut?—A. He was on the left side; that is, the west side.

Q. Was he standing with his back against the desk?—A. I do not remember as to that.

Q. Where were you standing?—A. I was standing there at the corner of the palings and I think he was standing immediately in front of me.

Redirect examination by W. A. BLOUNT, Esq.:

Q. Do I understand you to say that Mr. Greenhut knew that Baars, Dunwody & Co. was indebted to the American National Bank?—A. Yes, sir.

Q. And he knew that this mortgage made by Scarritt Moreno was intended to cover any part of that indebtedness?—A. Only the indebtedness that Moreno was liable on.

Q. But the indebtedness of Baars, Dunwody & Co., upon which Scarritt Moreno was liable?—A. Yes, sir.

Q. And that he knew that Mr. Eagan had advised that the mortgage was a valid mortgage for that purpose?—A. Yes, sir.

Recross-examination by B. C. TUNISON, Esq.:

Q. When did you dispose of the property hypothecated to the Aemerican National Bank by Baars, Dunwody & Co.?—Some time in June, if my recollection is correct.

Q. Immediately after the assignment of Baars, Dunwody & Co., was it not?—A. No; I think it was—it must have been a week or two or three weeks after the assignment.

Q. How did you dispose of those securities, Mr. O'Neal?—A. The indorsers paid it.

Q. The indorsers on the original obligations paid it?—A. Yes, sir.

Q. And what did you do with the securities?—A. I surrendered the securities to the indorsers.

Q. Was Mr. Greenhut acting as a director of your bank at that time?—A. Yes, sir.

Q. When did he cease to act as a director of your bank?—A. He resigned about the time that we sued him.

Q. About July?—A. I think so.

Q. When did you sell to Foshee, McGowan & Covington the $13,000 mortgage of Scarritt Moreno?—A. Some time in June.

Redirect examination by W. A. BLOUNT, Esq.:

Q. You had frequent discussions with Mr. Greenhut, you said, about this matter of indebtedness to the bank, of this $1,500 acceptance?—A. Yes, sir.

Q. Had he, or not, shown any heat or anger upon those occasions?—A. Mr. Greenhut appeared to be a little touched up and angered at times, and at other times he seemed very pleasant.

Q. There had been, then, feelings between you on account of that acceptance?—A. Yes, sir.

Thereupon the respondents called one Dr. W. J. Hannah, who, being duly sworn, testified as follows:

Direct examination by W. A. BLOUNT, Esq.:

Q. You reside in the city of Pensacola?—A. Yes, sir.

Q. Have been residing here for some time?—A. Yes, sir.

Q. Do you know Mr. W. C. O'Neal?—A. I do.

Q. Do you remember the occasion of the affray between him and Mr. Greenhut?—A. Yes, sir.

Q. Did you, at any time after the affray, examine his person?—A. Mr. O'Neal?

Q. Yes, sir.—A. Yes, sir.

Q. How long afterwards?—A. I suppose a half hour or such a matter.

Q. Did you find any evidence of contusion or bruises upon his person?—A. I found some redness; yes, sir.

Q. Where?—A. On his side, sir.

Q. What side?—A. I do not know, but I rather think it was the left. I am not sure of that.

Q. What, in your opinion, was that occasioned by?—A. He said——

Counsel for prosecution objects to witness stating what was said.

Q. Do not state what he said.—A. He looked as though he might have been punched.

Q. That was a half hour afterwards, you say?—A. About that, sir. I do not know exactly.

Q. How did you examine—happen to examine him?—A. I went in his office by accident.

Q. And were requested by him to examine it?—A. Yes, sir.

Cross-examination by B. C. TUNISON, Esq.:

Q. You are connected with the American National Bank, are you not, as a director?—A. Yes, sir.

Q. Where was this injury?—A. It was on the side; I do not remember, but I think it was on the left side.

Q. And you say the only evidence of it was a redness?—A. And complaint; he said it was very sore.

Q. What did you prescribe for it?—A. Nothing.

Q. There was no laceration?—A. No, sir.

Q. You say it looked as if it might have been punched. Would you have thought it was a punch if he had not told you so?—A. It was circumscribed. He certainly could not have received a circumscribed red spot in any other way than by coming in contact with something.

Q. But not necessarily being punched, was it?—A. It was a circumscribed red place.

Q. If he had come in contact with the corner of that desk would it not have been the same?—A. Possibly.

Q. Would there have been any difference?—A. I do not think a man could have told the difference.

Thereupon the respondents called one John McDavid, who, being duly sworn, testified as follows, to wit:

Direct examination by W. A. BLOUNT, Esq.:

Q. Did you have any connection with the American National Bank——A. I am a director, sir.

Q. Did you know of an acceptance, upon which Mr. Greenhut was indorser, made, and upon which Scarritt Moreno was indorser, made by Baars, Dunwody & Co. to the American National Bank?—A. Yes, sir.

Q. Did you ever hear any conversation between Mr. Greenhut and Mr. O'Neal with reference to the payment of that acceptance?—A. Yes, sir. I think it was some time in June. I am not positive as to the date of the transaction. I am one of the finance committee of the bank, and Mr. O'Neal called my attention to this piece of paper, then past due, and I suggested that he call Mr. Greenhut over and see what he proposed to do about it, and he came over into the bank while I was there, and Mr. O'Neal called his attention to this particular paper, which was drawn by Moreno on Baars, Dunwody & Co. and accepted by them and indorsed by Moreno and Greenhut, and he said it was his indorsement—that he would pay it. I expect to take care of all my papers.

Q. Do you know whether he paid it or not?—A. He has not paid it yet.

Q. Did you have any further conversation between him and Mr. O'Neal with reference to it?—A. No, sir; nothing further said. He was in the bank only a few minutes.

Thereupon the respondent recalled W. J. Hannah, who testified as follows:

Direct examination by W. A. BLOUNT, Esq.:

Q. You said that you were connected with the American National Bank; what was your connection, Doctor, during the summer?—A. I am a director in the bank and also a member of the finance committee.

Q. Do you know whether or not Mr. Greenhut had any knowledge of the mortgage made by Mansfield Moreno in connection with the loan or indebtedness of Scarritt Moreno of $13,000 to the American National Bank?—A. Why, I knew it; the balance knew it; I do not see why he did not know it; it was before us.

Q. Before who?—A. The finance committee.

Q. Who was the finance committee?—A. Mr. Greenhut, Mr. McDavid, Mr. Covington, and myself and John Eagan.

Q. Did Mr. Greenhut, as a member of the finance committee, pass upon that paper, do you know?—A. Yes, sir.

Q. So that he knew of the loan and the character of it?—A. As I understand it, sir.

Q. Do you know, not as you understand, but do you recollect as to whether he did or not?—A. I knew he was present, and the way in which things are done, every paper is handled and Mr. Greenhut did when he was a member of the finance committee, he was the one usually that handled the papers, and as it was passed around the table one would check and the other would call, and I see no reason why——

Q. Do you recollect that this was before the finance committee when Mr. Greenhut was present and discussed?—A. It was, sir.

Q. And handled by him?—A. He was there several times.

Cross-examination by B. C. TUNISON, Esq.:

Q. Did you ever see that mortgage?—A. Yes, sir; I saw the papers.

Q. Did you ever see the mortgage—the thirteen-thousand-dollar mortgage?—A. Well, it is all in a bundle; yes, it is all done up together.

Q. Are you certain that you saw that mortgage?—A. Yes, sir. I know I saw it.

Respondent rests.

Thereupon the prosecution called in rebuttal Donald McLellan, who, being duly sworn, testified as follows:

Direct examination by B. C. TUNISON, Esq.:

Q. Where do you reside?—A. Pensacola.

Q. What is your occupation?—A. Reporter.

Q. Reporter on what paper?—A. The News.

Q. How long have you been engaged as a reporter on the News?—A. About eighteen months.

Q. Mr. McLellan, do you remember the day of the affray between Mr. Greenhut and Mr. O'Neal?—A. I do not recall the date, but it was on Monday.

Q. You do recollect the occurrence, do you?—A. Yes, sir. I saw nothing of it, though.

Q. Did you, shortly after the occurrence, call on Mr. O'Neal?—A. Yes, sir; I sought an interview with him.

Q. Where was he at that time?—A. In his office.

Q. Just state what he stated to you there.—A. He did not want to talk at all at first, and said—I told him what I wanted—to get his statement of it, and I also wanted to see Mr. Greenhut, too—but Mr. O'Neal says that he was coming down the street; saw Mr. Greenhut, and was speaking to him, and the lie was passed, and he struck Mr. Greenhut, and Mr. Greenhut struck him.

Q. Did he or not say that Mr. Greenhut called him a liar?—A. I think, to the best of my recollection, that the lie was passed. I think that is what he said.

Q. Did Mr. O'Neal say anything to you about coming from a fighting family?

Counsel for respondent objects to question.

Q. What else did Mr. O'Neal say? Mr. McLellan, did Mr. O'Neal say to you, as you recollect it about as follows.

Counsel for respondent object to witness being asked if Mr. O'Neal said so and so, but that he must be asked as to what he did say.

The COURT. I will rule with you in this case on this occasion, but my recollection is that I have heard many a hard and desperate battle right on that point, counsel on the one side insisting that counsel on the other should use the exact word which had been spoken.

Q. Mr. McLellan, shortly after that occasion you made a statement in writing as to what took place, didn't you?—A. Yes, sir.

Q. Will you look at this statement?

Counsel for respondent object to witness looking at paper until the witness has developed that he needs the writing to refresh his memory, and that has not been developed; otherwise it is the act of another party and not permissible for the witness to use.

Objection overruled, and exception noted.

Q. You wrote this statement, did you not?—A. Yes, sir.

Q. Where was this statement made?—A. At your office.

Q. At my office?—A. Yes, sir.

Q. At what time?—A. I think it was in the afternoon—after 4 o'clock—but what day I can not recollect.

Q. Was it about three or four days after the cutting?—A. Yes, sir.

Counsel for respondent object to counsel for prosecution asking witness the specified time instead of letting the witness state the time. He can ask when.

Q. How long after the cutting did you make this statement?—A. I can tell you this way: It was the day Mr. O'Neal was served with the writ of contempt.

Q. In this statement written by you, Mr. McLellan, you say——

Counsel for respondent object to counsel for prosecution making testimony by what a man said at an indefinite time after the occurrence.

The COURT. It is a very common thing where a witness for any cause unknown to counsel that calls him makes a statement on the witness stand that is different from the statement which he has theretofore made to counsel, counsel has immediately the right to treat him, cross-

examine and present him the paper made, and ask him if he did not say thus and so at such a time and about this statement, and which one is correct and which one is not. The testimony will only be admissible in that way and for that purpose.

Q. Mr. McLellan, what did you just state about the lie passing?—A. I think he said, Mr. O'Neal said the lie passed. He said the lie passed, and then followed that up by saying he called me a liar, and you know I could not take that.

Q. Well, did he state what he did when Mr. Greenhut called him a liar?—A. He said I struck him.

Q. Did he tell you what it was about?—A. He said it was a business matter. We were discussing a business matter—matter of business—and I would not care to state what it was, and I mentioned, I says: "Did the suit filed Saturday have anything to do with it?" and he hesitated a while, and said it did.

Cross-examination by W. A. BLOUNT, Esq.:

Q. Your business, I believe you say, is that of a reporter?—A. Yes, sir.

Q. Part of your business is to go into court and impeach what persons have said by saying what they have said to you, is it not?—A. What is that?

Q. It is a part of your business to go into court and impeach what persons have said—their testimony—by saying what they have said to you. Has that not been your practice frequently of late?—A. No, sir.

Q. Has it not been your practice to go into the criminal court for the purpose of contradicting persons by saying what they had said to you as a reporter?—A. Only one.

Q. Upon what occasion was that?—A. The burglary cases.

Q. Now, why was it just now, when you were asked by Mr. Tunison about the lie, and he asked you twice, you said that what Mr. O'Neal said was the lie passed and did not say anything about Mr. O'Neal saying that Mr. Greenhut had called him a liar?—A. Just recalled it.

Q. Why was it at that time you simply said Mr. O'Neal said that Mr. Greenhut, that he struck Greenhut, without making it follow the fact that Mr. Greenhut had called Mr. O'Neal a liar? Just recalled that?—A. Yes, sir; just answered the question.

Q. Did Mr. O'Neal say anything to you about this matter arising out of the Scarritt Moreno bankruptcy matter?—A. He did not mention that; just said I asked him "Did the suit of Saturday have anything to do with it?" and he said, "Yes;" but he did not say that for publication.

Q. But you are publishing it now, are you not?—A. Yes, sir.

Q. How did Mr. Tunison happen to get the fact from you?—A. I understood this writ had been filed and I went to see Mr. Tunison and see whether——

Q. And then you told Mr. Tunison a thing which had not been given you for publication?—A. No, sir.

Q. You did not know that giving it to Mr. Tunison was publishing it, did you?—A. No, sir. I did not know that Mr. Tunison was Mr. Greenhut's lawyer.

Q. Why did you go to him?—A. I was told he had it.

Q. You did not know it then?—A. Not before I went to his office.

Q. And yet when this was not for publication the first officer you went to in connection with it you told all about; told what Mr. O'Neal had told you was not for publication?—A. I was talking man to man.

Q. But, Mr. McClellan, when you have an interview with a man and he tells you that it is not for publication, that means that it is not to be published, does it not?—A. Yes, sir.

Q. This was man to man, you say?—A. Not to be printed.

Thereupon the prosecution recalled A. Greenhut, who testified as follows:

Direct examination by B. C. TUNISON, Esq.:

Q. How much paper of Scarritt Moreno, and Baars, Dunwody & Co., upon which you were indorser, did the American National Bank have at the time of the failure of Baars, Dunwody & Co.?—A. I could not say exactly. As well as I can remember, I think only paper was one for $500, $750 of Baars, Dunwody & Co. I have taken that up. There was another for three or four thousand, possibly a little over, of Scarritt Moreno's paper discounted by me and all taken up, and then there was thousands of dollars of other papers there.

Q. You took up all the paper of Scarritt Moreno or of Baars, Dunwody & Co. except this one piece of paper of $1,500, did you not?—A. I think everything taken up except possibly one paper of $60.

Q. Overdue or not? All the other paper upon which you were liable of Baars, Dunwody & Co. or Scarritt Moreno, except this $1,500 piece of paper, was provided for by you?—A. Yes, sir.

Q. Mr. Grenhut, why didn't you pay this $1,500 payment?—A. Because I did not think I was treated right.

Q. Did you consult your attorney about that $1,500 payment?—A. Yes, sir.

Q. Who was your attorney?—A. Mr. W. A. Blount.

Q. Did you state all the facts bearing on that paper to Mr. W. A. Blount?—A. I think I did.

Q. Did Mr. Blount prepare the plea that was filed in that case?—A. I think so; he sent it down to me.

Being hour for adjournment for noon recess, court thereupon adjourned until 3.30, both prosecution and respondent having closed their testimony.

AFTERNOON SESSION.

COUNSEL FOR PROSECUTION. May it please your honor, there were two witnesses that the prosecution failed to present this morning, and which it is very desirous of now putting on the stand. They will not occupy more than five minutes.

The COURT. Very well.

Thereupon the prosecution called Lep. Mayer, who, being duly sworn, testified as follows:

Direct examination by B. C. TUNISON, Esq.:

Q. Where do you reside?—A. Pensacola, Fla.

Q. Do you recollect the occasion of the affray between Mr. Greenhut and Mr. O'Neal?—A. Yes, sir; I recollect it.

Q. Did you see any portion of it?—A. No, sir; I did not see any portion of it.

Q. Did you see Mr. O'Neal immediately after he and Mr. Greenhut were separated?—A. I was there.

Q. Did you see the knife that Mr. O'Neal had in his hands?—A. Yes, sir; I held the handle of the knife this way.

Q. I show you the knife, Mr. Mayer. Is that the knife that Mr. O'Neal held in his hands?—A. No. sir; that is not the knife.

Q. What kind of a knife did Mr. O'Neal have in his hands?—A. It was a sort of bone-handled knife.

Q. What was the condition of the blade of that knife, Mr. Mayer?—A. It looked like it was sharpened—freshly sharpened—to me. Of course, I got hold of the handle of the knife, and I cut myself.

Cross-examination by W. A. BLOUNT, Esq.:

Q. Mr. Mayer, did you have the knife in your hands?—A. I held Mr. O'Neal's hand and tried to take the knife out of his hand, but I could not, and Mr. Hyer came up, and in the meantime Mr. Hyer came up and says "Turn loose," and they turned loose.

Q. They turned loose; who do you mean by "they?"—A. Mr. O'Neal turned Mr. Greenhut.

Q. What do you mean by "they," then?—A. Mr. O'Neal and Mr. Greenhut.

Q. Both turned loose? Well, now, you held Mr. O'Neal's hand——A. I was trying to take the knife out.

Q. And he had the knife in his hands? Did he not have the handle inclosed in his hands?—A. Yes, sir; a portion of it.

Q. And you simply saw a portion of the handle?—A. Yes, sir.

Q. And yet you are able to swear that that is not the knife?—A. Yes, sir.

Q. You can?—A. I can swear that that is not the knife that I saw.

Q. And yet the knife that you saw was almost entirely inclosed in Mr. O'Neal's gripped hand?—A. I could see the top of it.

Q. That is all you saw?—A. Yes, sir.

Q. Saw the top metal?—A. Around here; this portion here was a little metal.

Q. This is always of metal, is it not?—A. Yes, sir.

Q. And during that time of excitement you were able to see what kind of a knife he had clinched in his hand?—A. I was there about five minutes.

Q. And tried to hold his hands for five minutes and wrenched his hands and tried to get it loose?—A. Yes, sir; tried to take it loose, but could not get it loose.

Thereupon the prosecution called one A. L. Rettinger, who, being duly sworn, testified as follows:

Direct examination by B. C. TUNISON, Esq.:

Q. Do you remember the occasion of the affray between Mr. O'Neal and Mr. Greenhut?—A. Well, I saw it after the cutting was all through with; they were clinched.

Q. Did you see the knife that Mr. O'Neal had in his hands?—A. He walked right by me; he walked right by me with the knife in his hands.

Q. Did you see the knife in his hands?—A. I saw a portion of it; did not see the whole knife and blade.

Q. Did you see a portion of the handle of the knife?—A. About the ear of the knife.

Q. Is that the knife, sir [exhibiting to witness knife]?—A. That don't look like it; it looked to be a very bright blade and the handle looked to be either pearl or white horn.

Q. Was the blade—— A. It was a slender blade.

Thereupon the respondents called in rebuttal one A. M. Hyer, who, being duly sworn, testified as follows:

Direct examination by W. A. BLOUNT, Esq.:

Q. Were you present at the time of this affray which has been testified to between Mr. O'Neal and Mr. Greenhut?—A. I was there at the wind-up, sir.

Q. Did you see the knife that Mr. O'Neal had?—A. I saw the blade; yes, sir.

Q. Did you see it at the time that Mr. Mayer was trying to take it away?—A. I saw the blade of it.

Q. Was it so held that you could see anything but the blade—A. I could not.

No cross.

COUNSEL FOR PROSECUTION. It has been agreed between counsel that the case shall be submitted without argument.

The COURT. In that event, then, the court will render its decision at 10 o'clock to-morrow a. m.

Court thereupon took a recess until 10 a. m. following day.

MORNING SESSION, DECEMBER 9, 1902.

By the JUDGE:

In the matter of the rule on W. C. O'Neal to show cause why he should not be punished for contempt upon the statements set forth in the rule of contempt and affidavit of A. Greenhut thereto attached, the court in going over the affidavit and the answer of the respondent and considering carefully the testimony which was given yesterday, has come to the following conclusion:

The charges set out in the affidavit made by Mr. Greenhut, so far as they relate to the interference with an officer of this court are concerned, are, in substance, as follows:

Mr. Greenhut alleges in his affidavit that he was the trustee in the bankruptcy matter of Scarritt Moreno; that he had filed a bill against the American National Bank et al., of which the respondent, O'Neal, was president; the bill was filed on Saturday, October 18, of this year, 1902; he alleges that on October 20, Monday following that day, the respondent assaulted him, because, as an officer of this court, he had instituted the suit aforesaid.

He alleges that the assault was made to interfere and prevent him from performing the duties as such officer, and that such assault did interfere with him as such officer in the performance of such duties.

The respondent, by his answer, admits that he knew Mr. Greenhut was trustee in the bankruptcy estate of Scarritt Moreno.

This was further established by the record which was put in evidence. He admits that he knew the bill recited in Mr. Greenhut's affidavit had been filed against his bank, and he alleges further that Mr. Greenhut knew said bill to be in fraud of the bank.

He admits that he went to the office of the officer of this court, Mr. Greenhut, to reproach him for having brought the suit mentioned, and he asserts that he did reproach him for bringing the said suit, and he asserts that Mr. Greenhut knew when the suit was brought that there was no foundation therefor.

Up to this point in the matter there is little conflict in the statements of either party, but from this point on the statements of the affiant, Greenhut, and the respondent, O'Neal, do not agree. Mr. O'Neal interpolates into his answer something about another suit which the bank had brought against Mr. Greenhut, and that part of the conversation which he had with Mr. Greenhut was in regard to that suit. This Mr. Greenhut denies. Mr. O'Neal says, however, that the principal conversation that he had on that occasion with Mr. Greenhut was in regard to the other suit which had just been brought on Saturday, the 18th, and not as to the suit that had been brought a month or two before by the bank against Mr. Greenhut. From this point on there is a direct and positive contradiction by the affiant and by the respondent in most of that that is important and critical in this case,

and the court is compelled, in deciding the case, to say who is stating the truth about it. From that position there is no escape.

Mr. Greenhut says, in a general way, without reading his statement or following his testimony, that after a conversation with himself and O'Neal about this transaction, that O'Neal made some remark and they had some words passed which were not pleasant, and that Mr. O'Neal started to the door and that he, without thinking or suspicioning any trouble, started after him and within a short distance of him; that suddenly, and without warning or any suspicion, that Mr. O'Neal turned with a knife and assaulted him, cutting him in the way shown to the court, which was a very serious way; I do not care to say much about it further than this, that it seems to the court that it was the merest accident in the world that Mr. Greenhut's life was not taken and that he was not forever prevented from appearing in this court to, or anywhere else to, attend to any duties whatever.

Mr. O'Neal says that they had some words, that perhaps in this connection it would be fairer to Mr. O'Neal to read what he swears to in his answer: When the respondent turned to leave the office and when he had nearly reached the door he turned and said to Greenhut, "Well you know you lied about the Moreno acceptance, for you said that you would pay it," the Moreno acceptance being the negotiable paper hereinbefore mentioned. As the respondent turned saying this he noticed that the said Greenhut was following him and as he said it the said Greenhut, who was short, stout, heavily built, and apparently much more muscular than respondent, struck the respondent, who is thin and feeble, and forced him against the railing in said office. That respondent shoved the said Greenhut a little way from him, but he, the said Greenhut, instantly recovered and rushed at respondent with his arm uplifted to strike, when respondent drew from his pocket a small pocketknife and opened it in order to protect himself, and upon said Greenhut rushing again upon him, cut him therewith, while the said Greenhut was still following and endeavoring to strike him.

That it is not true that the respondent at any time said to the said Greenhut that he, the respondent, would settle the matter, but the facts are as hereinbefore stated.

Taking the respondent's own statement as true, the court holds as a matter of law that the cutting was entirely unjustifiable.

It is a recognized rule of law by everybody who knows any law that in order to justify anyone with an assault with a deadly weapon they must first retreat as far as they can get when assaulted, and when they can go no farther, if their assailant has something which is likely to endanger their life or do them great bodily harm, as I remember the language, only then are they entitled to assault anyone with a knife, pistol, or any weapon for self-protection. Otherwise, if there is an opportunity to flee, they must go, and if they do not, and stand and what is commonly called "fight," and they injure their assailant, they are responsible therefor. The testimony of both parties here says that the office door was open; the testimony of both parties places Mr. O'Neal so that he could have leaped out of the office instantly and gotten out of Mr. Greenhut's way in case Mr. O'Neal's story is correct. He did not do so according to his own statement, but according to his own statement says that he would not fight in the office, but if he would come into the street he would fight. But Mr. Greenhut, as I have said, contradicts Mr. O'Neal flatly and Mr. O'Neal contradicts Mr. Greenhut flatly, and in disposing of this case the court must decide between them. There is no escape from that duty, unpleasant as it may be, and the court takes it up in this way. First, as to the reasonableness of the assault. Taking ordinary men having such an altercation as Mr. O'Neal says they had, ordinary men, what would be the natural effect of such conversation in an office between two men? Would the one man, Greenhut, who was affronted and insulted, strike his assailant quickly in the face for the insult, or would he follow him and attempt to strike him in the back? If he were such a powerful and muscular man and did attempt to follow and strike, would that attempt have no more effect upon Mr. O'Neal than the red spots sworn to upon the side by Doctor Hannah? That is one way that the court looks at it.

Leaving the testimony of the two men out of the question and looking at the reasonableness of the situation. Next, take the two testimonies. The one tells one story and the other the other. What must be done under those circumstances? No living witness testified to what he saw except the two parties. The court must dispose of the truth or falsity of those statements upon their sworn testimony and what additional light it can get, and in that connection it turns to the record and character of the two men for peace and good order and quiet. Eight or ten or a dozen of the best citizens of Pensacola appeared and testified, or it was admitted upon the part of the respondent that they would so testify, and their testimony was waived, that Mr. Greenhut was a gentleman of quiet, peace, and good order; in truth at this hearing no intimation was made, no attempt was made to intimate that Mr. Greenhut had ever had a quarrel, wordy quarrel even, with any living being. On the other hand, the record of Mr. O'Neal, as shown, was not of that character. I do not care to go over it. It is not a pleasant task, and I won't review it particularly, but simply refer to it as a fact, that taking the record of Mr. O'Neal on the one hand, showing his character and disposition and troubles that he had had in different places, and the utter absence of everything of that character as regards Mr. Greenhut on the other, the court is compelled in the direct conflict of testimony between the two men, is compelled to say that it believes Mr. Greenhut's story of this controversy and is compelled to disbelieve the story told by Mr. O'Neal. So much for the reasons of the finding.

I want to say further, that in disposing of this case the court has no intention to interfere or in any way usurp the jurisdiction or the authority or action of any other tribunal that may look to the matter between the State and Mr. O'Neal. The action that the court will take and feels compelled to take will only be such action as is necessary for the interference by Mr. O'Neal with the duties of an officer of this court. The sentence of the court will be in the matter that Mr. O'Neal will be confined in the county jail of this county for the term of sixty days.

COUNSEL FOR RESPONDENT. Your honor will, I assume, suspend the execution of that sentence for a half hour in which we can present to the court the papers necessary for the perfection of a writ of error to the Supreme Court of the United States.

COUNSEL FOR PROSECUTION. I would like to raise the question in the first place as to whether that a writ of error in the matter of contempt does not lie, and, secondly, that even if it did lie, there is no such thing as a supersedeas in a contempt proceeding.

The COURT. I will give Mr. Blount an opportunity to make a hearing. I wish to say here in regard to supersedeas that while I have granted three or four perhaps in thirteen years, I have always granted them on my own judgment, not where they were asked for in every instance, but where there was any ground to contend that there was a question of law involved. There was one in Dallas, Tex., that I granted of my own motion without being asked for it, because there was such a question of law. In ninety-nine cases out of a hundred in which they are asked there is no question of law—there is no question of law left which has not been disposed of and the purposes would not further the ends of justice. In the case at bar that question must be disposed of in the same way; if, upon looking over these decisions, the court is of the conclusion that there is, as counsel has very properly put it, a reasonable doubt in the mind of the court, a doubt which takes hold of the court's mind at all for the Supreme Court to go on, a supersedeas will be granted. It will only be refused in this case and in other cases where there is nothing for the court to pass upon at all. That is all I can say at present, and if the court makes an error it can be readily corrected.

COUNSEL FOR RESPONDENT. Will your honor be here at half past 3? I would like to present an oral argument on the question, perhaps.

The COURT. I desire to look at the cases in my room and read just what the court—the Supreme Court—has said. The court likes to read it itself and think about it and look at it. I have no objection to hearing counsel's views of it, but the court makes up its own idea and can understand it better when it reads the cases itself.

Court thereupon took a recess till 3.30 p. m.

AFTERNOON SESSION.

The COURT. This being an unusual case, and, so far as I know, this particular proposition of law never having been decided, and the counsel very properly voiced the position of the court before adjournment, that the court had no personal feeling, no desire to oppress anyone illegally, nor to imprison anyone illegally. I have no hesitation in saying that if Mr. O'Neal went to jail for sixty days and about that time, or subsequently, the supreme court should reverse my action the effect would not be good in any sense on the community, and this court would feel very much chagrined, exceedingly so; no hesitation in saying so. I will avoid being placed in that position with a great deal of care. On the other hand, if the case goes up and the supreme court should affirm my action, then all criticism of this court's action is effectually disposed of when the highest tribunal has passed upon the action of this court. Those are, perhaps, in a measure personal, but they are sufficient to the court to be worthy of mention. Much more important, I judge, is the fact there ought to be a ruling of that court upon this statute, and I really have decided, without any further discussion of the case, to allow the appeal, and allowing the appeal will allow the supersedeas bond until the bill is disposed of, or until it is dismissed or whatever course counsel representing the court may deem best to take, and that will be the course without any further delay or discussion of the matter, and for the reasons which I have assigned.

It is needless to say that after my action in this case has been disposed of there will be no more supersedeas cases in similar cases while I sit here; and never having had a case like this, I have concluded to make this exception now and will allow the appeal and will allow a supersedeas bond. The court under the circumstances has no anxiety about Mr. O'Neal's going away, and a bond of $1,000 will answer the purpose.

COUNSEL FOR RESPONDENT. The court will make an order allowing fifteen days in which to present a bill of exceptions?

The COURT. Certainly.

STATE OF FLORIDA, *County of Escambia:*

Before me personally appeared Lee Daniell, who, being duly sworn, says: That he was the stenographer who reported the proceedings in the United States district court in and for the northern district of Florida, at Pensacola, Fla., in the matter of the contempt of W. C. O'Neal. That the foregoing pages hereto attached and numbering from 1 to 70, consecutively and inclusive, is a true report of such proceedings as taken by me in shorthand at the time and now reproduced from said shorthand notes.

LEE DANIELL.

Sworn to and subscribed before me this 28th day of January, A. D. 1905.

[SEAL.] J. W. MARSH,

Clerk United States District Court, Northern District Florida.

Mr. Manager POWERS. I now desire to call one witness only, and that will complete the evidence in support of this charge. That witness is Mr. W. A. Blount. I understand that he is in attendance.

Mr. BACON. Mr. President, before the manager proceeds, as he says he will call only one witness, I desire to know whether the affidavits and such other matters as were included in these answers are offered and accepted as evidence without testimony being given from the stand? I simply wish the information.

Mr. HIGGINS. Mr. President, there is no objection on the part of the respondent.

I will state, Mr. President, in respect to that matter, that this is the first trial in this court I am aware of where a stenographic record of what occurred in another court has been presented here.

In the Peck case, seventy-five years ago, the testimony of what occurred in Judge Peck's court was entirely dependent upon the oral testimony of the witnesses who were present at that trial. It has seemed to counsel for the respondent that they were fortunate in the O'Neal case that a stenographic record had been made and preserved, and that it could be presented here, so that this court would know precisely what had occurred there.

I think, therefore, it is better that it should go in in that form, even though without the sanction of an oath in this tribunal.

Mr. FORAKER. Mr. President, while Senators in that part of the Chamber are acquiescing in the suggestion that this testimony shall go in without being read, it is upon the assumption that when counsel come to sum up the case and present it to the court they shall call attention specifically to such parts of the record as they regard as material and upon which they rely.

If that is not to be clearly understood we want to have all the testimony read.

William A. Blount sworn and examined.

By Mr. Manager POWERS:

Question. Mr. Blount, where do you reside?
Answer. Pensacola, Fla.
Q. What is your profession or occupation?
A. Attorney at law.
Q. How long have you been in the practice of the law?
A. Thirty-one years last November.
Q. Will you state whether or not you are a member of the United States courts?
A. I am; of all of them.
Q. And of the State courts of Florida?
A. I am.
Q. Are you acquainted with Judge Charles Swayne?
A. I am.
Q. For how many years?
A. Since 1888 or 1889.
Q. And whether or not you have had occasion to practice law before Judge Swayne in the district court of Florida?
A. Ever since that time.
Q. I will ask you, Mr. Blount, to what extent have you practiced law before Judge Swayne?
A. I have constantly practiced before him at every term of the court. I have had quite a practice in his court.
Q. I think you are a brother of Mr. Blount who testified yesterday?
A. A. C. Blount, jr.?
Q. Yes.
A. Yes.
Q. And whose firm is known as Blount & Blount?
A. Yes.
Q. State whether or not you were counsel for W. C. O'Neal in the contempt proceedings in 1902 before Judge Swayne.
A. Our firm was, and I conducted the business on behalf of the firm.
Q. Do you remember what condition the case was in when you first appeared before Judge Swayne—that is, I mean, what stage was it in?
A. He had been cited to appear to answer charges of contempt and came to me before any proceedings were taken except the citation.
Q. And was the citation backed up by an affidavit or petition?
A. It was.
Q. That was the petition of a complainant, Mr. Greenhut?
A. Yes.
Q. Will you state whether or not you filed any demurrer to that petition?
A. I did.
Q. And whether or not you argued that demurrer before Judge Swayne?
A. I did.
Q. What legal proposition was involved in the demurrer which you filed?
A. The proposition that was involved was whether, under the act of 1831, Mr. O'Neal had been guilty of a contempt of the district court of the United States for the northern district of Florida.
Q. Will you state whether or not you brought to the attention of Judge Swayne the statute of 1831?
A. I did.
Q. And whether or not you brought to his attention any other statute that was pertinent to the issue?
A. I do not remember at this moment any other statute than the act of 1831, as embodied in the Revised Statutes.
Q. Will you please state, Mr. Blount, whether in your argument upon this demurrer you brought to the attention of Judge Swayne any citations of any courts construing the statute of 1831?
A. Yes; I did.
Q. What cases were brought to Judge Swayne's attention in your argument by you?
A. I remember at this time the case of ex parte Poulsen, decided by Justice Baldwin, and reported in 19 Federal Cases; also the case of ex parte Robinson, reported, as I recollect, in 19 Wallace. There were some other cases, but I have not had occasion to refresh my memory since that time, and I do not now remember them.
Q. What was your contention as raised by your demurrer?
A. My contention was that neither of the three branches of the first section of the act of 1831 covered Mr. O'Neal's case; that he was not an officer of the United States, and consequently was not engaged in any official transaction; that he was not in the court room nor in the presence of the court or so near thereto as to embarrass the administration of justice, and that he was not in obstruction or disobedience of any affirmative mandate, order, or decree of the court.
Q. Will you state whether or not you argued all those propositions fully before Judge Swayne?
A. I did.
Q. Later on, I think, witnesses were called, were they not, in that proceeding?
A. Yes.
Q. Were you present at that time as counsel for the respondent?
A. I was throughout the whole proceeding.
Mr. Manager POWERS. I think, Mr. President, that is all I care to interrogate Mr. Blount.

Cross-examined by Mr. HIGGINS:

Q. Mr. Blount, was any further proceeding taken by you for O'Neal, or by O'Neal through you, after the judge rendered his decision?
A. Yes; I applied for and obtained a supersedeas pending a writ of error to the Supreme Court of the United States, upon the ground that Judge Swayne did have no jurisdiction of the case.
Q. On that ground?
A. Yes.
Q. Who granted the supersedeas?
A. Judge Swayne.
Q. You applied to him?
A. Yes.
Q. Was there any hesitancy on his part in granting it?
Mr. Manager PALMER. Mr. President, I object to that line of examination.
Mr. HIGGINS. I withdraw the question. [To the witness.] Was a bond given?
A. A bond was given.
Q. In what amount?
A. A thousand dollars.
Q. Did you prosecute the writ of error to the Supreme Court?
A. I did.
Q. Did or did not the judge, under the act of 1891, certify your question of jurisdiction to the Supreme Court?
A. He did.
Q. Therefore the question as to whether his court had jurisdiction or not of the case as made in Greenhut's affidavit, and your demurrer, and the judge's certificate all went to the Supreme Court of the United States for adjudication?
A. Yes.
Q. What did it decide?
A. It decided that it was not a question of jurisdiction at all brought up by the demurrer; therefore the act of 1891 did not apply.
Q. Did it not decide that the jurisdiction both of the person—that is, of O'Neal—and of the subject-matter—that is, the alleged acts of contempt—being not challenged, the court would not undertake to pass upon the merits of the case?
A. Singly, yes. They said I challenged the facts and did not challenge the jurisdiction of the court.
Q. So, upon the face of those proceedings Judge Swayne's court did have jurisdiction of that subject-matter and to try O'Neal?
A. That is what I understand the court to have decided.
Mr. HIGGINS. That is all.

By Mr. Manager POWERS:

Q. A single question, Mr. Blount. The court decided that it was the affidavit of Greenhut that gave the court jurisdiction?
A. Yes; that Judge Swayne had the right to try the general class of cases included under the term of contempt, and had jurisdiction of the person of O'Neal, and therefore it was not a question of jurisdiction.

By Mr. HIGGINS:

Q. After that what course did the proceeding take?
A. I then applied for a writ of habeas corpus to Judge Pardee, the presiding judge of the fifth judicial circuit.
Q. Was that matter heard before him?
A. It was heard before him and the other judges.
Q. What other judges?
A. Judges Shelby and McCormick.
Q. What was their decision?
A. Their decision was that the attempt by habeas corpus was an attempt to impeach the judgment collaterally, and that, Judge Swayne having jurisdiction, it could not be done.

Q. Therefore it distinctly rested upon the decision that he had jurisdiction?

A. No.

Q. Did you or not on behalf of O'Neal in the circuit court of appeals file a supplementary paper stating further facts going to show that the district court did not have jurisdiction over this matter of contempt, in that the place where the assault of O'Neal on Greenhut took place was at a distance from the United States court?

A. I attempted to file a paper of that kind. I do not recollect just now whether it was filed or not or whether consideration was given to it.

Q. Did you not recollect that the court in their decision said that those considerations contained in that paper made no difference?

A. I think so. Of course the decision would show for itself.

Mr. HIGGINS. That will do.

Reexamined by Mr. Manager POWERS:

Q. As I understand, Mr. Blount, both the Supreme Court and the circuit court found that Judge Swayne had jurisdiction of that case?

A. Yes.

Q. Now, did either of those courts go into the merits whether under the statute of 1831 he had the right to punish O'Neal for contempt?

A. Neither of them. Both cases distinctly went off on the question of jurisdiction.

Q. In other words, you undertook to get up the question of merit and failed?

A. Yes.

Q. And failed in both instances?

A. That is not exactly correct. I did not attempt to get up the question of merits in either case. In the first case I attempted to show that Judge Swayne did not have jurisdiction because the statute of 1831 was, as I contended, the full measure of his power, and he had no power to try the case upon the facts as shown upon the face of the affidavit.

Q. Then you took it on a habeas corpus to the United States circuit court?

A. Yes.

Q. What did the circuit court say?

A. I was met by the same response, practically, that the judge had jurisdiction of the subject-matter of contempts, and whether the statute of 1831 gave him power or not was a question not to be considered by the court.

Mr. Manager POWERS. I think, Mr. President, that is all the evidence we have in support of the twelfth article.

Mr. FAIRBANKS. I move that the Senate sitting as a court of impeachment do now adjourn until to-morrow.

The motion was agreed to; and (at 5 o'clock and 5 minutes p. m.) the Senate sitting as a court of impeachment adjourned until to-morrow, February 15, at 2 o'clock p. m.

The managers on the part of the House and the respondent and his counsel retired from the Chamber.

The PRESIDENT pro tempore resumed the chair.

GOLD AND SILVER IN THE ARTS.

Mr. KEAN submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 15578) to prevent the use of devices calculated to convey the impression that the United States Government certifies to the quality of gold or silver used in the arts, and for other purposes, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments and agree to the same.

JOHN KEAN,
J. B. FORAKER,
E. W. CARMACK,
Managers on the part of the Senate.
J. S. SHERMAN,
JAMES R. MANN,
D. W. SHACKLEFORD,
Managers on the part of the House.

Mr. GORMAN. Have the Senate conferees agreed to recede from all the Senate amendments?

Mr. KEAN. Yes; but the amendments were substantially one, extending the date until the 1st day of January, 1906.

Mr. GORMAN. Is not that very important to the trade? I suggest that the consideration of the conference report go over until to-morrow morning.

Mr. KEAN. I have no objection to that.

The PRESIDENT pro tempore. The consideration of the conference report will go over.

AGRICULTURAL APPROPRIATION BILL.

The PRESIDENT pro tempore. The Chair lays before the Senate the unfinished business, the title of which will be stated.

The SECRETARY. A bill (H. R. 6295) for preventing the adulteration or misbranding of foods or drugs, and for regulating traffic therein, and for other purposes.

Mr. PROCTOR. I ask that the unfinished business may be temporarily laid aside in order that the Senate may proceed with the consideration of the agricultural appropriation bill.

The PRESIDENT pro tempore. The Senator from Vermont asks that the unfinished business be temporarily laid aside in order that the Senate may proceed with the consideration of the agricultural appropriation bill. Is there objection?

There being no objection, the Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 18329) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1906.

The PRESIDENT pro tempore. The pending question is on the amendment submitted by the Senator from North Dakota [Mr. HANSBROUGH].

Mr. PETTUS. Mr. President, I attempted before the Senate laid aside its legislative business to make a point of order on this amendment, and I started to read the rule regarding it when the Senate resolved itself into a court.

The PRESIDENT pro tempore. It is too late to make the point of order on the amendment. It has already once been made and the Chair overruled the point of order.

Mr. PETTUS. I understand the Chair decided as to the point of order on an amendment to the amendment.

The PRESIDENT pro tempore. No; the Senator is mistaken. The point of order was made to the original amendment offered by the Senator from North Dakota, and the Chair overruled the point of order. The question now is on the amendment of the Senator from North Dakota.

The amendment was agreed to.

Mr. PLATT of Connecticut. Is it too late to inquire what that amendment is? [Laugnter.]

The PRESIDENT pro tempore. The Chair thinks it is too late.

Mr. GORMAN. Mr. President, I desire to offer the amendment which I send to the desk, to come in on page 36, line 25.

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. On page 36, line 25, after the word "situated," it is proposed to insert:

Provided, That hereafter all money received from the sale of any products or the use of any land or resources of the forest reserves shall be covered into the Treasury of the United States.

Mr. GORMAN. Mr. President, I desire to call the attention of the Senator from North Dakota [Mr. HANSBROUGH] and the attention of the Senate to this amendment. By an act approved February 1 of this year—1905—transferring the Forestry Division from the Interior Department to the control of the Department of Agriculture, it is provided:

SEC. 5. That all money received from the sale of any products or the use of any land or resources of said forest reserves shall be covered into the Treasury of the United States and for a period of five years from the passage of this act shall constitute a special fund available, until expended, as the Secretary of Agriculture may direct, for the protection, administration, improvement, and extension of Federal forest reserves.

This is the first time, except in the matter of irrigation, where the head of any Department of the Government has been authorized to dispose of the property of the United States and that the proceeds of the sales thereof should be expended under his general direction. The amount heretofore, as I understand, received from the sale of timber and from pasturage on lands while under the control of the Interior Department, is about $60,000 per annum, as near as I can get at it. Under the provisions of this bill as now amended possibly it will be very much greater.

I think the provision in this special act making the transfer was unwise. It was certainly not recommended by the Interior Department, which agreed to the transfer, that this special fund should be raised. I am informed that it is limited by the effect of the act for a period of five years. While I have not the slightest objection to vote any proper amount for the preservation of the forest reservations, I think it most unwise to introduce the system of leaving the expenditure of the money to the discretion of the head of any Department, and that is the reason I have offered the amendment.

The PRESIDENT pro tempore. The question is on the amendment submitted by the Senator from Maryland [Mr. GORMAN].

The amendment was rejected.

Mr. DANIEL. Mr. President, I desire to inquire if the words in lines 21 and 22 on page 40 "for the guidance of the officials of the various States and of the courts of justice" are still in the text of the bill?

Mr. PROCTOR. Those lines have been stricken out.

Mr. DANIEL. Do I understand that both lines have been stricken out?

The PRESIDENT pro tempore. The words which the Senator has read in lines 21 and 22 have been stricken out.

The bill was reported to the Senate as amended.

Mr. TELLER. Mr. President, I want to call the attention of the Senator from Vermont [Mr. PROCTOR] to the amendment proposed by the Senator from Maryland [Mr. GORMAN], which has just been declared to have been defeated. It seems to me very plain that the provision to which the Senator referred is a violation of the provision of the Constitution that—

No money shall be drawn from the Treasury, but in consequence of appropriations made by law.

It is true that this money may not get into the Treasury.

Mr. GORMAN. Oh, yes; it goes into the Treasury.

Mr. TELLER. Then it is the duty of every public officer who gets hold of public money to put it into the Treasury, and it can not be gotten out legally except by appropriation. It seems to me that is a very ill-advised provision and that it should not stand. I can not debate the question at this late hour, and I do not suppose it would do any good if I should attempt to do so.

The PRESIDENT pro tempore. Shall the amendments made as in Committee of the Whole be concurred in?

The amendments were concurred in.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

CONSIDERATION OF PENSION BILLS.

Mr. McCUMBER. I wish to ask unanimous consent that to-morrow, after the Senate shall have adjourned as a court of impeachment, the unobjected pension bills on the Calendar may be taken up for consideration.

The PRESIDENT pro tempore. The Senator from North Dakota asks unanimous consent that to-morrow, at the conclusion of the proceedings of the Senate sitting as a court of impeachment, the unobjected pension cases may receive consideration. Is there objection? The Chair hears none, and that order is made.

DISTRICT OF COLUMBIA APPROPRIATION BILL.

Mr. ALLISON. I ask unanimous consent that the unfinished business may be temporarily laid aside and that the Senate proceed with the consideration of House bill 18123, being the District of Columbia appropriation bill.

The PRESIDENT pro tempore. The Senator from Iowa asks unanimous consent that the unfinished business, being what is known as the "pure-food bill," may be temporarily laid aisde, and that the District of Columbia appropriation bill may be considered. Is there objection?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. 18123) making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1906, and for other purposes; which had been reported from the Committee on Appropriations with amendments.

Mr. ALLISON. I ask unanimous consent that the first formal reading of the bill may be dispensed with, and that the bill may be read for amendment, the amendments of the Committee on Appropriations to be first considered.

The PRESIDENT pro tempore. The Senator from Iowa asks unanimous consent that the first formal reading of the bill may be dispensed with, that it be read for amendments, and that the committee amendments shall first receive consideration. Is there objection? The Chair hears none, and that order is made.

The Secretary proceeded to read the bill. The first amendment of the Committee on Appropriations was, under the head of "General expenses," in the items for executive office, on page 2, line 20, after the word "each," to insert "draftsman, $1,400; clerk, $1,200;" so as to read:

Two civil engineers or computers, at $1,500 each; draftsman, $1,400; clerk, $1,200, etc.

The amendment was agreed to.

The next amendment was, on page 3, line 12, to increase the appropriation for the salary of the property clerk, who shall supervise the purchase and distribution and have custody of all supplies and stores for the use of the government of the District of Columbia, from $1,800 to $2,000.

The amendment was agreed to.

The next amendment was, on page 3, line 18, after the word "each," to insert "draftsman, $1,200; clerk and stenographer, $1,000;" and in line 21, before the word "thousand," to strike out "seventy-three" and insert "seventy-eight;" so as to read:

Draftsman, $1,200; clerk and stenographer, $1,000; five members of the plumbing board, at $300 each; in all, $78,499.

The amendment was agreed to.

The next amendment was, on page 4, line 2, after the word "each," to strike out "one clerk, $720" and insert "two clerks, at $720 each;" in line 9, before the word "dollars," to strike out "nine hundred" and insert "one thousand two hundred;" in the same line, after the word "dollars," to insert "one messenger, $600; one driver, $480;" and in line 11, before the word "hundred," to strike out "eighteen thousand three" and insert "twenty thousand four;" so as to make the clause read:

For one clerk, $1,500; seven clerks, at $1,200 each; two clerks, at $900 each; two clerks, at $720 each; three clerks, at $600 each; one clerk, $480; and one superintendent of construction, $1,200; one inspector of fuel, $1,500; one assistant inspector of fuel, $1,200; one messenger, $600; one driver, $480; in all, $20,400.

The amendment was agreed to.

The next amendment was, on page 5, line 6, after the word "dollars," to insert:

And the employees in the office of the assessor may be assigned to duty in the preparation of said numerical book in addition to their regular duties, and may be allowed a reasonable compensation for such additional services from said appropriation;

So as to make the clause read:

For assessor's office: For assessor, $3,500 and $500 additional as chairman of the excise and personal tax boards; two assistant assessors, at $2,000 each; two clerks, at $1,400 each; clerk, arrears division, $1,400; four clerks, at $1,200 each; draftsman, $1,200; four clerks, at $1,000 each; assistant or clerk, $900; clerk in charge of records, $1,000; two clerks, at $900 each; license clerk, $1,200; two clerks, at $1,000 each; inspector of licenses, $1,200; assistant inspector of licenses, $1,000; messenger, $600; three assistant assessors, at $3,000 each; clerk to board of assistant assessors, $1,500; messenger and driver, for board of assistant assessors, $600; temporary clerk hire, $500; temporary clerk hire for preparing numerical book, $2,500, and the employees in the office of the assessor may be assigned to duty in the preparation of said numerical book in addition to their regular duties, and may be allowed a reasonable compensation for such additional services from said appropriation; in all, $46,000.

The amendment was agreed to.

The next amendment was, on page 5, line 17, after the word "each," to insert "appraiser of personal property, $1,800;" and in line 22, before the word "dollars," to strike out "fifteen thousand two hundred" and insert "seventeen thousand;" so as to make the clause read:

Personal tax board: For two assistant assessors of personal taxes, at $3,000 each; appraiser of personal property, $1,800; clerk, $1,400; assistant clerk, $1,000; four inspectors, at $1,200 each; extra clerk hire, $2,000; in all, $17,000.

The amendment was agreed to.

The next amendment was, on page 7, line 19, after the word "dollars," to insert "hostler and laborer, $365;" and in line 21, before the word "dollars," to insert "three hundred and sixty-five;" so as to make the clause read:

For coroner's office: For coroner, $1,800; morgue master, $720; assistant morgue master and janitor, $480; hostler and laborer, $365; in all, $3,365.

The amendment was agreed to.

The next amendment was, on page 7, line 25, before the word "dollars," to strike out "six hundred and eighty" and insert "eight hundred;" and on page 8, line 2, before the word "dollars," to strike out "six hundred and eighty" and insert "eight hundred;" so as to make the clause read:

For market masters: For two market masters, at $1,200 each; one market master, $600; for hire of laborers for cleaning markets, $1,800; in all, $4,800.

The amendment was agreed to.

The next amendment was, in the items for "engineer's office, record division," on page 8, line 16, to increase the appropriation for the salary of two messengers from $480 each to $540 each.

The amendment was agreed to.

The next amendment was, on page 9, line 12, to increase the appropriation for the salary of messenger from $480 to $540.

The amendment was agreed to.

The next amendment was, on page 9, line 23, to increase the appropriation for the salary of assistant permit clerk from $840 to $900.

The amendment was agreed to.

The next amendment was, on page 10, line 1, to increase the total appropriation for maintenance of the engineer's office, record division, from $65,632 to $65,872.

The amendment was agreed to.

The next amendment was, in the items for the maintenance of persons now authorized and being paid from general appropriations, on page 11, line 10, to increase the appropriation for the salaries of two skilled laborers from $500 to $600 each.

The amendment was agreed to.

The next amendment was, on page 12, line 9, to increase the total appropriation for the employment of persons now authorized and being paid from the general appropriations from $111,140 to $111,340.

The amendment was agreed to.

The next amendment was, on page 13, line 10, after the word "dollars," to insert:

One blacksmith, $900; one mechanic, $780; one mechanic's helper, $600; one hostler, $550; nine dumpmen, at $480 each; one laborer, $450.

and in line 16, before the word "hundred," to strike out "fourteen thousand seven" and insert "twenty-two thousand three;" so as to make the clause read:

For superintendent of stable, $1,050; foreman of repairs, $1,000; one clerk, $1,500; one clerk, $1,200; six inspectors, at $1,200 each; two inspectors, at $900 each; one weigh clerk, $950; one blacksmith, $900; one mechanic, $780; one mechanic's helper, $600; one hostler, $550; nine dumpmen, at $480 each; one laborer, $450; in all, $22,300.

The amendment was agreed to.

The next amendment was, on page 13, line 24, after the word "dollars," to insert "clerk and appraiser, $1,000;" and on page 14, line 2, before the word "thousand," to strike out "seven" and insert "eight;" so as to make the clause read:

Department of insurance: For superintendent of insurance, $3,000; examiner, $1,500; clerk, $1,000; statistician, $1,400; clerk and appraiser, $1,000; temporary clerk hire, $600; in all, $8,500.

The amendment was agreed to.

The next amendment was, on page 15, line 13, before the word "attendants," to strike out "two" and insert "three;" in line 14, before the word "attendants," to strike out "four" and insert "five;" in line 15, before the word "messengers," to strike out "two" and insert "three;" in line 16, before the word "pages," to strike out "four" and insert "five;" in line 20, before the word "charwomen," to strike out "four" and insert "five;" and in line 22, before the word "dollars," to strike out "twenty-three thousand four hundred and twenty" and insert "twenty-five thousand and forty;" so as to make the clause read:

Free public library: For librarian, $2,500; assistant librarian, $1,000; assistant, $900; four assistants, at $720 each; two assistants, at $600 each; three assistants, at $540 each; copyist, $480; cataloger, $900; cataloguer, $720; cataloguer, $600; three temporary cataloguers, at $540 each; stenographer and typewriter, $720; three attendants, at $480 each; five attendants, at $360 each; three messengers, at $360 each; five pages, at $240 each; two janitors, at $480 each, one of whom shall act as a night watchman; engineer, $900; fireman, $540; workman, $480; five charwomen, at $180 each; in all, $25,040.

The amendment was agreed to.

Mr. ALLISON. On page 15, line 23, after the word "Sundays," I move to strike out the words "two o'clock and ten minutes" and insert "from two o'clock post meridian to ten o'clock;" and in line 25, after the word "holidays," to insert insert the word "from."

The PRESIDING OFFICER (Mr. GALLINGER in the chair). The amendment will be stated.

The SECRETARY. On page 15, line 23, after the word "Sundays," it is proposed to strike out "two o'clock and ten minutes" and to insert "from two o'clock post meridian to ten o'clock;" and in line 25, after the word "days," to insert "from;" so as to make the clause read:

For keeping the library open fifty-two Sundays, from 2 o'clock p. m. to 10 o'clock p. m. (eight hours), five holidays from 10 o'clock a. m. to 10 o'clock p. m. (twelve hours), and for extra services, three hours on Saturday afternoons during July, August, and September, $1,700.

The amendment was agreed to.

Mr. ALLISON. I have agreed with one or two Senators to yield to them for a few moments. Before doing so, however, I beg leave to offer an amendment to come in on page 5, at the end of line 11. I move to insert at that point what I send to the Secretary's desk.

The PRESIDING OFFICER. The amendment will be stated.

The SECRETARY. On page 5, line 11, after the word "dollars," it is proposed to insert:

And the assessor of the District of Columbia is hereby authorized, in his discretion, to accept without penalty all returns of gross earnings made by companies or corporations on or before August 8, 1904, as if the same had been made on the 1st day of August, 1904.

The amendment was agreed to.

Mr. ALLISON. Now, Mr. President, I will yield to the Senator from South Dakota [Mr. KITTREDGE].

BOUNDARY LINE BETWEEN SOUTH DAKOTA AND NEBRASKA.

Mr. KITTREDGE. I ask unanimous consent for the present consideration of the bill (S. 7117) establishing that portion of the boundary line between the State of South Dakota and the State of Nebraska south of Union County, S. Dak.

The PRESIDING OFFICER. The Senator from South Dakota asks unanimous consent for the consideration of the bill named by him, which will be read for the information of the Senate.

The Secretary read the bill, as follows:

Be it enacted, etc., That the portion of the boundary line between the State of South Dakota and the State of Nebraska lying and being south of Union County, S. Dak., shall be in the middle of the main channel of the Missouri River as now existing and the compact between said States establishing said boundary line is hereby approved.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

OMNIBUS CLAIMS BILL.

Mr. WARREN. I desire to submit a conference report on the bill (H. R. 9548) for the allowance of certain claims for stores and supplies reported by the Court of Claims under the provisions of the act approved March 3, 1883, and commonly known as the Bowman Act. In view of the late hour and the somewhat small attendance, I am willing that the report shall be printed and lie over until morning, and I will call it up immediately after the morning business.

The PRESIDING OFFICER. Does the Senator desire to have the report printed in the RECORD?

Mr. WARREN. I desire to have it printed in the RECORD, so that Senators may have the benefit of reading it, and I will call it up in the morning.

The PRESIDING OFFICER. Without objection, that order will be made.

The report is as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 9548) for the allowance of certain claims for stores and supplies reported by the Court of Claims under the provisions of the Act approved March third, eighteen hundred and eighty-three, and commonly known as the Bowman Act, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 3, 4, 5, 6, 11, 13, 19, 23, 27, 32, 37, 41, 42, 45, 46, 50, 52, 56, 58, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 84, 86, 87, 92, 93, 95, 96, 98, 105, 107, and 108.

That the House recede from its disagreement to the amendments of the Senate numbered 7, 8, 9, 10, 12, 16, 17, 18, 20, 21, 22, 24, 25, 26, 28, 30, 31, 33, 34, 35, 36, 40, 44, 47, 49, 51, 53, 55, 57, 81, 82, 83, 88, 89, 90, 91, 99, 100, 101, 102, 103, 104, 106, 109, 110, and 111, and agree to the same.

Amendment numbered 1: That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment, as follows: On page 20 of said amendment strike out lines 12, 13, and 14; on page 26, line 22, strike out "twenty", and insert in lieu thereof "ten"; on page 77, line 17, strike out "McCause", and insert in lieu thereof "McCance"; and on page 78, line 14, strike out "Hoskins", and insert in lieu thereof "Haskins"; and the Senate agree to the same.

Amendment numbered 2: That the Senate recede from its disagreement to the amendment of the House to the amendment of the Senate numbered 2, and agree to the same with an amendment, as follows: On page 89, strike out line 10; and in lieu of the matter proposed to be inserted by said amendment of the House, insert the following:

"MISCELLANEOUS CLAIMS AND COURT OF CLAIMS FINDINGS.

"To the trustees of the Memphis Conference Female Institute, Jackson, Tennessee, twelve thousand dollars, as compensation for occupancy and damages to said institute by the Army of the United States during the war for the suppression of the rebellion.

"To Elizabeth A. Ballew, of Kerrville, Texas, one hundred dollars, being for beef cattle furnished United States troops in the year eighteen hundred and sixty-five.

"To Eliza E. Hebert, of Iberville Parish, Louisiana, twenty-one thousand and ninety dollars, for stores and supplies furnished the Army of the United States during the civil war.

"To N. N. Lowry, of Carroll County, Georgia, the sum of one hundred and twenty-five dollars, being for the value of a mule sold to United States military authorities during the war for the suppression of the rebellion.

"To the members of the band of the Second Regiment Wisconsin Volunteer Infantry, for the hire, use, and unavoidable damage to certain band instruments, their private property, while in the service of the United States during the recent war with Spain, and to pay to each of said men, or to the heirs, administrators, and assigns of such of them as shall have in the meantime deceased, the sums which appear opposite their names, as follows, to wit: Henry Johnson, thirty-seven dollars and sixteen cents; Charles E. Collar, twenty-one dollars and

ninety-one cents; Frank Novotny, seventeen dollars and thirty-three cents; Robert Brand, junior, deceased, fifty-five dollars; Louis Simmet, five dollars; Fred W. Kohl, twelve dollars and sixteen cents; Eugene R. Billett, eight dollars and eighty-three cents; Frank A. Kroeff, eighteen dollars and thirty-three cents; Albert Boehm, seven dollars and eighty-three cents; Frank H. Kempt, twenty-two dollars and sixteen cents; Herman F. Discher, six dollars and sixty-six cents; Joseph J. Nussbaumer, twenty-two dollars and sixteen cents; Henry Ebeling, junior, three dollars and fifty cents; Herman Nagel, twenty-two dollars and eighty-three cents; Ferdinand Wetzel, forty dollars and fifty cents; Charles Neumann, eleven dollars and sixteen cents; George Johnson, twenty-five dollars; Ambrosius Jachinski, twenty-two dollars and sixteen cents; Oscar Hensel, seven dollars and eight cents; William J. Trier, deceased, thirty-six dollars and fifty cents; Adolph G. Markworth, thirteen dollars and sixteen cents; total, four hundred and sixteen dollars and forty-two cents.

"To Edwin P. Brewer, captain, Seventh Regiment United States Cavalry, United States Army, the sum of one hundred and ninety dollars and twenty-six cents, said sum of money having been deducted and stopped against his pay for a loss of certain commissary stores and supplies which occurred by reason of the defalcations and peculations of Post Commissary-Sergeant Maltby, at Fort Huschuca, Arizona, during the summer of eighteen hundred and ninety-six, as shown by official reports filed in the office of the Auditor for the War Department.

"To Margaret Dalton, widow of George Dalton, deceased, late of Pottsville, Schuylkill County, Pennsylvania, the sum of three hundred dollars, being the sum unlawfully collected from the said George Dalton by the board of enrollment when drafted for service in the Army, he not being a citizen of the United States at the time.

"To Erick Haugen, of Spring Valley Township, Rock County, Wisconsin, the sum of three hundred dollars, being the sum unlawfully collected from him by the board of enrollment, namely, three hundred dollars to furnish a substitute when drafted for service in the Army, he not being a citizen of the United States.

"To the heirs or assigns of George T. Howard, late of San Antonio, Texas, the sum of two thousand and seventy-seven dollars and eighty cents, out of any money not otherwise appropriated, in full settlement of the amount found to be due the said George T. Howard by a board of survey appointed for the purpose of assessing damages done to his property by troops of the United States.

"To M. A. Gantt and Son, of Conecuh County, Alabama, the sum of one hundred dollars and fifty cents, for board and lodging furnished by them to volunteer soldiers who enlisted in the Second Regiment Alabama Volunteer Infantry during the Spanish-American war.

"To Elliott K. Pennebaker, administrator of Warren Mitchell, deceased, late of Louisville, Kentucky, the sum of one hundred and twenty-eight thousand six hundred and ninety-two dollars and twenty-two cents.

"To Benjamin Burrows, of Orleans County, Vermont, the sum of three hundred dollars, being the sum unlawfully collected from him by the board of enrollment when drafted for service in the Army, and who was rejected upon examination by surgeons.

"To the legal representatives of John Schlipf, or Stipp, deceased, late of Crawford County, Pennsylvania, the sum of three hundred dollars, being the sum unlawfully collected from him by the board of enrollment when drafted for service in the Army in eighteen hundred and sixty-four.

"To Michael Kries, of Atlanta, Georgia, seven thousand four hundred and four dollars, being for tobacco furnished the Army during the civil war.

"To the First Presbyterian Church of Knoxville, Tennessee, three thousand dollars, being for use, occupation, and damage to their church during the civil war by United States troops.

"To the Vestry of Christ Episcopal Church, of Holly Springs, Mississippi, six hundred dollars, being for the use and occupation of their building by United States troops during the war for the suppression of the rebellion.

"To the Methodist Episcopal Church (colored), of Rome, Georgia, two thousand five hundred dollars, being for brick and other building materials taken and used by the military forces of the United States for their use during the war for the suppression of the rebellion.

"That the Secretary of the Treasury be, and he is hereby, directed to resettle and readjust, all claims of the States of New York, Pennsylvania, and Delaware, for and on account of advances and expenditures made by said States in the war of eighteen hundred and twelve to eighteen hundred and fifteen with Great Britain; and in computing interest on said advances the Secretary of the Treasury shall apply the same rule as that which was applied in the settlement of the like claim of the State of Maryland, under the provisions of the Act of Congress 'approved the third day of March, eighteen hundred and fifty-seven.'

"For the allowance of claims of certain citizens of Virginia for damages to their property incident to the encampment at Manassas and march from Camp Alger to Thoroughfare Gap, Virginia, as recommended by a board of officers appointed for the consideration of claims for damages to property by volunteer soldiers during the war with Spain.

VIRGINIA.

"To B. F. Adams, of Prince William County, one hundred and fifty-seven dollars.

"To David J. Arrington, of Prince William County, eighty-four dollars.

"To Albert G. Beckwith, of Fairfax County, thirty-eight dollars.

"To A. M. Brady, of Prince William County, eighteen dollars and thirty cents.

"To Joseph Brent, of Fairfax County, thirty-eight dollars and fifty cents.

"To A. H. Buckner, two hundred and twenty-seven dollars and fifty cents.

"To G. H. Burke, of Fairfax County, forty-six dollars and seventeen cents.

"To R. A. Burke, of Fairfax County, sixty-four dollars and fifty cents.

"To William Chloe, of Fairfax County, nine dollars.

"To S. W. Cooksey, of Prince William County, nine dollars.

"To Mrs. J. W. Cooksey, of Fairfax County, thirty-nine dollars and fifty cents.

"To Doctor A. G. Coumbe, of Fairfax County, six dollars.

"To R. R. Crosen, of Fairfax County, thirty-eight dollars and seventy-five cents.

"To William A. Crouch, of Fairfax County, twenty-three dollars and fifty-five cents.

"To Robert H. Davis, of Prince William County, fifteen dollars.

"To John L. Ditweiler, of Fairfax County, thirty-three dollars and thirty-seven cents.

"To S. H. Ditweiler, of Fairfax County, eighty dollars.

"To Albert A. Dewey, of Fairfax County, thirty dollars.

"To T. E. H. Dickens, of Prince William County, forty-nine dollars and fifty cents.

"To C. C. Dulaney, of Prince William County, fifty dollars.

"To Robert Dulaney, of Prince William County, fifty dollars.

"To B. F. Fairfax, of Fairfax County, twenty-seven dollars and fifty cents.

"To Elvira C. Finn, of Fairfax County, three dollars.

"To Mrs. Margaret M. Fitzhugh, of Fairfax County, thirty-seven dollars and seventy-five cents.

"To J. T. Flaherty, of Prince William County, nineteen dollars and fifty cents.

"To Thomas Fletcher, of Fairfax County, forty-two dollars and forty-five cents.

"To Mrs. Jane R. Foley, of Prince William County, thirty-three dollars.

"To Mary Gaskins, of Fairfax County, nine dollars.

"To Peter Grigsby, of Prince William County, four dollars.

"To John B. Hart, of Fairfax County, fifty-four dollars and sixty-five cents.

"To Spencer Hoskins, of Prince William County, six dollars and twenty-five cents.

"To Miss Ollie Hinson, of Prince William County, thirty-one dollars.

"To Mrs. B. J. Holden, of Fairfax County, fourteen dollars and ninety-five cents.

"To David J. Hottenstein, of Prince William County, thirty-one dollars.

"To Henry James, of Prince William County, three dollars.

"To Peyton Johnson, of Prince William County, forty dollars.

"To J. A. Kinchloe, of Fairfax County, fifty dollars.

"To W. S. Kinchloe, of Fairfax County, twenty-four dollars.

"To J. P. Leachman, of Prince William County, eleven dollars.

"To Mack Lewis, of Prince William County, forty dollars.

"To Charles Lions, of Prince William County, thirty-two dollars.

"To Samuel Lloyd, senior, of Prince William County, twenty-two dollars and forty-nine cents.

"To Joseph Long, of Prince William County, three dollars and seventy-five cents.

"To Miss Dollie Lynch, of Prince William County, eight dollars.

"To Charles L. Marshall, of Fairfax County, sixteen dollars and fifty cents.

"To Joseph Mayhugh, of Prince William County, nine dollars and seventy-five cents.

"To James J. McGahey, of Fairfax County, eighty-two dollars and ten cents.

"To Andrew Nelson, of Fairfax County, forty-one dollars and ninety-five cents.

"To Charles Parker, of Fairfax County, twenty-one dollars and seventy-five cents.

"To C. B. Parker, of Fairfax County, nine dollars.

"To R. T. Payne, of Prince William County, twenty-five dollars and forty cents.

"To Bell Phillips, of Fairfax County, ten dollars.

"To Miss C. Pullin, of Prince William County, seven dollars.

"To F. P. Rittenour, of Fairfax County, sixty dollars.

"To Milton A. Rollins, of Prince William County, eighteen dollars.

"To Alvin H. Rouse, of Prince William County, fifty-six dollars and seventy-five cents.

"To James Shirley, of Prince William County, nine dollars.

"To Joseph L. Speakes, of Prince William County, eighty-five dollars and sixty-five cents.

"To Henry E. Spittle, of Prince William County, twenty-five dollars and ten cents.

"To John Sutfin, of Prince William County, eleven dollars.

"To C. F. Swetnam, of Fairfax County, thirty-eight dollars and five cents.

"To David Williams, of Fairfax County, one hundred and three dollars and fifty cents.

"To E. N. Woodyard, of Prince William County, seven dollars.

"To G. B. Wright, of Fairfax County, six dollars.

"To Saint John's Lodge, Numbered Three, Ancient Free and Accepted Masons, of Newbern, North Carolina, five thousand dollars, being for use and occupation of their lodge building for three years during the civil war.

"For payment of amounts certified by the Court of Claims in House Document Numbered One hundred and forty-seven, third session Fifty-eighth Congress, as follows:

"To Lawrence H. Rousseau, of Pulaski County, Kentucky, late colonel Twelfth Regiment Kentucky Volunteer Infantry, the sum of four hundred and thirty-five dollars and eighty-two cents.

"To Carrie M. Boone, of Jefferson County, Kentucky, widow of John Rowan Boone, late colonel Twenty-eighth Regiment of Kentucky Volunteer Infantry, the sum of five hundred and twenty-eight dollars and sixteen cents.

"To Oliver P. Anderson, of Floyd County, Indiana, late colonel Eighty-first Regiment Indiana Volunteer Infantry, the sum of one hundred and seventy-nine dollars and seventy-three cents.

"To Jacob Bedtelyou, of Lapeer County, Michigan, late captain Fourth Regiment Michigan Volunteer Cavalry, the sum of twenty dollars and fifty-nine cents.

"To William B. Britton, of Rock County, Wisconsin, late colonel Eighth Regiment Wisconsin Volunteer Infantry, the sum of three hundred and ninety-two dollars and ninety-two cents.

"To Alfred A. Garlock, of Ionia County, Michigan, late second lieutenant, Tenth Regiment Michigan Volunteer Cavalry, the sum of sixty-four dollars and eighty-six cents.

"To Samuel E. Hill, of Fayette County, Kentucky, late captain Twelfth Regiment Kentucky Volunteer Cavalry, the sum of two hundred and ninety-two dollars and nineteen cents.

"To Maria Kerby, of Garrard County, Kentucky, widow of William M. Kerby, late captain Seventh Regiment Kentucky Volunteer Cavalry, the sum of seventy-six dollars and fifty-three cents.

"To Elizabeth B. Walker, of Hardin County, Kentucky, widow of Thomas B. Waller, late colonel Twentieth Regiment Kentucky Volunteer Cavalry, the sum of fifty-four dollars and forty cents.

"To John H. Ward, of Jefferson County, Kentucky, late colonel Twenty-seventh Regiment Kentucky Volunteer Infantry, the sum of two hundred and sixty-five dollars and forty-one cents.

"To John S. White, of Lafayette County, Missouri, late colonel Sixteenth Regiment Kentucky Volunteer Infantry, the sum of one hundred and twenty dollars and thirty-six cents.

"To Thomas C. Sweeney, of Wheeling, West Virginia, ten thousand and forty dollars.

"To William B. Horner, of Lawrence County, Pennsylvania, one thousand two hundred and fifty dollars.

"To the rector, warden, and vestrymen of Saint Philip's Episcopal Church, of Atlanta, Georgia, three thousand seven hundred and sixty dollars.

"To Fredrick S. Corbett and Henry C. Corbett, administrators of Sewell B. Corbett, deceased, of Alexandria County, Virginia, five thousand seven hundred and ninety-one dollars.

"To Elza W. Harper, administrator of Thomas J. Whitman, deceased, of Hart County, Kentucky, three thousand four hundred and sixty-five dollars.

"To The Washington Loan and Trust Company, administrator of Louisa Summers, deceased, late of Fairfax County, Virginia, one thousand eight hundred and sixty-four dollars.

"To Jennie E. Haller, administratrix of Samuel M. Haller, deceased, of Cumberland, Maryland, six hundred dollars.

"To S. S. Bradford, administrator of Maria Gibson, deceased, of Culpeper County, Virginia, three thousand two hundred and seventy-six dollars.

"To Carrie Yancey, administratrix of A. W. McCauley, deceased, of Benton County, Mississippi, four thousand five hundred and twenty-five dollars.

"To the heirs at law of Alice Hardaway, deceased, of Benton County, Mississippi, two thousand eight hundred and twenty-five dollars;"

And the House agree to the same.

Amendment numbered 14: That the House recede from its disagreement to the amendment of the Senate numbered 14, and agree to the same with an amendment, as follows: On page 151, lines 21 and 22, strike out "twelve thousand two hundred and ninety-one," and insert in lieu thereof "seven thousand five hundred;" and the Senate agree to the same.

Amendment numbered 15: That the House recede from its disagreement to the amendment of the Senate numbered 15, and agree to the same with an amendment, as follows: On page 152, lines 3 and 4, strike out "seven thousand nine hundred and eighty-seven," and insert in lieu thereof "five thousand;" and the Senate agree to the same.

Amendment numbered 29: That the House recede from its disagreement to the amendment of the Senate numbered 29, and agree to the same with an amendment, as follows: On page 157, strike out the whole of lines 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22, and insert in lieu thereof the following:

"That the Secretary of the Treasury be, and he is hereby, authorized and directed to examine and settle the claim of the Grand Rapids and Indiana Railway Company, for transporting the United States mail under its present corporate name and under its former corporate name, the Grand Rapids and Indiana Railroad Company, over postal routes numbered twenty-four thousand and eighteen and one hundred and thirty-seven thousand and eighteen, during the period between July first, eighteen hundred and seventy-six, and June twenty-seventh, eighteen hundred and ninety-six, both inclusive, allowing said company whatever sum may be found due, not exceeding twenty-five thousand and thirty-nine dollars and seventy-five cents: *Provided*, That the sum found due shall be accepted by the said company as full satisfaction of all of its claims against the United States arising from such services. And the said sum found due is hereby appropriated out of any money in the Treasury not otherwise appropriated";

And the Senate agree to the same.

Amendment numbered 38: That the House recede from its disagreement to the amendment of the Senate numbered 38, and agree to the same with an amendment, as follows: On page 161, line 7, strike out "eight," and insert in lieu thereof "five;" and the Senate agree to the same.

Amendment numbered 39: That the House recede from its disagreement to the amendment of the Senate numbered 39, and agree to the same with an amendment, as follows: On page 161, line 17, strike out "fifteen thousand" and insert in lieu thereof "ten thousand five hundred;" and in line 20 strike out "five thousand," and insert in lieu thereof "three thousand five hundred;" and the Senate agree to the same.

Amendment numbered 43: That the House recede from its disagreement to the amendment of the Senate numbered 43, and agree to the same with an amendment, as follows: On page 163, lines 6 and 7, strike out "seven thousand and forty-six dollars and twenty cents," and insert in lieu thereof "five thousand dollars;" and the Senate agree to the same.

Amendment numbered 48: That the House recede from its disagreement to the amendment of the Senate numbered 48, and agree to the same with an amendment, as follows: On page 165, line 8, strike out "devisees", and insert in lieu thereof "representatives"; and the Senate agree to the same.

Amendment numbered 54: That the House recede from its disagreement to the amendment of the Senate numbered 54, and agree to the same with an amendment, as follows: On page 167, line 24, strike out "fifteen thousand", and insert in lieu thereof "seven thousand five hundred"; and the Senate agree to the same.

Amendment numbered 59: That the House recede from its

disagreement to the amendment of the Senate numbered 59, and agree to the same with an amendment, as follows: On page 170, line 11, strike out "allowed", and insert in lieu thereof "certified"; and the Senate agree to the same.

Amendment numbered 60: That the House recede from its disagreement to the amendment of the Senate numbered 60, and agree to the same with an amendment, as follows: On page 172, line 12, strike out "allowed", and insert in lieu thereof "certified;" and the Senate agree to the same.

Amendment numbered 80: That the House recede from its disagreement to the amendment of the Senate numbered 80, and agree to the same with an amendment, as follows: On page 178, line 17, strike out "the different counties", and insert in lieu thereof "Gila County"; and in line 19 strike out "counties", and insert in lieu thereof "county"; and on page 179, line 3, strike out "counties", and insert in lieu thereof "county"; and in line 3 strike out "amounts", and insert in lieu thereof "amount"; and the Senate agree to the same.

Amendment numbered 85: That the House recede from its disagreement to the amendment of the Senate numbered 85, and agree to the same with an amendment, as follows: On page 181 strike out the whole of lines 17, 18, 19, 20, 21, 22, 23, and 24; and on page 182 strike out the whole of lines 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, and insert in lieu thereof the following:

"That the Secretary of the Treasury be, and he is hereby, directed to pay to Walter H. Taylor, administrator of Richard Taylor, deceased, of Norfolk, Virginia, the sum of eleven thousand nine hundred and forty-six dollars and eighty-one cents, remaining unpaid, of the amount appropriated to be paid to John A. Brimmer, junior, administrator of John Gilliat, deceased, of the firm of Gilliat and Taylor, in the Act entitled "An Act making appropriations to supply deficiencies in the appropriation for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for prior years, and for other purposes;" the same not being an assigned claim within the limitations of this Act, but an asset conveyed by deed in the dissolution of the partnership of Gilliat and Taylor, said deed of conveyance of this claim from John and Thomas Gilliat of said firm to Richard Taylor being dated May twelfth, eighteen hundred, and prior to the ratification of the Treaty of September, thirtieth, eighteen hundred. And so much of the Act of June thirtieth, eighteen hundred and ninety-one, as authorized the payment of the said sum of eleven thousand nine hundred and forty-six dollars and eighty-one cents to the administrator of John Gilliat, deceased, is hereby repealed;"

And the Senate agree to the same.

Amendment numbered 94: That the House recede from its disagreement to the amendment of the Senate numbered 94, and agree to the same with an amendment, as follows: On page 194, strike out the whole of lines 17, 18, 19, 20, 21, 22, 23, and 24; and on page 195 strike out the whole of lines 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, and in lieu of the matter stricken out, insert the following:

"To John S. Mosby, of Virginia, the sum of three thousand nine hundred and fifty dollars, being for the value of seven thousand nine hundred pounds, more or less, of tobacco taken and used by United States military forces in the year eighteen hundred and sixty-five. But it is provided that any portion of such sums representing tobacco beneficially belonging to the father, sister, or other relatives of said Mosby, shall be held in trust by him accordingly;"

And the Senate agree to the same.

Amendment numbered 97: That the House recede from its disagreement to the amendment of the Senate numbered 97, and agree to the same with an amendment, as follows: On page 198, line 1, strike out "damage or;" and in line 6 strike out "or," and insert in lieu thereof "and;" and in line 12, strike out "damage or;" and at the end of line 12 insert "not exceeding the sum of fifty thousand dollars;" and the Senate agree to the same.

F. E. WARREN,
WM. M. STEWART,
THOMAS S. MARTIN,
Managers on the part of the Senate.

THAD. M. MAHON,
THEO. OTJEN,
T. W. SIMS,
Managers on the part of the House.

Statement of managers on part of the Senate.

The managers on the part of the Senate at the conference on the disagreeing votes of the two Houses on the bill (H. R. 9548) for the allowance of certain claims for stores and supplies reported by the Court of Claims under the provisions of the act approved March 3, 1883, and commonly known as the "Bowman Act," submit the following written statement in explanation of the effect of the action agreed upon and submitted in the accompanying conference report on the amendments of the Senate, namely:

The bill as reported by the Senate carried amounts as follows:

(1) SUMMARY.

	Number of claimants.	Amount.
Bowman and Tucker Act claims	921	$1,358,817.52
French spoliation claims	529	752,660.93
Miscellaneous Court of Claims findings	4	79,367.22
Miscellaneous claims	125	375,206.00
For investigation and report (to Congress)	1	
For investigation and settlement (by Departments)	6	
For reference to the Court of Claims	14	
For reference to Court of Admiralty	2	
For relief from liability	10	
Total	1,612	2,566,051.67

(2) During consideration of bill by the Senate, the following amounts were added:

Bowman and Tucker Acts claims:	
Arkansas—Gordon	$5,705.00
District of Columbia—Carpenter	1,253.00
Maryland—Blackistone	6,326.00
Mississippi—Gray	2,370.00
Mississippi—Worthington	18,835.00
Total	34,489.00
Miscellaneous claims (direct appropriation):	
Captain Butt	480.00
Chesapeake Bank	2,396.28
Major Halford	165.44
Mullett	2,062.06
Sweeney	5,000.00
Wiel & Anumsden	8,524.10
Gray	356.10
Total	18,983.98

Making total Bowman and Tucker Act claims $1,393,306.52.

Making total miscellaneous claims for direct appropriation $394,189.98.

(3) These additions would make the above summary, corrected, as follows:

SUMMARY.

	Number of claimants.	Amount.
Bowman and Tucker acts claims	926	$1,393,306.52
French spoliation claims	529	752,660.93
Miscellaneous Court of Claims findings	4	79,367.22
Miscellaneous claims	132	394,189.98
For investigation and report (to Congress)	1	
For investigation and settlement (by Departments)	67	
For reference to the Court of Claims	14	
For reference to Court of Admiralty	2	
For relief from liability	10	
Total	1,685	2,619,524.65

Total amount carried by bill as it passed Senate, $2,619,524.65.

(4) *Amounts in bill as it passed Senate, afterwards dropped in conference.*

Bowman and Tucker Act claims:	
Louisiana—Citizens' Bank	$215,820.89
Maryland—Targarona (cut from $20,000 to $10,000)	10,000.00
Total	225,820.89
Miscellaneous Court of Claims findings:	
Julia L. Hall	8,664.19
Leo L. Johnson	37,351.49
Sarah J. Montgomery	18,769.50
Michael B. Ryan	14,582.04
Total	79,367.22
Miscellaneous claims (for direct appropriation):	
Elizabeth L. W. Bailey	10,519.20
Emile Blum	5,000.00
A. G. Boone (cut from $12,291 to $7,500)	4,791.00
Priscilla R. Burns (cut from $7,987 to $5,000)	2,987.00
Mary A. Coulson	3,950.00
James H. Dennis	26,538.00
Eleonora G. Goldsborough	7,200.00
Grand Rapids and Indiana Railway Company (deducted because change from direct appropriation to "For investigation and settlement")	25,039.75
Charles R. Hooper	3,000.00
W. J. Kountz	12,487.14
Jean Louis Legare (cut from $8,000 to $5,000)	3,000.00
Newport disaster (cut from $15,000 to $10,500)	4,500.00
Pacific Pearl Mullett	2,062.06
Emma Morris	2,097.83
Edward H. Murrell (cut from $7,046.20 to $5,000)	2,046.20
Postal Telegraph-Cable Company	2,155.19
Potomac Steamboat Company	5,090.00
John Stewart	2,000.00

Miscellaneous claims—Continued.	
Thomas C. Sweeney	$5,000.00
Lincoln W. Tibbetts (cut from $15,000 to $7,500)	7,500.00
Van Senden & Kay (W. R. Austin & Co.)	35,000.00
Ramon O. Williams and Joseph A. Springer	2,422.62
Henry O. Bassett	142.59
Lottie Bowman	427.17
R. W. Bullock	95.21
Henry Fulenwider	10,892.86
Georgia Railroad and Banking Company	4,880.68
Peter Johnson	1,859.91
Alabama and Tennessee River Railroad Company	11.00
Charlotte and South Carolina Railroad Company	4,589.01
D. S. Farrar	63.52
Greenville and Columbia Railroad Company	3,273.97
Laurens Railroad Company	375.00
Manassas Gap Railroad Company	89.12
Memphis and Charleston Railroad Company	20,947.93
Richmond and Danville Railroad Company	15.95
Richmond and York River Railroad Company	270.35
South Carolina Railroad Company	46.70
Western North Carolina Railroad Company	122.69
Malinda S. Gray	356.10
Total	222,845.75

(5) *Summary of amounts of Senate amendments dropped in conference.*

Bowman and Tucker acts claims	$225,820.89
Miscellaneous Court of Claims findings	79,367.22
Miscellaneous claims (for direct appropriation)	222,845.75
Total	528,033.86

(6) *Summary of amounts of Senate amendments retained in bill in conference*

	Number of claimants.	Amounts.
Bowman and Tucker acts claims	925	$1,167,485.63
French spoliation claims	529	752,660.93
Miscellaneous claims (for direct appropriation)	96	171,344.23
For investigation and report	1	
For investigation and settlement	65	
For reference to Court of Claims	7	
For reference to Court of Admiralty	2	
For relief from liability	7	
Total	1,632	2,091,490.79

(7) *Proof.*

Amount of bill as it passed Senate (see paragraph 3)	$2,619,524.65
Amount of Senate amendments dropped in conference (see paragraph 5)	528,033.86
Amount of Senate amendments retained in conference (see paragraph 6)	2,091,490.79

(8) Total amount of amendments proposed by the House to Senate amendment numbered 2, $293,580.98.

Amount of that amendment dropped in conference	67,211.38
Amount of that amendment retained in conference	226,369.60
Proof (see above total amount of amendment proposed)	293,580.98

(9) *Total of all Senate and House amendments retained in bill in conference.*

Total of Senate amendments retained (see paragraph 6)	$2,091,490.79
Total of House amendments to Senate amendment 2, retained (see paragraph 8)	226,369.60
Add claim of John S. Mosby (changed from "for reference to Court of Claims" to "direct appropriation")	3,950.00
Grand total	2,321,810.39

(10) FINAL SUMMARY.

	Number of claimants.	Amount.
Bowman and Tucker acts claims	946	$1,197,272.60
French spoliation claims	529	752,660.93
Miscellaneous claims (for direct appropriation)	199	371,876.86
For investigation and report (to Congress	1	
For investigation and settlement (by Departments)	68	
For reference to the Court of Claims	7	
For reference to Court of Admiralty	2	
For relief from liability	7	
Total	1,759	2,321,810.39

F. E. WARREN,
WM. M. STEWART,
THOMAS S. MARTIN,
Managers on the part of the Senate.

LIST OF ARBITRATION TREATIES, ETC.

Mr. LODGE presented a statement showing the constitutional methods of making and ratifying treaties in certain foreign countries, and also a list of arbitration treaties and conventions submitted to and acted upon by the Senate; which was ordered to be printed as a document.

EXECUTIVE SESSION.

Mr. ALLISON. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to and the Senate proceeded to the consideration of executive business. After three minutes spent in executive session the doors were reopened, and (at 5 o'clock and 35 minutes p. m.) the Senate adjourned until to-morrow, Wednesday, February 15, 1905, at 12 o'clock meridian.

CONFIRMATIONS.

Executive nomination confirmed by the Senate February 13, 1905.

POSTMASTER.

VIRGINIA.

Thomas L. Rosser to be postmaster at Charlottesville, in the county of Albemarle and State of Virginia.

Executive nominations confirmed by the Senate February 14, 1905.

ASSISTANT SECRETARY OF THE TREASURY.

James B. Reynolds, of Massachusetts, to be Assistant Secretary of the Treasury.

ASSOCIATE JUSTICE SUPREME COURT OF ARIZONA.

Eugene A. Tucker, of Nebraska, to be associate justice of the supreme court of the Territory of Arizona.

UNITED STATES ATTORNEY.

W. H. H. Llewellyn, of New Mexico, to be United States attorney for the district of New Mexico.

POSTMASTERS.

GEORGIA.

William H. Marston to be postmaster at Fitzgerald, in the county of Irwin and State of Georgia.

MASSACHUSETTS.

Benjamin Derby, jr., to be postmaster at Concord Junction, in the county of Middlesex and State of Massachusetts.

Frederic Robbins to be postmaster at Watertown, in the county of Middlesex and State of Massachusetts.

Herbert H. Russell to be postmaster at Waverley, in the county of Middlesex and State of Massachusetts.

Leonard A. Saville to be postmaster at Lexington, in the county of Middlesex and State of Massachusetts.

MISSISSIPPI.

Felicie L. Delmas to be postmaster at Scranton, in the county of Jackson and State of Mississippi.

Andrew J. Hyde to be postmaster at Meridian, in the county of Lauderdale and State of Mississippi.

NORTH CAROLINA.

Bernard W. Leavitt to be postmaster at Southern Pines, in the county of Moore and State of North Carolina.

James D. Parker to be postmaster at Smithfield, in the county of Johnston and State of North Carolina.

INJUNCTION OF SECRECY REMOVED.

On February 13, 1905:

Ordered, That the injunction of secrecy be removed from the proceedings on the so-called Olney-Pauncefote arbitration treaty with Great Britain, signed on January 11, 1897, including all amendments and votes thereon, and the yea-and-nay vote on the final disposition of the resolution of ratification.

On February 13, 1905:

Ordered, That the injunction of secrecy be removed from the views of the minority on the arbitration treaties with Great Britain and other European powers ratified by the Senate on February 11, 1905.

HOUSE OF REPRESENTATIVES.

TUESDAY, *February 14, 1905.*

The House met at 12 o'clock m.

Prayer by the Chaplain, Rev. HENRY N. COUDEN, D. D.

The journal of yesterday's proceedings was read, corrected, and approved.

PERSONAL EXPLANATION.

Mr. SULLIVAN of Massachusetts. Mr. Speaker——

The SPEAKER. The gentleman from Massachusetts.

Mr. SULLIVAN of Massachusetts. Mr. Speaker, I ask unanimous consent to make a personal explanation about a charge made on the floor yesterday by the gentleman from New York [Mr. HEARST], and I shall give the House this assurance, that in that explanation I will not reflect upon any Member of this body, but simply state the facts in the case. I believe it is due to me, now that the charge has been made, that I at least be permitted to explain it to the Members of this House.

The SPEAKER. Is there objection?

Mr. ROBINSON of Indiana. Reserving the right to object,