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FOUR MESSENGERS FOR HOUSE POST OFFICE.

APRIL 14, 1913.—Ordered to be printed.

Mr. LLOYD, from the Committee on Accounts, submitted the following

REPORT.

[To accompany H. Res. 23.]

The Committee on Accounts, to whom was referred House resolution 23, have had the same under consideration.

This resolution authorizes the appointment of four messengers for the House post office in addition to those regularly authorized in the appropriation act for the regular sessions of Congress. One of these messengers has been provided for by resolution during the previous sessions and it has now become necessary to provide the other three by reason of the increased membership and the fact that about 40 Members who must be furnished mail facilities are now in another building.

Believing this a necessary provision and a proper resolution, its adoption is recommended.

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63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 2.

MESSENGERS IN HOUSE POST OFFICE.

APRIL 14, 1913.—Ordered to be printed.

Mr. LLOYD, from the Committee on Accounts, submitted the following

REPORT.

[To accompany H. Res. 24.]

The Committee on Accounts, to whom was referred House resolution 24, authorizing the employment of seven messengers in the House post office, have had the same under consideration and recommend the following amendments:

In line 4, after the word "and," strike out the word "including" and insert the word "after."

In line 5, after the word "thirteen," insert the word "and."

This resolution simply provides for the same number of messengers during the special session as are provided for the regular session in the appropriation act, and believing it a proper resolution, its adoption is recommended.

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63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 3.

ANNA M. COULTRY.

APRIL 14, 1913.—Ordered to be printed.

Mr. LLOYD, from the Committee on Accounts, submitted the following

REPORT.

[To accompany H. Res. 38.]

The Committee on Accounts, to whom was referred House resolution 38, authorizing the Clerk of the House to pay to Anna M. Coultry, widow of P. L. Coultry, late assistant foreman in the folding room of the House, an amount equal to six months' salary of said P. L. Coultry, deceased, together with funeral expenses not exceeding $250, has had the same under consideration and recommend its adoption.

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63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 4.

CONSIDERATION OF SUNDRY CIVIL AND INDIAN APPROPRIATION BILLS.

APRIL 21, 1913.—Ordered to be printed.

Mr. POU, from the Committee on Rules, submitted the following

REPORT.

[To accompany H. Res. 41.]

The Committee on Rules, to whom was referred H. Res. 41, providing for consideration of sundry civil and Indian appropriation bills, having considered the same, beg to report it back to the House with the recommendation that it be adopted.

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House Calendar No. 1.

63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 6.

IN THE CASE OF CHARLES C. GLOVER FOR ASSAULT UPON REPRESENTATIVE THETUS W. SIMS.

APRIL 26, 1913.—Referred to the House Calendar and ordered to be printed.

Mr. DAVIS of West Virginia, from the select committee appointed pursuant to House resolution 59, submitted the following

REPORT.

The select committee of the House of Representatives appointed pursuant to House resolution 59, and charged with the duty of investigating the alleged assault committed on Friday, April 18, 1913, by one Charles C. Glover, a resident of the city of Washington, upon the person of Representative Thetus W. Sims, a Member of the House of Representatives from the State of Tennessee in the Sixty-third Congress, begs leave to report that it met on Monday, April 21, 1913, requested Representative Sims to be present at a hearing on Tuesday, April 22, 1913, at 10.30 o'clock a. m., and notified Mr. Glover of the time and place of the hearing, also informing him that he could be present in person or by counsel and make any statement to the committee which seemed to him or his counsel to be proper. The committee also caused to be issued the summons of the House of Representatives to several actual witnesses of the alleged assault upon Representative Sims by Mr. Glover.

The committee met for the hearing on Tuesday, April 22, 1913, at 10.30 a. m., and from the testimony adduced found the facts of the assault as follows:

FINDINGS OF FACTS.

That Representative Thetus W. Sims while on his way from his residence in the city of Washington to the Post Office Department on official business on Friday morning, April 18, 1913, was accosted in Farragut Square, in the city of Washington, by Charles C. Glover, who, after applying to him certain epithets, assaulted him by striking him in the face.

*

That the said Charles C. Glover committed the assault upon Representative Sims because of statements made by Representative Sims in debate on the floor of the House of Representatives at several times during the session of the House in the Sixty-second Congress, in which Congress the said Representative Sims was also a Representative from the State of Tennessee.

While Mr. Glover did not appear at the hearing either in person or by counsel, he sent a letter, which will be elsewhere set out in full in this report. In that letter is contained the following statement, admitting the assault upon Representative Sims:

The preamble of the resolution sets forth with substantial accuracy the facts of the incident therein referred to. It is true that in a moment of passion, moved by what I deemed to be an extraordinary provocation, I, who have the most profound respect for the law, took the law into my own hands. It is needless to say that in so acting I had no intention to invade any privilege of the House of Representatives, or of any of its Members as such; nor, indeed, did I at the time understand that any claim could be made that I was so doing.

By the said House resolution 59 your committee was charged with the further duty of reporting—

a course of procedure to be followed in dealing with the said C. C. Glover, to the end that the rights and the privileges of the House of Representatives and its Members should be maintained and protected.

The performance of this duty has necessarily involved a consideration of the privileges of the House of Representatives and its Members and of the powers of the House in relation to them. After giving to these topics such consideration as the time allowed by the House for the making of this report has permitted, your committee has reached, upon reason and precedent, the following conclusions:

First.—That for the purpose of this inquiry it is not necessary to consider what privileges, if any, the House of Representatives or its Members may possess other than those expressly stated in the Constitution.

By section 6 of Article I of the Constitution it is provided inter alia that:

They (the Senators and Representatives) shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House they (the Senators and Representatives) shall not be questioned in any other place.

The scope of this immunity was discussed by the Supreme Court of the United States in the case of Kilbourn *v.* Thompson (103 U. S., 168), to which we will later refer. The court said:

Mr. Justice Story (sec. 866 of his Commentaries on the Constitution) says:

The next great and vital privilege is the freedom of speech and debate, without which all other privileges would be comparatively unimportant or ineffectual. This privilege also is derived from the practice

of the British Parliament, and was in full exercise in our colonial legislatures and now belongs to the legislation of every State in the Union as matter of constitutional right.

It seems to us that the views expressed in the authorities we have cited are sound and are applicable to this case. It would be a narrow view of the constitutional provision to limit it to words spoken in debate. The reason of the rule is as forcible in its application to written reports presented in that body by its committees, to resolutions offered, which, though in writing, must be reproduced in speech, and to the act of voting, whether it is done vocally or by passing between the tellers. In short, to things generally done in a session of the House by one of its Members in relation to the business before it.

It may be thought by some that the constitutional immunity implied in the words "for any speech or debate in either House they shall not be questioned in any other place" relates merely to lifelong immunity from legal proceedings against the Member. The term "questioned," however, has always been construed liberally. In Kilbourn *v.* Thompson, supra, the court quotes with approval from an English case, Stockdale *v.* Hansard (36 Common Law Rep., 67):

For speeches made in Parliament by a member to the prejudice of any other person or hazardous to the public peace, that member enjoys complete immunity.

This complete immunity guarantees exemption from questioning not only within, but also without the courts. Obviously, if one may not question a Member for words spoken in debate under the processes of law, he can not do so by taking the law in his own hand.

In Wilson's Lectures on Law, delivered by Mr. Justice James Wilson, of the United States Supreme Court (vol. 2, p. 156), it is said:

The Members of the National Legislature * * * shall not for any speech or debate in either House be questioned in any other place. In England the freedom of speech is, at the opening of every new Parliament, particularly demanded of the king in person by the speaker of the House of Commons. The liberal provision which is made by our Constitution upon this subject may be justly viewed as a very considerable improvement in the science and the practice of government. In order to enable and encourage a representative of the public to discharge his public trust with firmness and success it is indispensably necessary that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of everyone, however powerful, to whom the exercise of that liberty may occasion offense.

Second.—An assault upon a Member of the House of Representatives for words spoken in debate is a breach of its privileges and a contempt of the House.

This has not only been the uniform opinion of the House of Representatives from the earliest times, but is necessarily true because of the reasons which lie at the foundation of the constitutional provision. As just stated, it was conceived that absolute freedom of speech and of debate in the Legislative Assembly was essential to the public

welfare, and it was intended that the voice of a Member, and of his constituents speaking through him, should not be silenced by any fear of legal or personal consequences. A Member, of course, may plead his constitutional privilege in bar of any action based upon his utterances, but unless his person is likewise immune from attack for the same cause, the purpose of the Constitution would be but half accomplished.

Nor is the House as a collective whole less concerned in preserving this freedom of debate than are the individual Member and his constituency. In order that the final action of any deliberative body may represent the joint wisdom of its members there must be unrestrained exchange of thought and opinion, and whatever tends to silence one subtracts just so much from the efficiency of the whole. A breach of a Member's privilege of unconditional freedom of debate therefore reacts upon the House; and the House in treating it as a contempt against itself, does so with no desire to magnify its office nor to vindicate its wounded dignity, but to preserve and defend its legislative integrity and power. Of this legislative integrity and power it is the sole guardian, and it may at all times protect that integrity and power by appropriate action taken for and by itself.

CONGRESSIONAL PRECEDENTS.

There are parliamentary precedents for the conclusion that an assault upon a Member of the House of Representatives for words spoken in debate is a breach of its privileges and a contempt of the House.

During the first session of the Twenty-second Congress, in 1832, an aggravated assault was made by Samuel Houston upon William Stanberry, a Member from the State of Ohio, for words spoken in debate; and after full hearing and exhaustive discussion this was held by the House of Representatives to be a violation of its rights and privileges authorizing the arrest and reprimand of the offender at the bar of the House. (1st sess. 22d Cong., Journal, pp. 590 et seq.; 2 Hinds' Precedents, 1616 et seq.)

During the first session of the Thirty-fourth Congress (1857) there occurred the regrettable assault by Preston S. Brooks, a Member of the House from the State of South Carolina, on the person of Charles Sumner, a Senator from Massachusetts, because of language used by the latter in debate. A special committee of the Senate having been appointed to investigate the occurrence, reported the Senate powerless to proceed in the matter against a Member of the House except by making complaint to the House of the assault. In their report the committee said:

> We have examined the precedents which are to be found only in the proceedings of the House of Representatives, the Senate never having been called on to pronounce its judgment in a similar case. In the House of Representatives different opinions

have at various times been expressed by gentlemen of great eminence and ability, among whom may be mentioned the late President of the United States, Mr. Polk, the late Judge Barbour of the Supreme Court, and Mr. Beardsley, of New York; yet the judgment of the House has always held an assault upon a Member for words spoken in debate to be a violation of the privileges of the House. (2 Hinds' Precedents, 1622.)

In the second session of the Thirty-eighth Congress (1865), one A. P. Field, in an attempt to intimidate and deter William D. Kelley from the free and fearless exercise of his rights and duties as a Member of Congress in voting and deciding upon a pending subject of legislation, made an assault upon Mr. Kelley, which the House held to be a breach of its privilege and caused the offender to be brought before the bar of the House and reprimanded. (2d sess. 38th Cong., H. Rept. 10; 2 Hinds' Precedents, 1625.)

Third.—Such an assault, when committed on the person of a Member for words spoken in debate, constitutes a contempt of the House in which he is then sitting, although the words may have been spoken in a prior House.

It will be observed that the speeches made by Representative Sims in the House of Representatives which Mr. Glover admits constituted the provocation for this assault were delivered by Representative Sims during the Sixty-second Congress; but, while this raises a question not discussed in earlier precedents, it does not change, in our opinion, the status of the case. This becomes clear when we contrast the individual privileges of the Member and the collective privilege of the House.

It is obvious that the Constitution, in providing that Senators and Representatives shall not be questioned in any other place for any speech or debate in either House extends an immunity unlimited as to space and unrestricted in point of time. One who has been a member of either body, whether longer so or not, can nevertheless plead this constitutional immunity against any attack which may be made upon him at any time by reason of any speech or debate which took place during his service. The shield of the Constitution, once extended, protects him so long as he may live.

The House, on the other hand, being simply the aggregate of its membership, is itself concerned with those things which affect the freedom and efficiency of its constituent members. A Member of the Sixty-second Congress, for instance, who enters the Sixty-third Congress brings with him his constitutional immunity against question for his action in the former body; and in order that he may be free to perform, without fear or hindrance, his duties in the latter, it is both its right and duty to resent as an attack upon itself any violation of his constitutional privilege. Its attention should properly be directed not to the time when this privilege accrued, but to the time when it was violated.

Fourth.—The House of Representatives has power under the authority of the Constitution to punish as a contempt against it such a breach of its privileges as is involved in the assault upon Representative Sims by the said C. C. Glover.

Both parliamentary precedent and high authority support this power. In addition to those precedents we have previously mentioned, there are the proceedings had by this House in 1795, in the first session of the Fourth Congress, against Robert Randall and Charles Whitney for attempted bribery; in the same Congress, against James Gunn for challenging a Member to a duel; in 1818 against John Anderson, in the first session of the Fifteenth Congress, for attempted bribery; in 1857, in the first session of the Thirty-fourth Congress, against James W. Simonton for contumacy as a witness; in 1874, in the second session of the Forty-third Congress, against Richard B. Irwin for a similar offense; and on the part of the Senate of the United States, in the first session of the Sixth Congress, against William Duane for a libel on the Senate; in 1848, in the first session of the Thirtieth Congress, against John Nugent for the publication of a secret treaty.

In the second session of the Forty-first Congress (1870), one Patrick Wood so assaulted Charles H. Porter, a Member of the House from the State of Virginia, in the city of Richmond, that the latter was delayed in returning to the House, although it did not appear that the act was done by reason of any words spoken by Porter in debate, but nevertheless it impeded the return of the Member to his place in the House and was held to be a breach of its privileges and a contempt. The offender was accordingly arrested and subjected by warrant of the House to three months' imprisonment in the jail of the District of Columbia. (2 Hinds' Precedents, 1626 et seq.)

As further illustrating not only the right but the power of the House to protect the constitutional privileges of its members, the case of Charles V. Culver, a Representative in the Thirty-ninth Congress, should not be overlooked. The House having been advised of his arrest and detention under civil process in the hands of the sheriff of Venango County, Pa., issued a warrant to its Sergeant at Arms directing him to take Mr. Culver from the custody of the sheriff, which was accordingly done.

In the letter of Mr. C. C. Glover to this committee, in which he admits the assault upon Representative Thetus W. Sims, but challenges the power and authority of the House to take notice of his act or punish him for it, he relies upon the case of Kilbourn *v.* Thompson (103 U. S.), already referred to in this report, as a warrant for a denial of the power of the House to deal

with contempts of its privileges. It is therefore important to make a somewhat critical examination of the cases in the courts affecting the question.

JUDICIAL PRECEDENTS.

Anderson *v.* Dunn (6 Wheaton, 204).

This case grew out of an attempt upon the part of Col. Anderson to bribe Hon. Lewis Williams, of North Carolina, chairman of the Committee on Claims. Upon a statement of the facts to the House, a motion was made directing the Speaker to issue a warrant for his arrest, and the identical question here involved was at once raised in the House.

Mr. Terry, of Connecticut, inquired whether, according to our forms of proceeding and to our constitutional provisions, a general warrant as proposed could be issued. Was it not opposed in itself and in its nature to the principle of civil liberty? The Speaker observed that in the practice of the House, happily, instances were extremely rare where such warrant became necessary. No such occasion had occurred within his observation. But there could be no doubt when an offense was committed against the privileges or dignity of the House it was perfectly in its power to issue a warrant to apprehend the party offending.

This question, pro and con, was debated very extensively and very ably in the House for many days, and it was contended on the one hand that Congress was given by the Constitution no power to punish for contempt, and that it especially had no power to punish for acts not committed in its presence. On the other hand, it was contended that the House had an inherent and implied power to protect the dignity, freedom, and self-respect of the House and to punish those guilty of a breach of the privileges of the House and of a high contempt of the dignity and authority of the same. After a very full consideration of this question, the House, by a very large majority, decided it had the power to punish for contempt, whether committed within the walls of the House or elsewhere, and Mr. Anderson was arrested and punished. He afterwards sued the Sergeant at Arms, Mr. Dunn, for trespass in executing this warrant and raised the specific question that it was issued without authority and hence constituted no protection. The case was tried in the Circuit Court of the District of Columbia, which court held that the House did have the power to punish for contempt and that the possession of this warrant issued by the House constituted a complete defense to the action of the plaintiff. Mr. Anderson appealed this case to the Supreme Court of the United States, and the decision of that court is found in 6 Wheaton, page 204. There the identical questions raised in the House were again insisted upon. It was there contended that the Constitution gave no express authority to either branch of Congress to punish for contempt, and

that our institutions forbade its exercise as implied authority. The court says:

It is certainly true that there is no power given by the Constitution to either House to punish for contempts, except when committed by their own Members. Nor does the judicial or criminal power given to the United States, in any part, expressly extend to the infliction of punishment for contempt of either House, or any one coordinate branch of the Government. Shall we, therefore, decide that no such power exists? * * * But if there is one maxim that necessarily rides over all others, it is that the public functionaries must be left at liberty to exercise the powers which the people have intrusted to them. The interests and dignity of those who created them require the exertion of the powers indispensable to the attainment of the ends of their creation. Nor is a casual conflict with the rights of particular individuals any reason to be urged against the exercise of such powers. * * * That "the safety of the people is the supreme law," not only comports with but is indispensable to the exercise of those powers in their public functionaries, without which that safety can not be guarded. On this principle it is that courts of justice are universally acknowledged to be vested by their very creation with power to impose silence, respect, and decorum in their presence, and submission to their lawful mandates, and, as a corollary to this proposition, to preserve themselves and their officers from the approach and insults of pollution.

It is true that the courts of justice of the United States are vested, by express statute provision, with power to fine and imprison for contempts; but it does not follow from this circumstance that they would not have exercised that power without the aid of the statute or not, in cases, if such should occur, to which such statute provision may not extend; on the contrary, it is a legislative assertion of this right, as incidental to a grant of judicial power, and can only be considered either as an instance of abundant caution or a legislative declaration that the power of punishing for contempt shall not extend beyond its known and acknowledged limits of fine and imprisonment.

But it is contended that if this power in the House of Representatives is to be asserted on the plea of necessity, the ground is too broad and the result too indefinite; that the executive and every coordinate and even subordinate branch of the Government may resort to the same justification, and the whole assume to themselves, in the exercise of this power, the most tyrannical licentiousness.

This is unquestionably an evil to be guarded against, and if the doctrine may be pushed to that extent it must be a bad doctrine, and is justly denounced.

But what is the alternative? The argument obviously leads to the total annihilation of the power of the House of Representatives to guard itself from contempts, and leaves it exposed to every indignity and interruption that rudeness, caprice, or even conspiracy may meditate against it. This result is fraught with too much absurdity not to bring into doubt the soundness of any argument from which it is derived. That a deliberate assembly, clothed with the majesty of the people, and charged with the care of all that is dear to them; composed of the most distinguished citizens, selected and drawn together from every quarter of a great Nation; whose deliberations are required by public opinion to be conducted under the eye of the public, and whose decisions must be clothed with all that sanctity which unlimited confidence in their wisdom and purity can inspire; that such an assembly should not possess the power to suppress rudeness, or repel insult, is a supposition too wild to be suggested. And, accordingly, to avoid the pressure of these considerations, it has been argued that the right of the respective Houses to exclude from their presence, and their absolute control within their own walls, carry with them the right to punish contempts committed in their presence; while the absolute legislative power given to Congress within this District enables them to provide by law against all other insults against which there is any necessity for providing.

It is to be observed that, so far as the issue of this cause is implicated, this argument yields all right of the plaintiff in error to a decision in his favor; for, non constat, from the pleadings, but that this warrant issued for an offense committed in the immediate presence of the House.

Nor is it immaterial to notice what difficulties the negation of this right in the House of Representatives draws after it, when it is considered that the concession of the power, if exercised within their walls, relinquishes the great grounds of the argument, to wit, the want of an express grant, and the unrestricted and undefined nature of the power here set up. For why should the House be at liberty to exercise an ungranted, an unlimited, and undefined power within their walls, any more than without them? If the analogy with individual right and power be resorted to, it will reach no further than to exclusion, and it requires no exuberance of imagination to exhibit the ridiculous consequences which might result from such a restriction, imposed upon the conduct of a deliberative assembly.

Nor would their situation be materially relieved by resorting to their legislative power within the district. That power may, indeed, be applied to many purposes, and was intended by the Constitution to extend to many purposes indispensable to the security and dignity of the General Government; but they are purposes of a more grave and general character than the offenses which may be denominated contempts, and which, from their very nature, admit of no precise definition. Judicial gravity will not admit of the illustrations which this remark would admit of. Its correctness is easily tested by pursuing, in imagination, a legislative attempt at defining the cases to which the epithet "contempt" might be reasonably applied.

This decision clearly and unequivocally sustains the doctrine that the House has the implied right to punish for contempt, whether committed in its presence or elsewhere.

Nugent *v.* Beale (Smith's Digest of Decisions and Precedents, 601).

The next time this matter came up for judicial determination was in the case of Nugent *v.* Beale in the Circuit Court of the District of Columbia. This case grew out of a breach of the rules of the Senate by Mr. Nugent. A warrant was issued and placed in the hands of Beale for service, and a writ of habeas corpus was asked, bottomed on the proposition that the Senate had no power to arrest or punish for contempt. The court says:

The jurisdiction of the Senate in cases of contempt of its authority depends upon the same ground and reasons upon which the acknowledged jurisdiction of other judicial tribunals rests, to wit, the necessity of such jurisdiction to enable the Senate to exercise its high constitutional functions—a necessity at least equal to that which supports the like jurisdiction which has been exercised by all judicial tribunals and legislative assemblies in this country from its first settlement, and in England from time immemorial.

Irwin *v.* Ordway (Smith's Digest of Decisions and Precedents, 520).

In 1874, one Richard B. Irwin was held in contempt of the House for a refusal to answer certain questions before a committee of that body, and having been presented in custody of N. G. Ordway, the Sergeant at Arms, he applied to one Arthur McArthur, one of the

judges of the Supreme Court of the District of Columbia, for a writ of habeas corpus. Upon hearing, the writ was refused, and in refusing it, the court said:

There can be no doubt that either House of Congress has the right of committing for contempts all contempts which infringe upon the order, dignity, or the purity of their legislation, and for this purpose it is not denied but that they have the power of examination, of investigation, and of calling witnesses into their presence or before their committees and of administering oaths and putting inquiries, and of punishing at refusal to answer. These powers of the House are so very clearly established now that the learned counsel has not impeached them unless Congress, by the enactment of 1857, has abrogated this almost indispensable power of Congress. It is to be observed that the statute applies to only a species of contempt; that is, the witnesses who refuse to answer questions upon subjects of legislation before Congress or before its committees. * * * The power of the House to punish for a contempt extends only to confinement and terminates with the session of Congress. If a party were found guilty of a contempt 24 hours before the period of adjournment, that must be the limitation of the punishment. Now, this might be a very inadequate protection to the House and a very inadequate punishment for a party in contempt. I have no doubt that Congress intended recusant witnesses or witnesses refusing to answer pertinent inquiries upon proper subjects of investigation should be punished beyond the power of the House to reach them; and that they therefore created the offense a misdemeanor to be punished by fine and imprisonment in the courts of justice. This statute can by no means purge the contempt or abolish the power of the House to protect itself in this respect, as it is able to protect itself from every other species of contempt.

Kilbourn *v.* Thompson (103 U. S., 168).

The next time that this question was discussed was in the case of Kilbourn *v.* Thompson. This was a case wherein one Kilbourn refused to answer certain interrogatories propounded to him by a committee of the House of Representatives. This opinion, written by Chief Justice Miller, undoubtedly controverts some of the reasoning contained in the case of Anderson *v.* Dunn, and by some is thought to overrule the fundamental principle involved in that case, namely, the implied power of the House to punish for contempt. But a careful reading of the case will show that that is not true. After having given expression to much dictum on this subject, it finally bases its opinion upon another and entirely different proposition. The court says:

Nor, taking what has fallen from the English judges, and especially the later cases on which we have just commented, is much aid given to the doctrine that this power exists as one necessary to enable either House of Congress to exercise successfully their function of legislation. *This latter proposition is one which we do not propose to decide in the present case, because we are able to decide it without passing upon the existence or nonexistence of such a power in aid of the legislative function.*

Then, after defining the express powers of the House to punish its own members, the court continues:

Whether the power of punishment in either House by fine or imprisonment goes beyond this or not, we are sure that no person can be punished for contumacy as a

witness before either House, unless his testimony is required in a matter into which that House has jurisdiction to inquire, and we feel equally sure that neither of these bodies possess the general power of making inquiry into the private affairs of the citizen.

It will thus be noticed that in the Kilbourn case the Supreme Court bases its decision upon the proposition that Congress has no power to punish a contumacious witness for refusing to answer questions in regard to matters about which the House has no jurisdiction to inquire—namely, the private affairs of individuals or corporations. It does not even decide that Congress has no power to punish a contumacious witness for refusing to answer questions concerning which the House did have the right to inquire. It did not overrule the case of Anderson *v.* Dunn; at most, it only limits and defines the doctrine of that case.

In re Chapman (166 U. S., 661.)

The last time that this question was before the Supreme Court was in the case of Elverton R. Chapman. This is a case where prosecution had been had against Chapman under the statute for punishing contumacious witnesses. Application was made to the Supreme Court of the United States for a writ of habeas corpus. The contention was made in that case that Congress had undertaken to delegate its power to the courts of the District of Columbia and this statute was, therefore, unconstitutional. The court, in passing on that question, said:

> While Congress can not divest itself or either of its Houses of the inherent power to punish for contempt, it may provide that contumacy in a witness called to testify in a matter properly under consideration by either House and deliberately refusing to answer questions pertinent thereto shall be a misdemeanor against the United States.

And further on the court says:

> Nevertheless, although the power to punish for contempt still remains in each House, we must decline to decide that this law is invalid because it provides that contumacy in a witness called to testify in a matter properly under consideration by either House and deliberately refusing to answer questions pertinent thereto shall be a misdemeanor against the United States, who are interested that the authority of neither of their departments, nor of any branch thereof, shall be defied and set at naught.

This case in all of its reasoning clearly recognizes and sustains the doctrine that each House has the inherent power to punish for contempt.

As a result of this analysis of the judicial precedents it seems clear that it has been established by the highest court of the land that either branch of Congress has the implied power and authority to punish those guilty of a contempt of the authority of either House by a breach of its privileges whether the breach is committed within or without its chamber.

In view of the expressed desire at the time the resolution under which this committee is acting was passed, a somewhat extended examination of the matter of the privileges of the House has been made. In addition to the privileges expressly stated in the Constitution, there is warrant for the claim that the House of Representatives possesses such additional and inherent privileges as are necessary for the preservation of its own integrity and the due performance of its legislative functions. Such are, for instance, the right to protect itself from the offer of bribes; to punish contumacious witnesses; and to put down tumult or riot within its walls or so near thereto as to disturb its deliberations; but for obvious reasons it has always been deemed unwise to attempt a catalogue of these inherent privileges and powers, and so long ago as 1837, the House of Representatives expressly refused to proceed with a bill defining the offense of a contempt of the House and providing punishment therefor.

Upon the question of inability to define breaches of privilege and contempts of the House the Supreme Court itself has said:

> Nor would their situation be materially relieved by resorting to their legislative power within the district. That power may, indeed, be applied to many purposes, and was intended by the Constitution to extend to many purposes indispensable to the security and dignity of the General Government; but they are purposes of a more grave and general character than the offenses which may be denominated contempts, and which, from their very nature, admit of no precise definition. Judicial gravity will not admit of the illustrations which this remark would admit of. Its correctness is easily tested by pursuing, in imagination, a legislative attempt at defining the cases to which the epithet "contempt" might be reasonably applied. (Anderson *v.* Dunn, supra.)

The existence of the inherent power in the House of Representatives to determine and punish contempt against its privileges is most cogently stated in Rawle on the Constitution, as follows (p. 48):

> It would be inconsistent with the nature of such a body to deny it the power of protecting itself from injury or insult. If its deliberations are not perfectly free, its constituents are eventually injured. This power has never been denied in any country, and is incidental to the nature of all legislative bodies. If it possesses such a power in the case of an immediate insult or disturbance, preventing the exercise of its ordinary functions, it is impossible to deny it in the other cases which, although less immediate or violent, partake of the same character by having a tendency to impair the firm and honest discharge of public duties.

That learned jurist, Mr. Justice Story, strongly sets forth the same views thus (Story on the Constitution, vol. 1, sec. 847):

> This subject has of late undergone a great deal of discussion both in England and America, and has finally received the adjudication of the highest judicial tribunals in each country. In each country upon the fullest consideration, the result was the same, namely, that the power did exist, and that the legislative body was the proper and exclusive forum to decide when the contempt existed, and when there was a breach of its privileges; and that the power to punish followed, as a necessary incident to the power to take cognizance of the offense.

The committee also believes that in reporting on such a grave subject it ought to say that while freedom of speech and debate is a great vital privilege, and without that freedom to an unconditional extent all the other privileges of either of the Houses of Congress would be practically ineffectual, yet the very existence and extent of the privilege demands the greatest restraint in its exercise. No man, even under the cloak of public necessity and parliamentary power, ought to have the right wantonly to defame another.

As Mr. Justice Story very pertinently says (Story on the Constitution, sec. 866):

> Every citizen has as good a right to be protected by the laws from malignant scandal, false charges, and defamatory imputation as a Member of Congress has to utter them in his seat. If it were otherwise a man's character might be taken away without the possibility of redress, either by the malice or indiscretion or overweening self-conceit of a Member of Congress.

The House of Representatives is vitally concerned with the safeguarding of its privileges and the preservation of its legislative integrity and dignity. It is just as seriously concerned, however, with the maintenance of such a course of conduct on the part of each of its individual Members as will assure to every citizen in the land protection from defamation on the floor of the House. The power of the House over its Members is of the broadest character. The breach of the privileges of the House by a Member gives to the House ample power of punishment. It must become to be understood, therefore, that as the privileges of the House in so far as the public is concerned will be enforced by prompt punishment for contempt in the event of their breach, the House, in the future, as often in the past, will also fully protect all citizens from unjust assaults upon their character by censure or other punishment administered to an offending Member.

The committee calls attention to the written communication received from Mr. Glover, which will be found in full in the appendix containing the testimony accompanying this report.

This letter, it will be observed, contains a frank avowal of fault and a voluntary disclaimer of any intentional contempt toward this body. The testimony, however, establishes the fact that his act was the result of some premeditation and design extending over a period sufficiently long for him to have informed himself, if ignorant, of the privilege of the House; and his disclaimer, while full and free in form, is accompanied by a challenge, though without discourtesy, of the jurisdiction of the House in the premises. Under the circumstances, therefore, your committee recommends the adoption of the following resolutions:

Resolved, That the Speaker do issue his warrant directed to the Sergeant at Arms commanding him to take in custody wherever to be found the body of Charles C.

Glover, of the city of Washington, in the District of Columbia, and the same in custody keep, and that the said Charles C. Glover be brought to the bar of the House of Representatives on a day to be fixed in said warrant to answer the charge that he, on Friday, April eighteenth, nineteen hundred and thirteen, in the city of Washington, District of Columbia, committed an assault upon the person of Representative Thetus W. Sims, a Representative in the Sixty-third Congress from the State of Tennsesee, because of words spoken by the said Representative Sims in debate on the floor of the House of Representatives while the House was in regular session during the Sixty-second Congress, and that in committing said assault Charles C. Glover has been guilty of a breach of the privileges and a contempt of the House of Representatives; and that the said Charles C. Glover be furnished with a copy of this resolution and a copy of the report of the select committee of the House of Representatives appointed to investigate the charge made against him in the House of Representatives.

Resolved, That when Charles C. Glover shall be brought to the bar of the House to answer the charge of having violated the privilege of the House of Representatives by having made an assault upon Representative Thetus W. Sims, of the State of Tennessee, for words spoken by said Representative Sims on the floor of the House of Representatives, the Speaker shall then cause to be read to the said Charles C. Glover the findings of facts by the special committee of the House charged with the duty of investigating whether or not the said assault had in fact been committed as alleged, and whether or not the said Charles C. Glover had violated the privileges of the House of Representatives by said assault. The Speaker shall then inquire of the said Charles C. Glover if he desires to be heard, and to have counsel, on the charge of being in contempt of the House of Representatives for having violated its privileges. If the said Charles C. Glover desires to avail himself of either of these privileges, the same shall be granted him, if not the House shall thereupon proceed to take order in the matter.

JOHN W. DAVIS.
J. HARRY COVINGTON.
CHARLES R. CRISP.
S. F. PROUTY.
JOHN M. NELSON.

APPENDIX.

THE TESTIMONY AT THE HEARING.

ASSAULT ON REPRESENTATIVE THETUS W. SIMS, A REPRESENTATIVE FROM THE STATE OF TENNESSEE, BY CHARLES C. GLOVER.

SELECT COMMITTEE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Tuesday, April 22, 1913.

The select committee this day met, Hon. John W. Davis (chairman) presiding.

Present also: Messrs. Covington, Crisp, Prouty, and Nelson, members of the committee.

The CHAIRMAN. The committee is charged with the duty of investigating an alleged assault committed upon a Member of Congress, Hon. Thetus W. Sims, by one C. C. Glover, in pursuance of the following resolution:

> Whereas it has been published in various newspapers circulating in the city of Washington, D. C., and elsewhere, and otherwise currently reported, that on Friday, April 18, 1913, Thetus W. Sims, a Representative in Congress from the State of Tennessee, was, in a public park in said city, while on his way from his place of residence to a department of the Government for the purpose of transacting official business, and while in attendance upon the Congress as such Representative, set upon and physically assaulted by one C. C. Glover, a citizen of the District of Columbia; and
>
> Whereas said assault is alleged to have been made because of words spoken by said Representative on the floor of the House while it was in regular session; and
>
> Whereas said assault, if made, constitutes a breach of the privileges of the House and of its Members and demands immediate action on the part of the House for the protection of its rights and the rights of its Members in the performance of official duties: Therefore be it
>
> *Resolved*, That a select committee of five Members be appointed forthwith by the Speaker of the House to investigate and report:
>
> First, whether such assault was made by said C. C. Glover upon the said Representative, Thetus W. Sims; and if so, then,
>
> Second, a course of procedure to be followed in dealing with the said C. C. Glover, to the end that the rights and the privileges of the House of Representatives and its Members shall be maintained and protected.
>
> For the purpose of ascertaining the fact herein required to be reported upon, the said committee shall have power to send for persons and papers, and to examine witnesses upon oath administered by the chairman or any member thereof.
>
> Said committee shall report not later than Saturday, April 26, 1913.

Mr. Sims will be good enough to present himself before the committee.

As a Member of Congress, Mr. Sims, the committee will not insist upon your being sworn, and yet the precedents seem to authorize it. You will be good enough to be sworn.

TESTIMONY OF HON. THETUS W. SIMS.

(The witness was duly sworn by the chairman.)

The CHAIRMAN. Your name is Thetus W. Sims?

Mr. SIMS. Yes, sir.

The CHAIRMAN. You are a Member of the Sixty-third Congress?

Mr. SIMS. Yes, sir.

The CHAIRMAN. Have you duly qualified as such?

Mr. SIMS. I have.

The CHAIRMAN. From what State and what district?

Mr. SIMS. The eighth district of Tennessee.

The CHAIRMAN. Have you been a Member of preceding Congresses?

Mr. SIMS. I have been a Member of every Congress since and including the Fifty-fifth and up to the present time.

The CHAIRMAN. Do you know one C. C. Glover?

Mr. SIMS. I do.

The CHAIRMAN. It has been alleged that on Friday, the 18th day of April, a personal assault was committed upon you by one C. C. Glover in the city of Washington; is that true?

Mr. SIMS. It is.

The CHAIRMAN. Will you be good enough to detail to the committee the circumstances of that assault?

Mr. SIMS. I will, Mr. Chairman; and before beginning, I might say that I presume the strict rules of evidence will not be expected to be complied with, and I will make the statement simply in my own way.

The CHAIRMAN. Simply in your own way.

Mr. SIMS. I started from my residence, 2139 Wyoming Avenue, to the Post Office Department about 9 o'clock on the morning of the 18th, for the purpose of attending to official business with the First Assistant Postmaster General, Mr. Roper. When I got out of the apartment house in which I live, known as Windsor Lodge, Dr. Magruder, of Washington, who lives in the same apartment house, invited me to get in his automobile and go down with him. I did so, and we went as far as Stoneleigh Court together. I then got out and started on foot, crossing K Street and entering Farragut Square, going on a walkway through the square from K Street, and when I got about one-third of the way, from behind I felt some one touch me or come against me or heard a voice. My attention was attracted, I think, perhaps, in both ways. The party touched me on the left. I turned and saw a man standing there. At the time I did not recognize him; I mean at the very moment. I looked steadily at him for a moment or two and he remarked, "Don't you know who I am?" in an ordinary tone of voice, so far as volume was concerned. He had what I believed at the time to be, and so impressed me, an insane expression, a glare of the eyes, somewhat of a bluish pallor on the face. I then looked a moment longer, and I said, "Is not this Mr. Glover?" or "This is Mr. Glover," I am not positive which. He made no reply to that statement, but still stared at me in the way I have tried to describe. He then said, "Why did you attack me in the House?" or "on the floor of the House?" I am not certain which. I replied slowly and distinctly, "I did not attack you; I only defended myself from an attack made by you." Up to this time he did not show anger by his expression.

The CHAIRMAN. Do you mean by his words or his motions?

Mr. SIMS. By his words he did not show anger nor by any gesticulation or motion he made with his hands or otherwise, but had an expression on his face which made me feel very apprehensive at the moment. After stating what I have just said, he then said, slowly and distinctly, in what did not impress me as being an unusually loud voice, "You ought to apologize," or "You ought to apologize to me." I will not be sure whether he used the words "to me" or not. I then said, "I will apologize to you or anyone else for anything I may have said about them in debate on the floor of the House not warranted by the facts." I said it slowly and distinctly and in as inoffensive a way as I knew how, because by that time I felt very apprehensive of an assault, but not an ordinary assault with the hand. I said that if I had made any misstatement of facts that I would be glad to apologize to him or to any other man, but that I had taken my statement of facts from reports of the committee and from his own statement, and unless they were shown to be otherwise than as they seemed I was not called on to make any apology; that I simply had done what I regarded as my duty. All of which I said in a slow manner and with what I would regard as more or less of a palliative way. He then spoke in a loud, angry tone of voice for the first time. The language he used I could not at all remember. I was only watching his right hand and his right arm, with the only purpose, which I arrived at coolly and deliberately, that if I saw his hand go toward his coat pocket or his trousers pocket to grab his arm. I had no other thought. When he spoke in this loud voice, as I have just stated, I said: "Now, Mr. Glover, I will not have any controversy with you here in this public place. I will go with you anywhere or with anybody and talk this matter over, but I will not have a scene here in this public place." I turned my head slightly in the direction I would go if I had gone on in the way I was going, and he struck me on the side of the face about the cheek bone, as I thought, with his open hand. To be perfectly candid and clear about this matter, it was a very light stroke, and having come to the conclusion that I had come to, from his appearance, I regarded it as a provocative stroke, and I purposely and deliberately, for what I thought was my own best interests, declined to strike back or do anything that would justify an assault of the kind I felt, from his appearance, was intended, and about that time a gentleman stepped in between us.

The CHAIRMAN. Do you know his name?

Mr. SIMS. I did not know it and do not know it now. In a moment or two another gentleman came up and there was no further action. He was then talking loud and angrily; but, as a matter of course, after these gentlemen came up the apprehension which I had previously entertained ceased, and he either walked away in the direction I was going or in the other direction; I do not know which, because I did not notice him any further. I walked on with the gentleman who first came between us and asked him his name, and he did not give it to me. I said: "Did you see him strike me?" He said—he hesitated somewhat, but I understood him to say "No." I said: "I only wanted your name in case you saw him strike me." Then I asked the other gentleman, and he said "Yes," and gave me his name as McAllister. We two walked on in the direction I was intending to go through the park, on through Lafayette Square, down to the corner, where the Lafayette Statue is located, where I would naturally go across in going to the Treasury Building. On the opposite side, right on the corner, standing by a tree, was Mr. Glover, facing us, but I gave him no attention and did not look toward him and did not go toward him only as the crossing, as I said, went near him. That was all that occurred; and if he struck me twice, one lick must have been so slight as to make absolutely no impression on me, because I have no recollection of it at all.

The CHAIRMAN. Did Mr. Glover assign any reason for his assault?

Mr. SIMS. None, only the words, "Why did you attack me in the House?" or "on the floor of the House?"

The CHAIRMAN. Had you made a speech on the floor of the House criticizing him?

Mr. SIMS. I have made two speeches, one on the 15th of January and one on the 5th of February, in reply to an attack made on me, as I regarded it, in hearings before a subcommittee of the Committee on the District of Columbia investigating some question about the Commercial Building and certain fire insurance companies in Washington.

The CHAIRMAN. Will you repeat the dates of those speeches, giving the year?

Mr. SIMS. 1913; January 15, 1913, on the floor of the House on a question of personal privilege, and on February 5, 1913, on the floor of the House on a question of personal privilege.

The CHAIRMAN. Were they made during a session of the Sixty-second Congress?

Mr. SIMS. Yes; during the last or the third session of the Sixty-second Congress.

The CHAIRMAN. And you were at that time a duly qualified member of that Congress?

Mr. SIMS. I was.

TESTIMONY OF CAPT. CHARLES A. McALLISTER, ENGINEER IN CHIEF REVENUE-CUTTER SERVICE.

(The witness was duly sworn by the chairman.)

The CHAIRMAN. Will you please give your name to the stenographer?

Capt. McALLISTER. Charles A. McAllister.

The CHAIRMAN. Where do you live and what is your office or occupation?

Capt. McALLISTER. I am engineer in chief of the Revenue-Cutter Service, and my residence is at the Ontario Apartments.

The CHAIRMAN. Washington?

Capt. McALLISTER. Yes, sir.

The CHAIRMAN. Do you know Mr. C. C. Glover or Mr. Thetus W. Sims?

Capt. McALLISTER. I know them both by sight.

The CHAIRMAN. Were you a witness to any altercation between those gentlemen on the 18th day of April, 1913?

Capt. McALLISTER. I was.

The CHAIRMAN. Where did that altercation take place?

Capt. McALLISTER. Farragut Square?

The CHAIRMAN. Please describe the circumstances and such conversation as you heard between them.

Capt. McALLISTER. After I had seen this altercation I realized it might be of importance and immediately after getting to my office I went in and wrote the following statement of exactly what I saw at that time and had it sealed in the presence of two witnesses in my office, and I would like to have the envelope opened by you and I will then read it as testimony.

The CHAIRMAN. You may do so, or you can open it, if you desire.

Capt. McALLISTER. I simply wanted you to see the seal [handing envelope to the chairman].

The CHAIRMAN. You may read the statement to the committee.

Capt. MCALLISTER (reading):

TREASURY DEPARTMENT,
Friday, April 18—9.30 a. m.

While just walking down to the office I have been unfortunate enough to witness an altercation between two prominent men. Between 9 and 9.05 a. m., as I approached Farragut Square, I observed in the pathway north of the monument two gentlemen stopped and engaged apparently in a heated conversation, the taller one seeming to be much excited and shaking his fist; as I drew nearer I recognized the men as Mr. C. C. Glover and Congressman Sims, of Tennessee. Mr. Glover struck Congressman Sims several blows with the flat of his hand and shouted, "You are a damn lying scoundrel." They separated, and from their excited remarks I learned that Mr. Glover was mad at what had been said in Congress by Mr. Sims. Mr. Sims had dropped a letter when he was struck, which I picked up and handed to him. I then walked down with Mr. Sims and on his request I gave him my card. I left him in front of the Treasury, north side. I am writing this at this time in order to make a record of the facts as they are now fresh in my memory.

C. A. MCALLISTER.

The CHAIRMAN. The statement which you have just read is an accurate statement of all the facts as you know them?

Capt. MCALLISTER. Yes, sir.

Mr. NELSON. Have you anything you wish to add verbally to the statement you made in writing?

Capt. MCALLISTER. Nothing, except to answer any questions you may desire to ask me.

The CHAIRMAN. I believe the committee has no further questions and you will be excused.

TESTIMONY OF HON. SHERMAN ALLEN, ASSISTANT SECRETARY OF THE TREASURY.

(The witness was duly sworn by the chairman.)

The CHAIRMAN. Will you be good enough to give the stenographer your name, your residence, and office or occupation?

Mr. ALLEN. Sherman Allen, Assistant Secretary of the Treasury; residence, Stoneleigh Court.

The CHAIRMAN. Do you know by sight or by personal acquaintance C. C. Glover or Thetus W. Sims?

Mr. ALLEN. I know them both by sight; yes, sir.

The CHAIRMAN. Were you a witness to any encounter between those gentlemen on Friday, the 18th day of April, 1913?

Mr. ALLEN. Yes, sir.

The CHAIRMAN. Where did that encounter take place?

Mr. ALLEN. In Farragut Square.

The CHAIRMAN. Will you please detail to the committee the circumstances, as you witnessed them, together with any conversation which you overheard?

Mr. ALLEN. I had left my apartment at Stoneleigh Court to go to the office. As I was about to cross K Street I saw Mr. Glover talking with a gentleman in the park. My attention then, I think, was attracted by something else, and I took no more notice of them until I had gotten within, say, 15 or 20 feet of them. At that time I looked again at the two of them, and Mr. Glover had his fist in the air. A moment later he struck Mr. Sims with the flat of his hand on the face, on the side of the face. I then stepped between the two and said to Mr. Glover that I would not carry the matter any further. My recollection of what he said is that he said to Mr. Sims: "You are an infamous liar." About that time Capt. McAllister came along, and regarding Mr. Sims as the more tractable of the two, I took him by the arm and walked along down through the park with him.

The CHAIRMAN. Did that close the incident?

Mr. ALLEN. That closed the incident; yes, sir.

The CHAIRMAN. Have you given us all the conversation you overheard between them?

Mr. ALLEN. My recollection is that Mr. Sims, when Mr. Glover struck him, said that he needed to be protected, or that he needed protection; something of that sort.

The CHAIRMAN. You were not within hearing distance when the interview between them began?

Mr. ALLEN. No, sir; I was not.

Mr. COVINGTON. Did you hear any statement made by Mr. Glover as to his reason for accosting Mr. Sims and attacking him?

Mr. ALLEN. I do not recall anything further than his saying that Mr. Sims was a liar—an infamous liar, as I recall it.

Mr. NELSON. You say you stepped between them and said that you would not carry it any further. Were you apprehensive of his going further had you not stepped between them?

Mr. ALLEN. I was not apprehensive that either one of them was going to be seriously injured. It seemed to me that here were two gentlemen who both were prominent, and that it would be very much better for them to stop the altercation in which they were engaged. It did not seem to me that either one of them was going to be seriously injured.

The CHAIRMAN. There are no further questions, and you may stand aside, Mr. Allen.

TESTIMONY OF MR. JAMES MULLEN.

(The witness was duly sworn by the chairman.)

The CHAIRMAN. Will you give to the stenographer your name, residence, and occupation?

Mr. MULLEN. James Mullen, 1033 Thirtieth Street NW., Washington, D. C. I work in the parks trimming trees.

The CHAIRMAN. Were you working in Farragut Square on last Friday morning, the 18th of April?

Mr. MULLEN. Yes, sir.

The CHAIRMAN. Did you witness any altercation between two gentlemen in that square that morning?

Mr. MULLEN. I did; yes, sir.

The CHAIRMAN. Do you know either Mr. Glover or Mr. Sims?

Mr. MULLEN. No, sir.

The CHAIRMAN. Do you recognize the gentleman sitting at the end of the bench here as one of the parties to that encounter?

Mr. MULLEN. Yes, sir.

The CHAIRMAN. Will you tell the committee just what happened?

Mr. MULLEN. Well, I was sitting in a tree when it first began, and the two men walked under the tree. I saw them under the tree and I thought they were having a conversation about some business of some kind. I never paid much attention to them and was just sitting there waiting for them to get out of the way, and then I heard Mr. Glover speak to Mr. Sims, "I think you ought to apologize to me," and what Mr. Sims said I couldn't hear, he was talking so low. The next words I heard from Mr. Glover, he said, "Right here will do." They were the next words I heard from him, and a few more words passed along, and I never paid no more attention to them, either, and Mr. Glover hit him, and I laughed at the joke, a big man like him standing there and letting that man hit and not protecting himself; I had to laugh over it. The first time he hit him he knocked his hat off and knocked a letter out of his hand, and the next time he hit him I started to climb down the tree, and I seen two gentlemen walking in the park and I stayed up there; and this gentleman here said, "I need protection," and Mr. Glover says, "Damn you, I will give it to you, you scoundrel." He said, "You have lied and you continuously lied on me on the floor of the House."

The CHAIRMAN. Is the gentleman sitting here, who by the way is Mr. Thetus W. Sims, the man who was struck?

Mr. MULLEN. Yes, sir.

The CHAIRMAN. There are no further questions, and you may stand aside, Mr. Mullen.

The CHAIRMAN. Representative Johnson will be good enough to take the stand.

TESTIMONY OF HON. BEN JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KENTUCKY.

(The witness was duly sworn by the chairman.)

The CHAIRMAN. Will you be good enough to give the stenographer your name, residence, and present office.

Mr. JOHNSON. My name is Ben Johnson; my residence is Bardstown, Ky.; and I am at present a Member of Congress.

The CHAIRMAN. Do you know Mr. C. C. Glover?

Mr. JOHNSON. I met Mr. Glover for the first time during last January, I think. Since first meeting him I have seen him two or three times. Beyond that I have no acquaintance with him.

The CHAIRMAN. Have you ever had any conversation with him touching his sentiments toward Mr. Thetus W. Sims, a Member of the House?

Mr. JOHNSON. Yes; I have.

The CHAIRMAN. When and where?

Mr. JOHNSON. As nearly as I can fix the time—and I can approximate that only; I have nothing by which to fix the correct date—but it must have been about the middle of last February, I met Mr. Glover in the corridor very near the room in which we are now, or to be more exact, about opposite the door of Mr. Bell, from Georgia. I was going along through the corridor and met Mr. Glover, as I said about opposite Mr. Bell's door, and he was going south through the corridor. Upon meeting me he stopped and without any preliminary remark he said; "I am awfully sorry that there is a law in this country against dueling," and he said it in a very excited way. I did not know to whom or to what he had reference, and did not know but what he was intending to apply it to me, and I said to him that I was not averse myself to the dueling code, and that if anybody ever wished to apply it to me that I would help him get around it in some way, and he said, "No; I was applying it to Mr. Sims. He has said some things on the floor of the House relative to me that I do not like, and except for the law I would challenge him to a duel."

The CHAIRMAN. What was the date of this conversation?

Mr. JOHNSON. As near as I can fix it in the last few minutes, since I have been asked concerning it, I would say it was about the middle of February.

The CHAIRMAN. 1913?

Mr. JOHNSON. 1913. I may add that in the last few days somebody said in my presence that Mr. Glover had expressed that same sentiment to him, and I am not able to recall who it was; but I am rather inclined to the opinion that it was Mr. H. J. Brown, but I can not be certain about it. But it is only in the last few days that it was said to me, but I did not impress it upon my mind, and I am not now able to recall.

The CHAIRMAN. We have no further questions.

TESTIMONY OF MR. FREDERICK STECKMAN.

(The witness was duly sworn by the chairman.)

The CHAIRMAN. Will you please give the stenographer your name, residence, and occupation?

Mr. STECKMAN. Frederick Steckman; 1882 Columbia Road; reporter for the Washington Post.

The CHAIRMAN. Do you know C. C. Glover?

Mr. STECKMAN. Yes, sir.

The CHAIRMAN. Did you have any conversation with him touching an altercation between himself and Mr. Thetus W. Sims in Washington on the 18th of April last?

Mr. STECKMAN. Yes, sir.

The CHAIRMAN. When and where did you have the conversation with him on that subject?

Mr. STECKMAN. At his country home on the Tennallytown Road.

The CHAIRMAN. Did he detail to you the circumstances of that altercation?

Mr. STECKMAN. Very elaborately.

The CHAIRMAN. Will you tell us what he said in that connection, and use any notes you have for that purpose?

Mr. STECKMAN. Well, I have the story that I wrote as a result of that interview.

The CHAIRMAN. Speak from that story, if it is accurate.

Mr. STECKMAN. I would be quite willing to stand by that.

The CHAIRMAN. Speak from that. Please recite what he said to you.

Mr. STECKMAN. When I went to his house, he started to give me in detail all the circumstances that led up to this affair, which included the first speech that Mr. Sims had made on the floor of the House and Mr. Glover's answer before the insurance investigating committee and Mr. Sims's reply to that on the floor of the House. I had heard Mr. Sims's speech and I was present in the insurance investigating committee when Mr. Glover made his reply, and I heard Mr. Sims's speech on the floor of the House. So I told him that it would be unnecessary for him to go into those details; that what I would like to get at was just the circumstances of the affair in Farragut Square. After awhile he told me what happened in Farragut Square, and——

The CHAIRMAN (interposing). Well, proceed. What did he tell you?

Mr. STECKMAN. He said that—may I read this [indicating copy of the Washington Post]?

The CHA RMAN. You may read that if you want to adopt it as your present statement.

Mr. STECKMAN. I do adopt it as my present statement.

"Since Mr. Sims made his last speech on the floor of the House we never met until to-day. I have in a way kept a lookout for him, but never went out of my way to find him. To-day I rode into town, as usual, and stopped at my house in K Street. I saw Mr. Sims crossing the street to Farragut Square. I walked in the same direction. As I neared him, I said, 'Mr. Sims, I believe.' He turned a little and made as if to shake hands. 'Oh, Mr. Glover,' he said. 'Yes,' I replied, 'the man against whom you have made a number of infamously false statements on the floor of the House—statements which you knew were false when you made them.' 'I have only done my duty,' was his reply to this. I retorted, and I slapped him on the side of his face with my open palm as hard as I could. 'I need protection; I need protection,' Mr. Sims exclaimed. 'You certainly do,' I informed him. Then I slapped him again, a very vigorous slap. Two gentlemen came up at that moment, and Mr. Sims walked down the street with them. I went to the bank and then walked toward Lafayette Square, where Mr. Sims was approaching with one of the gentlemen. I then expressed my opinion of Mr. Sims to this gentleman in substantially the same langauge that I had used to Mr. Sims and told why I had slapped him.

"There was a man cutting limbs from a tree in Farragut Square who heard what was said by both of us. I saw this man afterwards, and he said he had laughed at the encounter and at Mr. Sims's remark, 'I need protection.'"

I think that covers pretty thoroughly all he said regarding the affair in the park, except that afterwards, I think on Sunday night, I talked to him again—this was on Friday evening—on Sunday night I talked to him over the telephone, and he said that he had not used the word "damn" in his talk in the things he had said to Mr. Sims in the park.

The CHAIRMAN. That is all, Mr. Steckman; you may stand aside.

TESTIMONY OF MR. J. FRED ESSARY.

(The witness was duly sworn by the chairman.)

The CHAIRMAN. Kindly give the stenographer your name, residence, and occupation.

Mr. ESSARY. J. Fred Essary; 1821 Newark Street, Washington; newspaper correspondent.

The CHAIRMAN. Do you know one C. C. Glover?

Mr. ESSARY. Yes, sir.

The CHAIRMAN. Did you have any conversation with him touching an altercation between himself and one Thetus W. Sims on the 18th day of April last?

Mr. ESSARY. Yes, sir.

The CHAIRMAN. When and where did that conversation occur?

Mr. ESSARY. It took place at his country home on Massachusetts Avenue extended on the evening of Friday, April 18.

The CHAIRMAN. What did he say with reference to this occurrence?

Mr. ESSARY. Why, he discussed with me at great length the details that led up to this altercation, and finally, after about three-quarters of an hour of that kind of talk, he discussed the details of the meeting with Mr. Sims in the morning. He said that he had come into town early in the day, had stopped at his house in town, and he was about to go to his bank when he saw Mr. Sims, to use his words, "waddling" across Farragut Square. He said he approached Mr. Sims, and said to him, "Mr. Sims, I believe?" Mr. Sims turned and says, "Mr. Glover"—I have some notes from my story, Mr. Chairman, which I would like to refer to in quoting Mr. Glover further.

The CHAIRMAN. You may refresh your recollection.

Mr. ESSARY. Mr. Glover said, "I looked him squarely in the face and said, 'I want to tell you to your face that you are a contemptible liar; yes, a miserable, contemptible liar. Furthermore, I mean to show you just what I think of you.' With that I struck Sims a blow squarely on the jaw with the open palm of my hand. He reeled back and cried, 'I need protection, I need protection.' 'Yes,' I said to him, 'you do need protection, damn you.' With that I hit him again as hard as I could. By that time two other parties who were passing rushed up and urged me to go no further. I walked calmly again across the street and entered my automobile.'" That was about all he had to say with regard to the striking of Mr. Sims.

The CHAIRMAN. What reason did he assign to you for his resentment toward Mr. Sims?

Mr. ESSARY. Attacks that Mr. Sims had made upon him on the floor of the House in connection with the Rock Creek Park and Potomac Flats transactions.

The CHAIRMAN. That is all. You may stand aside, Mr. Essary.

The Chair will read into the record certain correspondence. At the direction of the committee, the Chair addressed to Mr. Glover the following letter, which was delivered to him by messenger:

LETTER TO MR. GLOVER.

APRIL 21, 1913.

Mr. C. C. GLOVER, *Washington, D. C.*

DEAR SIR: I beg to advise you that in conformity with a resolution herewith inclosed, the House of Representatives has appointed a committee for the investigation of an alleged assault committed by yourself on one Thetus W. Sims, a Representative in Congress. This committee will proceed with its duties on Tuesday, the 22d day of April, 1913, at 10.30 o'clock a. m., in the room of the Committee on the Judiciary of the House of Representatives, in the House Office Building, Washington, D. C. At this hearing you will be privileged to attend in person or by counsel, as you may desire.

Yours, very truly,

JOHN W. DAVIS,
Chairman.

The Chair has received the following communication from Mr. Glover:

LETTER FROM MR. GLOVER TO THE COMMITTEE.

WASHINGTON CITY, D. C., *April 22, 1913.*

Hon. JOHN W. DAVIS,
Chairman of Select Committee,
House of Representatives, Washington, D. C.

DEAR SIR: I have the honor to acknowledge receipt of your courteous communication of the 21st instant, inclosing, for my information, an attested copy of House resolution No. 59, Sixty-third Congress, first session, proposing an investigation of an alleged assault committed upon the Hon. Thetus W. Sims, a Representative in Congress.

I note that your committee will proceed with its duties on Tuesday, the 22d day of April, 1913, at 10.30 o'clock a. m., and also that at the hearing I may attend in person or by counsel. I thank your committee for this privilege.

It would seem that the purpose of your committee in offering this privilege may well be met by the following statement, which I freely and respectfully submit for the consideration both of your committee and of the House of Representatives:

The preamble of the resolution sets forth with substantial accuracy the facts of the incident therein referred to. It is true that in a moment of passion, moved by what I deemed to be extraordinary provocation, I, who have the most profound respect for the law, took the law into my own hands. It is needless to say that in so acting I had no intention to invade any privilege of the House of Representatives, or of any of its Members as such, nor, indeed, did I at the time understand that any claim could be made that I was so doing.

Being now advised that it is thought by the House of Representatives, as expressed in the above-mentioned resolution, that such action did constitute a breach of the privileges of the House and of its Members, I desire in the fullest and most emphatic manner to disclaim any intention of showing disrespect for the House of Representatives as a body, or for its Members individually, or of violating the official privileges of either.

Having been all my life a law-abiding citizen of the National Capital, I greatly regret this single departure from a lifelong course of conduct.

Though advised that under any fair and reasonable interpretation of the conclusions announced by the Supreme Court of the United States in the case of Kilbourn *v.* Thompson (103 U. S., 168) the House of Representatives is without jurisdiction to pursue this inquiry and to take the action foreshadowed by the resolution in question, I have determined, as the result of personal reflection, to disregard this advice for the moment, reserving, however, the right to avail myself of the benefits thereof if it should at any time become necessary so to do.

With this statement and disavowal I leave the matter to the consideration of your committee and to that of the House of Representatives.

Respectfully, yours,

CHAS. C. GLOVER.

Is there anyone here representing Mr. Glover who desires to be heard before the committee at this time? If there is not, there is no further business before the committee at this session, and the committee will stand adjourned, subject to the call of the Chair.

(Thereupon the committee adjourned.)

○

63D CONGRESS, 1st Session. | HOUSE OF REPRESENTATIVES. | REPORT No. 7.

JANITORS TO CERTAIN COMMITTEES.

APRIL 30, 1913.—Ordered to be printed.

Mr. LLOYD, from the Committee on Accounts, submitted the following

REPORT.

[To accompany H. Res. 55.]

The Committee on Accounts, to whom was referred House resolution 55, providing for the appointment by the Doorkeeper of two janitors for committees located in the Capitol during the sessions of the Sixty-third Congress, have had the same under consideration and recommend its adoption.

○

63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 8.

APPOINTMENT OF LABORERS, JANITORS, AND STENOGRAPHER.

APRIL 30, 1913.—Ordered to be printed.

Mr. LLOYD, from the Committee on Accounts, submitted the following

REPORT.

[To accompany H. Res. 56.]

The Committee on Accounts, to whom was referred House resolution 56, authorizing the appointment by the Clerk of three laborers, three janitors, and one stenographer, have had the same under consideration and recommend the following amendments:

Strike out all after the word "month" in line 4.

In line 2, after the word "appoint," strike out the word "three" and insert the word "four."

In line 2, after the word "and," strike out the word "three" and insert the word "two."

This resolution as amended provides for the appointment of four laborers and two janitors, and, believing the additional employees necessary and this a proper resolution, its adoption is recommended.

○

63D CONGRESS, 1st Session. HOUSE OF REPRESENTATIVES. REPORT No. 9.

MARY S. MANN.

APRIL 30, 1913.—Ordered to be printed.

Mr. HOWARD, from the Committee on Accounts, submitted the following

REPORT.

[To accompany H. Res. 61.]

The Committee on Accounts, to whom was referred House resolution 61, authorizing the Clerk of the House to pay to Mary S. Mann, widow of Charles H. Mann, late superintendent of the press gallery of the House, a sum equal to six months' salary and funeral expenses not exceeding $250, have had the same under consideration, and in accordance with the custom heretofore established its adoption is recommended.

○

63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 10.

ATTENDANT FOR LADIES' RECEPTION ROOM.

APRIL 30, 1913.—Ordered to be printed.

Mr. WOODRUFF, from the Committee on Accounts, submitted the following

REPORT.

[To accompany H. Res. 54.]

The Committee on Accounts, to whom was referred House resolution 54, providing for the appointment of an attendant for the ladies' reception room, have had the same under consideration. This employee has been provided for at all the recent sessions of Congress, and, believing it necessary to continue the employment and that this is a proper resolution, its adoption is recommended.

O

63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 11.

MARIE SMITH AND OTHERS.

MAY 8, 1913.—Ordered to be printed.

Mr. HOWARD, from the Committee on Accounts, submitted the following

REPORT.

[To accompany H. Res. 81.]

The Committee on Accounts, to whom was referred House resolution 81, providing for payment for certain services rendered as telephone operators by Marie Smith, Hallie Vierbuchen, Louise Morgan, and Jennie White, have had the same under consideration, and it appearing that the services were necessary, were rendered, the amount asked a reasonable compensation therefor, and this a proper resolution, its adoption is recommended.

○

63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 12.

MARY C. ADAMS.

MAY 8, 1913.—Ordered to be printed.

Mr. LLOYD, from the Committee on Accounts, submitted the following

REPORT.

[To accompany H. Res. 87.]

The Committee on Accounts, to whom was referred House resolution 87, providing that the Clerk pay to Mary C. Adams, for services as attendant in ladies' reception room, the sum of $60, have had the same under consideration and recommend its adoption.

○

63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 13.

CLERK TO JOINT SELECT COMMITTEE ON DISPOSITION OF USELESS EXECUTIVE PAPERS.

MAY 8, 1913.—Ordered to be printed.

Mr. LLOYD, from the Committee on Accounts, submitted the following

REPORT.

[To accompany H. Res. 86.]

The Committee on Accounts, to whom was referred House resolution 86, authorizing the appointment of a session clerk to the Joint Select Committee on Disposition of Useless Executive Papers, have had the same under consideration and recommend the following amendment: In line 5, after the word "day," strike out the word "for," and insert "from the second day of May and during the remainder of," and that with said amendment it be adopted.

○

63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 14.

EXPENDITURES BY COMMITTEE ON THE MERCHANT MARINE AND FISHERIES.

MAY 8, 1913.—Ordered to be printed.

Mr. ABERCROMBIE, from the Committee on Accounts, submitted the following

REPORT.

[To accompany H. Res. 84.]

The Committee on Accounts, to whom was referred House resolution 84, providing for the members of the Committee on the Merchant Marine and Fisheries of the Sixty-second Congress who are Members of the Sixty-third Congress to continue the investigation authorized by the Sixty-second Congress, have had the same under consideration and recommend the following amendment:

In line 3, after the word "Fisheries," insert the words "of the Sixty-second Congress."

Believing the provision necessary and the resolution as amended a proper one, its adoption is recommended.

○

63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 15.

MESSENGER TO JOINT SELECT COMMITTEE ON DISPOSITION OF USELESS EXECUTIVE PAPERS.

MAY 8, 1913.—Ordered to be printed.

Mr. LLOYD, from the Committee on Accounts, submitted the following

REPORT.

[To accompany H. Res. 85.]

The Committee on Accounts, to whom was referred House resolution 85, authorizing the appointment of a messenger by the chairman of the Joint Select Committee on Disposition of Useless Executive Papers, have had the same under consideration and recommend that it be amended by striking out, in line 5, all after the word "month" and inserting the following: "from the 2d day of May, 1913, and during the remainder of the session," and that when so amended the resolution be adopted.

○

63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 16.

ADDITIONAL DISTRICT JUDGE, EASTERN DISTRICT OF PENNSYLVANIA.

MAY 10, 1913.—Ordered to be printed.

Mr. HENRY, from the Committee on Rules, submitted the following

REPORT.

[To accompany H. Res. 97.]

The Committee on Rules, to whom was referred the resolution (H. Res. 97) providing for the consideration of H. R. 32 and S. 577, having considered the same, beg to report as a substitute therefor the following resolution and recommend that it be adopted:

Resolved, That immediately after the adoption of this rule the House shall proceed to the consideration of the bill (H. R. 32) to provide for the appointment of an additional district judge in and for the eastern district of Pennsylvania.

○

63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 18.

COMMITTEE ON ROADS.

JUNE 2, 1913.—Ordered to be printed.

Mr. HENRY, from the Committee on Rules, submitted the following

REPORT.

[To accompany H. Res. 104.]

The Committee on Rules, to whom was referred the resolution (H. Res. 104) providing for the creation of a Committee on Roads and for other purposes, having had the same under consideration, beg to report it back to the House with the recommendation that it be adopted.

○

63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 31.

WESTERN FUEL CO. DIRECTORS.

JULY 2, 1913.—Ordered to be printed and to lie on the table.

Mr. CLAYTON, from the Committee on the Judiciary, submitted the following

REPORT.

[To accompany H. Res. 180.]

The Committee on the Judiciary, having had under consideration the resolution (H. Res. 180) calling upon the Attorney General for copies of all correspondence and other memoranda and papers on file in the office of the Attorney General, or referred by the President to the Attorney General, relating to the postponement or delay of trial of cases against the Western Fuel Co. directors, J. C. Wilson, or either or any of them, now pending in the northern district of California, submit the following report:

The resolution as drawn by the author is in the following words:

Resolved, That the Attorney General be, and he is hereby, instructed to transmit to the House of Representatives copies of all correspondence and other memoranda and papers on file in the Office of the Attorney General, or referred by the President to the Attorney General, relating to the postponement or delay of trial of cases against the Western Fuel Co. directors, J. C. Wilson, or either or any of them, now pending in the Northern District of California.

The attention of the Attorney General was called to this resolution by the chairman of the committee, as had been done in other like cases, and he was invited to make such suggestions as he thought proper. Afterwards, while the committee had under consideration the resolution, the Attorney General transmitted to the committee the file of the Department of Justice in this case, stating that the papers so transmitted were the complete file of his office and contained all correspondence and other memoranda and papers relating to the case.

After an examination of the said file so transmitted by the Attorney General, the committee was in doubt as to the propriety of publishing some of these papers or some parts of some of these papers in such file because of an apprehension on the part of the committee that the publication thereof might be incompatible with the public interest. Thereupon a subcommittee consisting of Messrs. Clayton, Webb, Carlin, McCoy, Volstead, Morgan, and Chandler was appointed to confer with the Attorney General as to the necessity of withholding from publication any of such papers or any part of any of the same for the reason above stated.

The subcommittee met with the Attorney General at the Department of Justice on Saturday evening last. There were present,

besides the Attorney General and the members of the subcommittee, Assistant Attorney General Harr and Assistant Attorney General Graham. The Attorney General was requested, as the chief law officer of the Government, to give the committee the benefit of his opinion as to whether or not the file of the Department of Justice in this case might be published without detriment to the Government in the prosecution of the case. The Attorney General said in effect that personally he had no objection to the publication of everything in the file, but expressed the belief that certain portions of some of the papers should not be published because it might be detrimental in the prosecution of the case.

Your committee is of opinion and so reports that a telegram dated June 18, 1913, from District Attorney McNab to the Attorney General and copy of a telegram from the Attorney General to the United States attorney, San Francisco, Cal., dated June 17, 1913, should not be made public at this time, because such publication would be incompatible with the public interest.

Your committee is also of the opinion and so reports that a portion of the report of District Attorney McNab to the Attorney General dated May 20, 1913, should not be made public at this time, as its publication might be prejudicial to a fair and impartial trial of this case and incompatible with the public interest. The portion of said report so withheld is a statement of the facts in the case which the Government expects to be able to prove.

In view of the fact that your committee examined all the original papers and documents covered by the resolution and made copies of the same which are hereby made a part of this report, except as above stated, your committee is of opinion that the purpose of the resolution has been accomplished and therefore so report and recommend that the resolution do lie upon the table.

WRH–EJB.

JUNE 18, 1913.

165862–

[To be sent in cipher.]

UNITED STATES ATTORNEY,
San Francisco, Cal.:

Upon further consideration of matter department feels grave doubt as to guilt of Sidney V. Smith and Robert Bruce, indicted in Western Fuel Co. case. In order to avoid possible injustice, you are instructed to continue case as to them until after the trial of the other three directors who were officers of the company and active in its management. If latter are convicted, copy of proceedings at trial should be sent department in order that it may determine what course should be pursued in regard to the two directors named. Wire receipt.

MCREYNOLDS.

WRH–EJB.

JUNE 19, 1913.

165862–11

[To be sent in cipher.]

UNITED STATES ATTORNEY,
San Francisco, Cal.:

Wrote you June 17 that department did not think letter Sidney Smith to Lane admissible against other directors and you should not use it. Exercise your own judgment as to giving attorneys for defense a copy. Just received your telegram as to publication of evidence in Bulletin.

MCREYNOLDS.

[Telegram.]

9W. O. 39 G. R.

SAN FRANCISCO, CAL., *June 18, 1913.*

ATTORNEY GENERAL, *Washington, D. C.:*

Attorneys defense Western Fuel directors ask for copy Sidney Smith letter to Hon. Franklin K. Lane which you sent me. Your letter on ground Smith kept no copy. Does department object?

McNAB, *United States Attorney.*

2.50 p. m.

W. R. H.
165862–9

JUNE 17, 1913.

JOHN L. McNAB,
United States Attorney, San Francisco, Cal.

SIR: I have your letter of the 7th instant in regard to the letter addressed by Sidney V. Smith to the Secretary of the Interior, which you desire to use in the trial of the Western Fuel Co. case.

The department doubts the admissibility of this letter as against the other defendants, it not being an act done in pursuance of the conspiracy, and does not care to have you attempt to use it.

Respectfully,

(Signed) W. R. HARR,
Assistant Attorney General.
(For the Attorney General.)

[Copy.]

[Department of Justice. Office of United States attorney for the northern district of California.]

1–A

JUNE 7, 1913.

The ATTORNEY GENERAL,
Washington, D. C.

SIR: I have the honor to refer again to your letter to me dated May 7, 1913, "JCA JSW 165862–6," inclosing copy of a letter from Sidney V. Smith dated April 24, 1913, and addressed to Hon. Franklin K. Lane, Secretary of the Interior, and to my reply thereto dated May 20, 1913.

Subsequent to the mailing of the above letters I received your letter approving my recommendation and instructing me to proceed to trial against all the defendants named.

The trial being for conspiracy, the statements of all the defendants become of vital importance in the case. The letter addressed by Sidney V. Smith to Hon. Franklin K. Lane, while intended as a defense of his position, contains certain statements relative to the other defendants of the utmost importance to the Government's case. I have the honor, therefore, to request that the original letter, a photostat copy of which is in my possession, be obtained from the honorable Secretary of the Interior for the use of the Government during the trial. I can not use the photostat copy in the face of an objection by the defendant that the original has not been produced. I do not know that objection would be made by Sidney V. Smith, particularly in view of the fact that the letter is his own statement of his defense, but I can not approach him on this question, and must be prepared at the trial to produce the original or account for its absence.

The trial will be called June 24. I am quite sure that Mr. Lane regarded the communication as official and will have no objection to transmitting it to me. I wish you would convey to him, however, my assurance that I would not do anything in the case that would embarrass him if he should regard it as a private communication. I assume, however, that it is an official communication.

Respectfully,

(Signed) J. L. McNAB,
United States Attorney.

165862–8

MAY 28, 1913.

HERRINGTON,
United States Customhouse, San Francisco, Cal.:

Sunned. Authorized employ man temporarily, but think compensation should not exceed $5 per day.

BIELASKI.

[Western Union Telegraph Co. Received at 138 Govt. P.O.]

SAN FRANCISCO, CAL., *May 27, 1913.*

The ATTORNEY GENERAL,
Washington, D. C.:

Trial of directors Western Fuel Co. set for June 24, and stockbroker cases June 30. Both cases of great importance and all defendants represented by numerous attorneys. I ascertain they are searching records of trial jurors and expending large sums in shadowing them. I believe situation requires that it be prepared on question of social and financial affiliations of all trial jurors. Request authority to employ special detective from firms or other agency for not to exceed 20 days at not to exceed $10 per day to secure information above suggested, and to prevent interference with justice by operation of defendant or Government agents might be detailed to work engaged in searching evidence also; can not be used for purpose required, because well known to all persons concerned.

McNAB, *United States Attorney.*

MAY 28, 1913.

Approved.

ADKINS.

JCA—jsw

165862–7. DEPARTMENT OF JUSTICE,
May 26, 1913.

JOHN L. McNAB, Esq.,
United States Attorney, San Francisco, Cal.

SIR: I have your letter of the 20th instant, in reply to mine of the 7th, reporting upon the indictment against Sidney V. Smith, Robert Bruce, and others, directors of the Western Fuel Co.

I inclose for your information copy of a letter sent this day to the Secretary of the Interior.

I think there is sufficient evidence to justify the filing of indictment against these two directors, and the question of their guilt should be determined by the petit jury.

Please proceed accordingly.

Respectfully, (Signed) J. C. McREYNOLDS,
Attorney General.

Inclosure 15768: Copy of letter, dated May 26, 1913, to Secretary of Interior, re above case.

JCA–jsw

165862–7. DEPARTMENT OF JUSTICE, *May 27, 1913.*

Hon. FRANKLIN K. LANE,
Secretary of the Interior, Washington, D. C.

MY DEAR MR. LANE: I have received from United States Attorney McNab, of San Francisco, his report upon the letter of Mr. Sidney V. Smith, of that city, to you, of the 24th of April, asking that the district attorney be directed to dismiss the indictment against Mr. Smith.

The report of the district attorney clearly shows the existence of a conspiracy among several officers and directors of the Western Fuel Co. to defraud the United States and the accomplishment of the object of that conspiracy, so that the United States lost in several ways a large sum.

The district attorney states that in his opinion there was sufficient evidence to justify the indictment of Mr. Smith and Mr. Bruce and other directors of the company, and that the case should be submitted to a trial jury.

Upon the facts stated in the district attorney's report I thoroughly agree with him and have therefore directed him to proceed to trial against all the defendants.

Faithfully, yours,

(Signed) J. C. McREYNOLDS,
Attorney General.

DEPARTMENT OF JUSTICE,
Washington.

The FILE CLERK:

This file should be charged to me, the Attorney General having asked me personally to look into the case. Please charge accordingly, so as to avoid further confusion.

W. R. HARR.

165862–7.

[Department of Justice. Office of United States attorney for the northern district of California.]

1–A.

SAN FRANCISCO, *May 20, 1913.*

The ATTORNEY GENERAL, *Washington, D. C.*

SIR: I am in receipt of your letter of May 7, 1913, "JCA JSW 165862–6," inclosing a copy of a letter from Sidney V. Smith, dated April 24, 1913, and addressed to Hon. Franklin K. Lane, Secretary of the Interior. You ask that if I have an extra copy of the evidence before the grand jury that I forward it to you, and if not, to give you a brief statement of the facts and an expression of my opinion on Mr. Smith's request.

No evidence was taken down in shorthand before the grand jury. It will be necessary, therefore, for me to give you a statement of the facts from my intimate knowledge of them acquired by a study of the case.

The defendants, John L. Howard, James B. Smith, J. L. Schmitt, Robert Bruce, Sidney V. Smith, S. C. Mills, E. H. Mayer, and Edward J. Smith, were indicted for conspiracy to defraud the United States by the Federal grand jury about three months ago. Of the defendants, John L. Howard is president of the Western Fuel Co. He is a leading financier in San Francisco. James B. Smith is manager and one of the directors of the company. He is a brother of the defendant, Edward J. Smith, who was formerly tax collector of San Francisco and who served a long term for embezzling the city funds. J. L. Schmitt is the treasurer of the company and a director. Robert Bruce and Sidney V. Smith are likewise directors of the company. S. C. Mills is the superintendent, acting on the wharves and docks under the manager, James B. Smith. E. H. Mayer and Edward J. Smith are weighers for the Western Fuel Co.

The conspiracy charge against the defendant is that they entered into an unlawful agreement to defraud the Government in three ways: First, by causing false weights and measures and fraudulent return of weight on the incoming cargoes of their coal, to the end that the amount of duty should be very much lessened. Secondly, by causing the returns of weight on all outgoing cargoes delivered into American bottoms to be grossly excessive in weight, to the end that the drawback on the coal should be much greater than the shipping company was entitled to; and thirdly, by grossly overweighing the coal delivered to the United States transport.

In brief, the Government will show that the Western Fuel Co. is and for many years has been a fuel trust, having an absolute monopoly on all coal importation into the Bay of San Francisco. It owns mines in British Columbia and has a fleet of its own vessels by which the fuel is transported to San Francisco. In addition to this, it purchases all the coal brought in by various fleets of steamers operating between New Zealand, Australia, and British Columbia and the port of San Francisco. It has full control of a number of docks on the San Francisco water front as well as on the Oakland water front, across the bay. (Omission, referred to in committee report.)

The directors of the Western Fuel Co. are vigorous, virile, shrewd, business men. They are not men who are likely to be engaged as directors of any large financial institution without having an intimate knowledge of its affairs. To me it is inconceivable that a definite system of operation can be carried on for many years by which the company underweighs incoming coal and overweighs outgoing coal, bribes systematically and indiscriminately all the engineers of the various ships going out of San Francisco, and returns statements showing fraud on their face into the rooms of the directors and in the offices of the company without the directors being cognizant thereof. I have no desire whatever to falsely accuse any man. Willingly, indeed, would I admit the innocence of any defendant if the evidence so indicated. Appeals have been made to me by a number of people of considerable influence and power who have represented that they wish Sidney V. Smith and Robert Bruce dismissed from the case. Each man who comes to me charges fraud against some other particular director of the company. No one seems to agree in denouncing the one denounced by the man who preceded him. Each defendant seems to agree that the other fellow is guilty, but none of them will admit that he had any share in the guilty proceedings. If at the time of the trial these two men, Robert Bruce and Sidney V. Smith, shall not be connected by the evidence which I have indi-

cated to the satisfaction of the court, naturally they will be dismissed from the case But under the present conditions I can not see how it can be done without prejudice to the Government and without ignoring the strong and powerful connecting links of circumstantial evidence. I have conferred with the Treasury agent in regard to this matter. I have talked it over with him very fully quite awhile ago with a view of determining whether these various appeals from their financial friends should be given any consideration from the viewpoint of injuring or assisting the Government's case in court. I could not see how we would be justified in dismissing them in view of the circumstances, and I feel that the question of comparative guilt or innocence is one which must be solved by the court and the jury and not by the United States attorney's office. I think my personal sincerity in this will be admitted when it is known that I have the very kindest of personal feeling toward Robert Bruce and Sidney V. Smith, both of whom, I regret to say, are intimately connected with many personal friends of mine and organizations to which I happen to belong. If I should now select certain defendants and take upon myself the burden of saying that they are more guilty than others or less guilty than others, I would be taking upon myself a responsibility which should be assumed by a jury and not by a prosecuting officer.

Referring to that portion of Mr. Smith's letter to Mr. Labe in which he says that I have repeatedly stated that I made no suggestions relating to his indictment, I beg to reply as follows: I presented the evidence to the grand jury for about 10 days. At the end of that time I stated to them that I had not sounded them as to their feelings; that I felt that I had presented a perfect case, but that I should refuse to in any way influence them by suggestion or arguing; that I had placed before them the names of the directors, all the officials and weighers, and that I would leave to them the selection of the guilty defendants if they believed that any of them were guilty. I then withdrew from the room, refusing in any way to make any further suggestions. I was called back at the end of about 10 minutes and was requested to refresh the memory of the jury as to the names of various directors. I then withdrew, and was again called to the jury room and informed of the names of the defendants who had been indicted. Thus, I took no part in naming the defendants, but I presented evidence connecting all of them with the case. I heartily agree with the grand jury's action.

The case is set for trial June 24, 1913, before Judge Bean, of the Oregon district. It will be tried on that date, and the fate of the defendants will be known before the end of the month. If there are any further facts that I can give to you, I shall be only too happy to supply them. I, of course, naturally feel under the circumstances that the evidence is sufficient to justify a verdict on behalf of the Government against all defendants, and I believe the Government's case would be impaired by dismissing any of the defendants.

Very respectfully,

(Signed) J. L. McNab,
United States Attorney.

165862–6 JCA–jsw

May 7, 1913.

John L. McNab, Esq.,
United States Attorney, San Francisco, Cal.

Sir: I inclose, for your information, copy of a letter, dated April 24, from Mr. Sidney V. Smith, of San Francisco, to Secretary Lane, stating the facts as he understands them upon which an indictment was found against himself and the other directors of the Western Fuel Co., charging them with conspiring to defraud the United States Government of its customs duties on foreign importation of coal into California.

If you have an extra copy of the evidence before the grand jury, I should like to see it; if not, please give me a brief statement of the facts. I should like an expression of your opinion on Mr. Smith's request.

Respectfully,

(Signed) Jesse C. Adkins,
Assistant Attorney General.
(For the Attorney General.)

Inclosure 7971: Letter from S. V. Smith, dated April 24, 1913.

JCA–jsw

165862–6.

MAY 7, 1913.

Hon. FRANKLIN K. LANE,
Secretary of the Interior, Washington, D. C.

MY DEAR MR. LANE: I have your letter of the 30th of April inclosing one dated April 24, from Mr. Sidney V. Smith, a lawyer of San Francisco, who has been indicted as one of the directors of the Western Fuel Co. charged with defrauding the United States Government of customs duties on coal imported into California.

I am to-day sending a copy of Mr. Smith's letter to District Attorney McNab, and am asking for a copy of the evidence in the case, and for Mr. McNab's opinion upon Mr. Smith's request that the indictment be dismissed as against himself and Mr. Bruce.

Faithfully, yours,

(Signed) J. C. MCREYNOLDS,
Attorney General.

[San Francisco Law Library, 424 City Hall Building.]

SAN FRANCISCO, CAL., *April 24, 1913.*

Hon. FRANKLIN K. LANE.

DEAR MR. LANE: It may be that you can do me a great personal favor.

Some two months ago the United States grand jury here found an indictment against all the directors of the Western Fuel Co., viz, John L. Howard, James B. Smith, Joseph L. Schmitt, Robert Bruce, and myself, charging us with conspiracy to defraud the United States Government out of customhouse duties on foreign coals imported into California by causing the same to be wrongly weighed both on their importation and on their delivery to vessels having a United States registry and plying to foreign ports. An examination of the books of the fuel company made at the instance of the grand jury disclosed the fact that since the San Francisco fire the company appears to have sold some 64,000 tons in excess of the amount on which it paid duties. How this excess is to be accounted for or explained I am ignorant, but there may have been and probably was presented to the grand jury some evidence of improper practices in connection with the weighing on the part of some of the company's employees or agents. Of the nature of this evidence I am completely ignorant, nor have I or the attorneys employed to defend against the criminal charge been able to learn how or by whom the improper weighing, if any such there was, was effected.

Of the persons indicted, John L. Howard was president of the company, charged with the general administration of its affairs, including the management of its mine in British Columbia. James B. Smith is vice president, charged with the buying and selling of coal and with the management of all operations on the wharves and at the company's breakers, including the receipt, handling, storage, and delivery of coal as sold. The employment and direction of the company's employees engaged in the receipt and delivery of coal to and from the breakers is his immediate province. Joseph L. Schmitt is the treasurer of the company. Robert Bruce and myself were merely directors, having no desks or places in the offices, nor any connection with or knowledge of the details of the company's business or operations beyond that which came before us at the regular monthly meetings of the directors. It seems that daily statements came into the office showing the amounts of coal imported and sold, that a monthly summary was made which showed the amount of "over-run," or excess of sales over importations whenever the same existed, and that the fact of this over-run was thus brought to the knowledge and attention of the three directors who were officers of the company, and, by reason of their position in the office, aware of the details of its business from day to day. But these monthly or daily statements of receipts and sales of coal by tons never came before the directors as a body, who were only called upon to pass on the monthly financial balance sheet, which dealt only with dollars and cents, and contained no hint or suggestion of the existence of any over-run or excess in tons of sales over importations. There could have been no evidence presented to the grand jury of any facts or circumstances showing or tending to show any knowledge on the part of Mr. Bruce or myself of these over-runs, or implicating us in any way with any fraudulent weighing or connecting us with any conspiracy to that end. For myself I can say positively that I never knew or heard of any attempt to defraud the Government in the matter of coal weighing or duties on coal, never heard the thing discussed or alluded to in directors' meetings or elsewhere or at all, never knew anything about over-runs or had a hint that such a thing existed. And I believe that Mr. Bruce is in the same case as myself.

Mr. John L. McNab, the United States district attorney, has stated more than once that he did not procure or suggest the indictment of Bruce or myself, but that after the grand jury had heard the evidence in regard to the overruns as appearing on the company's books, etc., they sent for the names of the directors and instructed them, of their own motion, to include us all in the charge.

I have caused the facts above set forth to be called to Mr. McNab's attention with the request that he would, as a matter of simple justice, enter a nolle prosequi as to Mr. Bruce and myself, but he has paid no attention to the request. The trial was set for May 20, but by reason of Judge De Haven's death and the consequent pressure of business in the Federal court, it will not take place on that date, and may, indeed, be indefinitely postponed until a judge from some other State may find it convenient to preside.

The attorneys engaged for the defense, Warren Olney, Samuel Knight, and Black, are convinced that the trial judge will have to direct the jury to acquit Bruce and Smith, which is all very well, but in the meantime I am unjustly subjected to the annoyance of having over my head an indictment of a Federal grand jury concerning a matter as to which I know no more than you. For myself I am not greatly concerned, but I find that the charge is affecting the health of my wife, who is not strong or well, and for her sake I am bound to do all I can to relieve myself from this complication.

And so it is that I am troubling you with all this, and the request that if you see nothing improper in such a proceeding you will lay this letter before the Attorney General and ask him to wire Mr. McNab instructions to lay before him at once all evidence presented to the grand jury or coming to his knowledge implicating Robert Bruce and Sidney V. Smith with the charge of conspiracy. If Mr. McNab fails to produce any such facts as warrant our being put on trial, I believe it will be the Attorney General's pleasure and duty to direct the district attorney to dismiss and so relieve Mr. McNab of the embarrassment of acting contrary to the instructions he received from the grand jury.

In addition to what you may already know of me I may say that I practiced law in this city for nearly 40 years, being the attorney of the Security Savings Bank, the Bank of British North America, the Canadian Bank of Commerce, Ant. Boul & Co., bankers, and that no man in this city of any sense believes that I would have countenanced the cheating of the Government out of $30,000, which would have been the duty at 45 cents a ton on 64,000 tons. With the most sincere apologies for this invasion of your time and interest,

Very truly, yours, (Signed) SIDNEY V. SMITH.

Address care of Western Fuel Co., San Francisco.

THE SECRETARY OF THE INTERIOR,
Washington, April 30, 1913.

MY DEAR MR. MCREYNOLDS: I inclose you a letter from Mr. Sidney V. Smith, a lawyer of high reputation in San Francisco, who it appears has been indicted as one of the directors of the Western Fuel Co. for defrauding the Government in connection with the importation of coal into this country. He asks that you telegraph Mr. McNab to lay the facts before you, upon which he thinks that he is entitled to a nolle prosequi.

Cordially, yours,

Mr. F. K. LANE.

Hon. JAMES C. MCREYNOLDS,
Attorney General.

Inclosure. 165862–6

165862–5

MARCH 1, 1913.

UNITED STATES ATTORNEY,
San Francisco, Cal.:

Referring to your telegram of the 27th instant and confirming department telegram of yesterday, you are hereby authorized to incur an expense not exceeding $450 in having photographs made of certain evidence, exhibits, etc., for use in the trial of the case against the Western Fuel Co.

This letter presented to the marshal will be his authority to pay the expense incurred hereunder from the appropriation "Miscellaneous expenses, United States courts, 1913," upon an account rendered in duplicate on the proper blanks, fully itemized and bearing your official approval.

(Signed) WINIFRED T. DENISON,
(For the Attorney General).

JCA
165862–5 FEBRUARY 28, 1913.
UNITED STATES ATTORNEY,
San Francisco, Cal.:

Authorized procure photographs evidence case Western Fuel Co., expense not exceeding $450. Letter follows.

WICKERSHAM.

[Night message, Western Union Telegraph Co. Received at Wyatt Building corner Fourteenth and F Streets, Washington, D. C.]

SAN FRANCISCO, CAL., *February 27, 1913.*

To ATTORNEY GENERAL,
Washington, D. C.:

Lowest estimate for photographs in Western Fuel Co. trial $450 for not to exceed 600 sheets about 18 inches square. Consider the figure very reasonable; have secured figures by defense agreeing to pay for copies; possession these photographs absolutely necessary proper trial of case; request authority on receipt telegram; will write for formal authorization.

MCNAB, *United States Attorney.*

JCA
165862–4 FEBRUARY 25, 1913.
UNITED STATES ATTORNEY,
San Francisco, Cal.:

Photographic work in Western Fuel Co. case can not be done here. State approximate cost if done San Francisco.

WICKERSHAM.

[Western Union Telegraph Co. Received at F199ch WM 104 Govt.]

SAN FRANCISCO, CAL., *February 24, 1913.*

ATTORNEY GENERAL, *Washington, D. C.:*

In conspiracy prosecution of directors Western Fuel Co., defrauding Government on coal drawbacks; secured corporation's books through progress of grand jury; impracticable to try case without books or copies. After discussion with defendant's attorneys agreeable both sides to photograph books and documents; will require photographs 168 sheets 18 inches square and 400 double sheets, totaling 18 inches square books of entry. Can send all books to Washington for photographing there by Department Justice unless you authorize photographing here. Please wire which course agreeable, also how long would require to do the work.

MCNAB, *United States Attorney.*

[Department of Justice. Office of United States attorney for the northern district of California.]

1–A

SAN FRANCISCO, *February 19, 1913.*

The ATTORNEY GENERAL, *Washington, D. C.*

SIR: Responding to your letter of February 12, 1913, "JWG ABB 165862–1," authorizing me to employ an expert accountant to examine the books of the Western Fuel Co. and to your telegram of the same date to the same effect, I beg to say that I found it unnecessary to incur the expense. There is therefore returned to you herewith the blank voucher.

In this connection I wish to say that the grand jury will to-day return indictments against the entire directorate of the Western Fuel Co., and the trial will involve heavy interests. It will undoubtedly be necessary for me to ask you for authorization for some kind of help when the trial comes on. Therefore I will ask you to remember that I have refrained from expending this $200 which you authorized me to expend.

Respectfully,

(Signed) JOHN MCNAB,
United States Attorney.

Adkins, Bielaski, Glover.
File McG.

SAN FRANCISCO, CAL., *February 19, 1913.*

ATTORNEY GENERAL, *Washington, D. C.:*

Grand jury has just voted indictment against all directors and personnel Western Fuel Co. Coal Trust of Pacific coast conspiracy to defraud Government on imports and drawback from April 1, 1906, to date; expect return indictment to-day; please tell Fowler this case has prevented preparing petition Otis Elevator case; will rush it.

MCNAB, *United States Attorney.*

165862–1.

FEBRUARY 12, 1913.

UNITED STATES ATTORNEY,
San Francisco, Cal.:

Replying to your telegram of the 11th instant, and confirming department telegram of this date, you are authorized to employ an expert accountant for not exceeding 10 days, at a compensation not exceeding $20 per day, for the purpose of making an examination of the books of the Western Fuel Co., which company is alleged to have defrauded the Government in connection with duties on imports.

Please have the accountant render his account on the inclosed form (No. 5½ D. C.) and forward same to this department for payment from the appropriation "Detection and prosecution of crimes."

(Signed) WINIFRED T. DENISON,
(For the Attorney General).

Inclosure.

165862–1. FEBRUARY 12, 1913.

UNITED STATES ATTORNEY,
San Francisco, Cal.:

Authority granted for employment of accountant not exceeding 10 days, $20 per day, as requested. Letter follows.

(Signed) GEO. W. WICKERSHAM.

[Western Union Telegraph Co. Received at F140CH FC 83 GR.]

SAN FRANCISCO, CAL., *February 11, 1913.*

ATTORNEY GENERAL, *Washington, D. C.:*

Very important investigation before grand jury to indictment officials Western Fuel Co. for defrauding Government on tariff imports and drawbacks on coal duties. Have secured books of company, which show immense and systematic fraud since 1906. Request authority to employ expert to examine books at not to exceed $20 per day for not to exceed 10 days. Regard this vitally important. Western Fuel Co. has virtually monopoly coal imports San Francisco.

1050P MCNAB, *United States Attorney.*

Approved February 12, 1913.

JESSE C. ADKINS.
J. S. WALKER.

Following is a reproduction from San Francisco Bulletin of June 6, 1913:

ATTEMPT TO EVADE TRIAL BY EXERCISE OF INFLUENCE AT WASHINGTON FALLS FLAT—PROSECUTOR M'NAB PREPARED TO SHOW METHODS BY WHICH GOVERNMENT WAS DEFRAUDED.

WASHINGTON, *June 6.*

Directors of the Western Fuel Co., of San Francisco, who are to face trial on June 24 on charges of defrauding the Government out of between $500,000 and $1,000,000 in coal duties and by the "short weighting" of Uncle Sam's fuel orders, have made a futile attempt to muster enough political influence here to effect a dismissal of the charges against them.

The spotlight was trained on this attempt to-day by a high authority in the customs service. It has been learned that two of the Western Fuel directors, said to be Robert Bruce and Sidney V. Smith, were willing to sacrifice their fellow directors, but pleaded innocence on their own account, and asked the dismissal of the indictment against themselves. Their activities failed, and have served only to arouse a deep interest in administration circles here in the trial.

The nature of the indicted directors' method of attempting to thwart the prosecution has not been disclosed. Whether they sent agents to the authorities here or approached the subject by correspondence has not been disclosed, but it is now an open secret in Federal circles that they felt confident in marshaling enough influence to "call off" United States Attorney John L. McNab, of San Francisco, via the route of nolle prosequi, on telegraphic orders from his superiors in Washington.

ACTS AS BOOMERANG.

The result of the attempt has been the extending of the indorsement and support of the Attorney General's office to McNab. The Department of Justice will take an active interest in the coming trial, and will be specially represented in the San Francisco court by Judge Clayton T. Herrington.

Other directors of the Western Fuel Co. who were jointly indicted with Sidney V. Smith and Robert Bruce are John L. Howard, James B. Smith, and Joseph L. Schmitt. The gossip in customs circles here to-day has it that the Bruce-Smith forces contend that they were ignorant of the process whereby the Government was consistently cheated.

Besides the directors mentioned, three employees of the Western Fuel Co. will be tried with them for conspiracy. These are Superintendent Fred Mills and Weighers Edward J. Smith and Edward Mayer. Smith is a brother of James B. Smith.

"I have neither the time nor the inclination to try the Western Fuel conspiracy case in the newspapers," declared United States Attorney John L. McNab to-day, when shown a copy of the Washington dispatch, which reports an attempt of certain of the fuel officials to evade prosecution.

"This story may or may not be true. I will not discuss it. The defendants can resort to any move they deem advisable. But the preparations of this office for this case will not be hampered by any consideration. Our duty is plain. Eight men have been indicted by the Federal grand jury for a gigantic conspiracy to defraud the Government. I am willing to say that I believe them all guilty. And I shall try hard at the proper time so to prove them."

The coming trial of the Western Fuel Co. officials will perhaps prove the most noted in the annals of criminal prosecutions in the Federal courts of this city. The defendants will be represented by a legal battery including E. J. McCutcheon, Warren Olney, James Mannon, Samuel Knight, and A. P. Black. Prosecutor John L. McNab will represent the Government. An army of attorneys, representing local shippers who are alleged to have been swindled by the Western Fuel Co., will be present to gain data for civil suits their clients may bring for the recovery of large sums which the local coal trust is said to have mulcted them by a well-organized system of "short weighting."

CHARGES AGAINST DEFENDANTS.

The defendants, John L. Howard, James B. Smith, J. L. Schmitt, Robert Bruce, Sidney V. Smith, Frederick Mills, E. H. Mayer, and Edward J. Smith, were indicted for conspiracy to defraud the United States by the Federal grand jury about three months ago.

John L. Howard is president of the company. James B. Smith is manager and one of the directors of the company. J. L. Schmitt is treasurer and a director. Robert Bruce and Sidney V. Smith are directors. Frederick Mills is the superintendent. E. H. Mayer and Edward J. Smith are weighers.

The charge against the defendants is that they entered into an unlawful agreement to defraud the Government in three ways: First, by causing false weights and measures and fraudulent returns of weight on the incoming cargoes of their coal to the end that the amount of duty should be very much lessened; secondly, by causing the returns of weight on all outgoing cargoes delivered into American bottoms to be grossly excessive in weight, to the end that the drawback on the coal should be much greater than the shipping company was entitled to; and, thirdly, by grossly overweighing the coal delivered to the United States transports.

GOVERNMENT'S CONTENTION.

In brief, the Government will attempt to show that the Western Fuel Co. is, and for many years has been, a fuel trust, having an absolute monopoly on all coal importations into the bay of San Francisco. It owns mines in British Columbia and has a fleet of its own vessels by which the fuel is transported to San Francisco. In addition to this, it purchases all the coal brought in by various fleets of steamers operating between New Zealand, Australia, and British Columbia and the port of San Francisco.

It has full control of a number of docks on the San Francisco water front, as well as on the Oakland water front.

These docks are so constructed that a large portion of them are devoted to the use of the company's bunkers. It appears that on the incoming vessel approaching the dock the coal is dropped through a scuttle and into a train of cars that is run alongside the vessel on the dock. This train is operated over a skeleton track said to be so constructed that any excess of coal which drops over the side of the car falls directly on certain boards and then into the bunkers of the coal company. When the cars are loaded they are transported along rails and then up a very steep incline to a place on the dock, where the scales are located. These scales are covered over by a shed in which the custom weigher stands. With a weigher of the Western Fuel Co., he checks off the weight of the car.

"LOST" IN THE SHUFFLE.

It is charged that a vast amount of the coal never reached the Government scale. On being dropped through the chute into the cars a great portion of it rolled off into the bunkers. What did not reach the bunkers on running over the side of the car was caught on a small platform which ran alongside each side of the track. The company had men standing alongside the track who, it is charged, caught the excess with shovels and immediately threw it into the bunkers below, cheating the Government out of the waste.

Evidence was adduced before the grand jury—and will be submitted at the trial—that the boards were manipulated so that the waste would fall. The scales were shown to have been so constructed that certain beams would intercept the downward drop of the scales after reaching a given weight, thereby robbing the Government of a great portion of the duty.

ONE NOTABLE LINK.

It was shown to the grand jury and also will be presented to the trial jury that the chief weigher instructed one of the men who was afterwards made a division superintendent how a certain link was operated between the cars. It was so constructed that it lifted the car at one end, thereby throwing a great portion of the weight from the center of the scale and materially reducing the weight of the cargo. In this way the Government was defrauded of a vast amount of incoming duty.

After the coal passed the scales it was dropped directly into the bunkers. From these bunkers it was let down through a chute into barges belonging to the Western Fuel Co. in the hold of which was another set of scales. From these barges it was taken alongside the United States transports or American registered vessel for weighing and delivery. The evidence shows that for the first five hours that these barges were alongside the vessel no weight could be taken at all, because the scales were completely covered by the coal.

Thereafter it was the custom to weigh 1 tub as it went over the vessel's side out of every 15, or, as a matter of common practice, 4 out of 60.

The evidence showed that there was a defined plan and practice by which the bucket came up out of the hold only one-half or three-quarters full at the most, but when the Government's weights were to be ascertained the foreman called down through the scuttle hole to the crew, which loaded the bucket heaping full, so that it came up with coal dripping from every side.

In this way the Government was compelled to accept the weight as largely in excess of what was actually in the hold.

It was shown to the jury that the barges which left the company's bunkers with an ascertained weight of some 500 tons on board would actually deliver out of their holds more than 700 tons. In many cases the percentages of increase ran as high as 70 per cent over what was actually put into them. In the same way the transport service is said to have been robbed.

Every day a report was made of these transactions to the offices of the company. These sheets and books contained a red circular mark giving an indication of the amount of the overcharge or an alleged general swindling process which was carried on against the Government. The books disclosed overwhelming evidence of fraud.

Secretary David Norcross testified that the value of the coal sold at the wholesale rate to the shipping companies amounted to as much as $7 a ton.

Computed at that figure the amount of coal which the Government was alleged to be deprived of amounted to half a million dollars. If computed at the price at which it is sold to the public in San Francisco it would be considerably in excess of a million dollars.

It was admitted to the grand jury by Secretary Norcross that it was a common practice of the company to bribe the engineers of the ocean-going vessels; all the engineers

on the Japanese steamship line going out of this harbor are on the pay roll of the Western Fuel Co. They receive a certain percentage of the value of every ton of coal put in their bunkers. The alleged purpose of this is to prevent the engineers making any report to the company of any complaint regarding the shortage of coal.

Pacific Mail Steamship Co. engineers, it was testified, likewise have been taken care of by some similar method. In certain instances the engineers refused to be bribed and made reports to their company. These reports, it is charged, were afterwards frowned upon by certain officers of the company, apparently acting in collusion with the Western Fuel Co.

The indicted directors had before them the books of the company; they were familiar with the statement of its assets, of its coal on hand, of its general financial condition; they held their annual meetings and declared dividends. They had before them the amount of coal which was on hand at the time of the great fire of 1906, and they had before them the statement of coal at the successive meetings of the company board of directors. This shows conclusively, Prosecutor McNab told the jury, that the company was selling over 60,000 tons of coal that it never had brought into the country.

McNab declared that these directors of the company must face one proposition or another. Either they must admit that they sat with closed eyes like inanimate dummies and refused to watch the figures that were placed before them or they knew by the exercise of ordinary intelligence that their company was selling coal that it never received and was withdrawing from the Government funds that it was not entitled to withdraw.

Before the grand jury sheets containing secret red ink summaries of the overrun of the coal to the United States transports, the American registered bottoms, and showing the underrun on the incoming cargoes were traced to the door of the directors' room.

The circumstances were overwhelming. It was proved that James B. Smith, manager of the company, received a daily report of these overruns and of the overweight of the coal, and that he discussed these with the secretary, and that at the meetings of the directors and the annual meetings of directors and stockholders a complete summary showing this overrun of coal was delivered by the secretary to J. B. Smith, the managing director, as he entered the directors' room to confer with the other directors. The secretary testified before the grand jury that the matter of the overrun was a matter of discussion in the offices of the company, and that J. B. Smith at the time of the annual stockholders' and directors' meetings discussed it with him, and that he had in his possession all of the papers and books showing the same.

[Bureau of Investigation, Department of Justice. June 12, 1913. Received. Report Form No. 1. Original.]

6186. Report made by C. Herrington. Period for which made, May 28, 1913. Place where made, San Francisco. Date when made, May 29, 1913.

Title of case and offense charged or nature of matter under investigation: United States *v.* Western Fuel Co. Customs fraud case.

Statement of operations, evidence collected, names and addresses of persons interviewed, place visited, etc.: Received telegram from bureau concerning employment of person to do certain work in this matter.

Telegraphed bureau as follows:

SAN FRANCISCO, *May 28, 1913.*

BIELASKI,

Department of Justice, Washington, D. C.:

Yam cost $8 per day, about 50 cents per day for expenses. Duration about two weeks. Very difficult to get good material here.

HERRINGTON.

Copy of this report furnished to John L. McNab.

[Bureau of Investigation, Department of Justice. June 12, 1913. Received. Report Form No. 1. Original.]

6186. Report made by C. Herrington. Period for which made, June 2, 1913. Place where made, San Francisco. Date when made, June 3, 1913.

Title of case and offense charged or nature of matter under investigation: United States *v.* Western Fuel Co. (Customs fraud case.)

Statement of operations, evidence collected, names and addresses of persons interviewed, places visited, etc.:

Conferred with United States Attorney McNab concerning jurors who may be called to serve at the trial of this case.

The defendants have spent considerable money and time in investigating the past business and other relations of the members of the panel and in view of the prominence of some of the defendants and the desperate defense which will be made, it seemed very necessary that the Government officers in charge of the trial should have the fullest information concerning the jurors that could be ascertained.

Went over the record of the evidence in this case with the United States attorney.

Copy of this report furnished to Jno. L. McNab.

[Bureau of Investigation, Department of Justice. June 12, 1913. Received. Report Form No. 1. Original.]

6186. Report made by C. Herrington. Period for which made, June 3, 1913. Place where made, San Francisco. Date when made, June 4, 1913.

Title of case and offense charged or nature of matter under investigation: United States *v.* Western Fuel Co. et al. (Customs fraud case.)

Statement of operations, evidence collected, names and addresses of persons interviewed, places visited, etc.:

[Translation. Postal. Night message. Pd. Govt. Off. Bus.]

SAN FRANCISCO, *June 3, 1913.*

BIELASKI,
Department of Justice, Washington, D. C.:

Your telegram about Western Fuel Co. case. Can get two good men five per day each. Small extra allowance for carfare and incidentals. Impossible secure trustworthy persons this locality for less. Agency rates from seven to eight dollars. They have best men, as a rule. These not available to us. United States attorney approves two men we have in mind. Defendants have spent large sum same purpose. Importance of case and desperate defense think justifies expense.

HERRINGTON.

(73–wds., 78 cents.)

Copy of this report furnished to Jno. L. McNab.

[Bureau of Investigation, Department of Justice, June 21, 1913. Received. Report Form No. 1. Original.]

6186. Report made by C. Herrington. Period for which made, June 13, 1913. Place where made, San Francisco. Date when made, June 14, 1913.

Title of case and offense charged or nature of matter under investigation: United States *v.* Western Fuel Co. (Customs fraud case.)

Statement of operations, evidence collected, names and addresses of persons interviewed, places visited, etc.

Conferred with United States attorney concerning the investigation made concerning the character of the jurors who were on the panel from which would be selected the jurors to try this case.

SJG–LER

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., June 30, 1913.

Hon. HENRY D. CLAYTON,
Chairman Judiciary Committee, House of Representatives.

DEAR JUDGE CLAYTON: I beg leave to herewith inclose you a letter, and a copy thereof, in relation to the Western Fuel Co. case, which has just been received at this office. It should be placed in the file sent you in connection with H. Res. 181.

Very truly, yours,

(Signed) SAMUEL J. GRAHAM,
Assistant Attorney General.
(For the Attorney General.)

Inclosures.

[Copy.]

OFFICE OF UNITED STATES ATTORNEY,
San Francisco, June 24, 1913.

The ATTORNEY GENERAL,
Washington, D. C.

SIR: I have your letter of June 17, 1913, "WRH 165862–9," in which you state to me that you do not consider the letter addressed by Sidney V. Smith to the Secretary of the Interior admissible against the other defendants in the trial of the Western Fuel Co. case.

I thoroughly understand that the declaration of a conspirator is not admissible against his coconspirators unless the declaration is made during the continuance of the conspiracy. However, you have been advised that the Western Fuel Co. directors have all been indicted again since the writing of your letter, and the letter of Sidney V. Smith is admissible. Furthermore, it would have been admissible against Smith himself as an individual defendant. It matters very little whether I take issue with the department now upon these matters or not, but I can not refrain from saying in closing my connection with this case that the policy of the Attorney General's office in instructing a United States attorney as to what evidence he shall or shall not use tends to the discouragement of the service. No man who cares a rap for his position is going to conduct a case along lines suggested by somebody else. If evidence is admissible at all, and tends to prove the guilt of a defendant, it ought to be admitted so long as its introduction sustains the Government and tends to convict the guilty. This, as I say, is written subsequent to my resignation and can in no wise affect any of my future conduct, but you may be glad to know that the United States attorneys in the various districts feel that they are crippled whenever suggestions as to how they should or should not conduct cases are sent to them by the department.

Respectfully,

(Signed) J. L. MCNAB,
United States Attorney.

63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 32.

UNITED STATES v. FARLEY DREW CAMINETTI AND MAURY DIGGS.

JULY 2, 1913.—Referred to the House Calendar and ordered to be printed.

Mr. CLAYTON, from the Committee on the Judiciary, submitted the following

REPORT.

[To accompany H. Res. 181.]

The Committee on the Judiciary, having had under consideration the resolution (H. Res. 181) calling upon the Attorney General for copies of all correspondence and other papers and memoranda on file in the office of the Attorney General or referred by the President to the Attorney General relating to the prosecution or trial of Maury Diggs and Drew Caminetti, or either of them, for violation of the Mann White Slave Act, submit the following report:

The resolution as drawn by the author is in the following words:

Resolved, That the Attorney General be, and he is hereby, instructed to transmit to the House of Representatives copies of all correspondence and other papers and memoranda on file in the office of the Attorney General or referred by the President to the Attorney General relating to the prosecution or trial of Maury Diggs and Drew Caminetti, or either of them, for violation of the Mann White Slave Act.

The attention of the Attorney General was called to this resolution by the chairman of the committee, as has been done in other like cases, and he was invited to make such suggestions as he thought proper. Afterwards, while the committee had under consideration the resolution, the Attorney General transmitted to the committee the file of the Department of Justice in this case, stating that the papers so transmitted were the complete file of his office and contained all correspondence and other papers and memoranda relating to the case.

After an examination of said file so transmitted by the Attorney General the committee was in doubt as to the propriety of publishing some of these papers or some parts of some of these papers in such file because of an apprehension on the part of the committee that the publication thereof might be incompatible with the public interest. Thereupon a subcommittee, consisting of Messrs. Clayton, Webb, Carlin, McCoy, Volstead, Morgan, and Chandler, was appointed to confer with the Attorney General as to the necessity of withholding from

publication any of such papers or any part of any of the same for the reason above stated.

The subcommittee met with the Attorney General at the Department of Justice on Saturday evening last. There were present, besides the Attorney General and the members of the subcommittee, Assistant Attorney General Harr and Assistant Attorney General Graham. The Attorney General was requested, as the chief law officer of the Government, to give the committee the benefit of his opinion as to whether or not the file of the Department of Justice in this case might be published without detriment to the Government in the prosecution of the case. The Attorney General said, in effect, that personally he had no objection to the publication of everything in the file, but expressed the belief that certain portions of some of the papers should not be published because it might be detrimental in the prosecution of the case.

Your committee is of opinion, and so report, that the statement of facts of this case in the report of District Attorney McNab to the Attorney General under date of May 21, 1913, should not be published because such publication would be incompatible with the public interest.

Your committee is also of opinion, and so report, that the reports of the special agent of the Department of Justice should not be published at this time because incompatible with the public interest, except the copy of the letter signed "Clayton Herrington," on the first page thereof, which copy is hereto attached.

In view of the fact that your committee examined all the original papers and documents covered by the resolution and made copies of the same, which are hereby made a part of this report, except as above stated, your committee is of opinion that the purpose of the resolution has been accomplished, and therefore so report and recommend that the resolution do lie upon the table.

[Telegram.]

WASHINGTON, D. C., *June 24, 1913.*

JOHN I. MCNAB, Esq.,
San Francisco, Cal.:

I greatly regret that you should have acted so hastily and under so complete a misapprehension of the actual circumstances, but since you have chosen such a course and have given your resignation the form of an inexcusable intimation of injustice and wrongdoing on the part of your superior, I release you without hesitation and accept your resignation, to take effect at once.

WOODROW WILSON.

THE WHITE HOUSE,
Washington, June 24, 1913.

MY DEAR MR. ATTORNEY GENERAL: Allow me to acknowledge with sincere appreciation your letter of to-day, giving me a full account of the way in which the Department of Justice has dealt with the Diggs-Caminetti and the Western Fuel Co. cases, pending in California, and transmitting the documents connected with the two cases necessary for their elucidation. I am entirely satisfied that the course you took in both these cases was prompted by sound and impartial judgment and a clear instinct for what was fair and right. I approve your course very heartily and without hesitation; but I agree with you that what we may think of what has been done does not relieve us of the obligation to press these cases with the utmost diligence and energy. I approve very

heartily of your suggestion that, in the circumstances, special counsel be employed—the ablest we can obtain. I will be very glad to confer with you about the selection. I hope that you will do this without delay. I am very glad indeed that you are giving your personal attention to the immediate and diligent prosecution of the cases, which I agree with you in regarding as of serious importance from every point of view.

Sincerely, yours, WOODROW WILSON.

Hon. J. C. MCREYNOLDS, *Attorney General.*

167096–13.

JUNE 24, 1913.

The PRESIDENT,
The White House.

DEAR MR. PRESIDENT: In view of the somewhat heated and sensational dispatches given to the press by United States Attorney McNab on Saturday, June 21, in connection with his resignation, and the widespread misapprehension which would naturally result therefrom, I desire to lay before you the facts relating to the Caminetti-Diggs case, and the Western Fuel Co. case, to which he refers.

The department was closed on Sunday, June 22, and it was not until yesterday that I had opportunity fully to acquaint myself with the contents of all the files and confer with my assistants. I send you herewith what, I am informed, are the complete files in each case, and specially request that you examine them with particular care.

DIGGS-CAMINETTI CASE.

The earliest paper in the the files relating to this case is a "report made by C. Herrington," dated March 26, 1913, the pertinent part of which follows:

"Farley Drew Caminetti, a married man about 27 years of age, residing in Sacramento and connected in some clerical capacity with the State government, in company with Lola Norris, and Maury I. Diggs, a young married man of about the same age, residing in Sacramento, in company with Marsha Warrington (who, like Lola Norris, is a young unmarried girl), about 19 years of age (also the age of the Norris girl), left Sacramento for Reno via Southern Pacific Co. in the early morning of March 10, 1913.

"On arrival at Reno they registered at the Riverside Hotel, Diggs under the name of C. E. Enright and wife, of Los Angeles; and Caminetti under the name of F. F. Ross and wife. They remained there one night, occupying connecting rooms. The next day Diggs, who appears to have furnished all the money, rented a cottage in the outskirts of the city from Real Estate Agents Peck & Sample, of Reno; bought a supply of provisions, coal, etc., and the party went to housekeeping. They remained there for three or four days, when they were taken into custody by Chief of Police Hillhouse, of Reno, and Chief of Police William Johnson, of Sacramento, on accusations against the men for having violated a State law.

"They waived extradition and returned voluntarily to Sacramento. To Assistant District Attorney F. F. Atkinson, of Sacramento, William Johnson, and Arthur D. Ryan, of the detective force of Sacramento, they admitted the foregoing facts, but they all claimed that their purpose was not an immoral one and that there had been no illicit carnal intercourse among any of them on the trip or after arrival at Reno.

"It appears that the young men claimed to be unhappy in their marital relations, they had become attached to these girls, and that as their intimacy had become known in Sacramento, and as one of the papers was about to print a "scandalous story," they decided that it would be best for all concerned to leave the country for a time until the affair had blown over. That after residing for the statutory period (six months) required by the Nevada law, they would secure divorces from their wives and marry these girls.

"The girls were interrogated at considerable length by Mr. Atkinson, but insisted that there had never been anything that was improper, though there had been much that was imprudent, in their relations with the young men. Some of Miss Warrington's clothes were found in the room occupied by Diggs, and some of Miss Norris's clothes were in Caminetti's room.

"If the story of the girls is true, it is indeed an exceptional state of affairs.

"Caminetti is the son of a State senator, and all of the four are prominent in social life of Sacramento. A great deal of publicity was given the affair, and the friends of the wives, as well as those of the two girls, were greatly incensed against the young men.

"Informations were filed against Caminetti and Diggs, charging them with violating the white-slave traffic act. There will be a hearing before the United States commissioner the latter part of this week unless defendants waive examination, and the matter will be presented to the grand jury by the United States attorney, who requests the assistance of this office in investigating the matter, and, unless otherwise advised, I will give the matter attention."

On May 16 I wired McNab, directing him to forward me a full report and take no further affirmative action in the case until further advised. In response he wrote such a report, under date of May 21, and this reached me on the 27th. In this, which covers more than a dozen typewritten pages, he details a version of the facts, with his inference therefrom, and expresses the opinion that the case was aggravated and should be vigorously prosecuted; also that there might be attempts to interfere with the due course of justice by improper influences.

On the same date, May 27, I replied by wire, saying:

"I think proper course is for you to set the cases and proceed with them as you have planned, and you are so directed."

The matter needing no further immediate consideration, it, of course, passed out of my thoughts. This litigation is only one of a great number of cases pending in the department, some phases of which are constantly being brought to my attention for suggestions or directions, and it is utterly impossible for me to carry in my memory the details of them all.

I had no occasion to give the matter any further special consideration for some three weeks—June 18—when Secretary Wilson telephoned to me and told me of the embarrassment in which he was placed by the request from the elder Caminetti, father of one of the defendants, for leave of absence in order to attend the trial of his son. The elder Caminetti, as you know, is the newly appointed Commissioner of Immigration. The Secretary explained the exigencies of his department, which he thought imperatively required the presence here of the commissioner. He has written me a letter stating his recollection of the circumstances, and I herewith inclose it.

Impressed by Secretary Wilson's statement of his embarrassment, and desiring, of course, if possible, to relieve him, without stopping to go through the files and so refresh my recollections concerning any particular circumstances of the case, I sent the United States attorney the following telegram:

"The Secretary of Labor advises it is a matter of public importance that Commissioner of Immigration Caminetti remain at his post here. I do not now wish Government to be in position of insisting upon trial of young Caminetti and Diggs, charged with violating white-slave law, during enforced absence of the father, who is performing necessary public duties. In view of all facts, you are instructed to postpone trial of these cases until the autumn."

The postponement of a criminal case, so recently instituted as this was, is not an unusual proceeding; and it did not occur to me that any malign motive would be attributed to me. If I had anticipated that any fair-minded man, knowing the facts, would place such a construction upon this ordinary act, I would have been scrupulously careful to avoid it. It is essential, not only that the administration of justice shall be free from partiality or improper influence, but that even the appearance of such things should be avoided. I do not even hope to escape mistakes; but I am profoundly conscious that my actions are free from unworthy motives.

Mr. McNab, as United States attorney, held a position of peculiar trust and confidence, demanding the utmost loyalty to the department. If, as such an officer should do, he had availed himself of the opportunity to send a dispatch recalling my attention to the peculiar conditions which he thought rendered the proposed action inadvisable, as I had always theretofore done, I should have given earnest consideration to his suggestions, and with them before me, could have acted with the local conditions fresh in my mind. Instead of pursuing this manifestly proper course, he waited until June 20 and then published the sensational telegrams wherein he imputed base motives to me. His conduct has, of course, made it impossible for him to continue in the prosecution of this case, however desirable that otherwise might have been. Under the circumstances the only course open is to accept his resignation.

I therefore suggest an immediate conference between us for the purpose of selecting some counsel whose ability, character, and reputation are so high as to insure the proper conduct of the case, and that he be put in immediate charge, with instructions promptly and vigorously to prosecute it to a conclusion.

WESTERN FUEL CO. CASE.

This is an indictment against five directors of the Western Fuel Co., charged with participating in a conspiracy to defraud the Government on coal drawbacks. It was found in February last.

So far as I can recall, there was no occasion for me to give this case any personal consideration until April 30 last, when I received a letter from Secretary Lane, in which he inclosed one from Sidney V. Smith, a defendant, without recommendation. Mr. Smith's letter sought to show that the things complained of were done by others; that although he was a director he was not a participant in any criminal act, and that the case should be dismissed as to him.

I sent a copy of the Smith letter to District Attorney McNab, with a request for his views. On May 20 he replied, giving a review of the evidence, and expressing the view that all five of the defendants should be prosecuted. I thereupon advised the district attorney of my concurrence in his conclusion, and directed him to proceed.

Thereafter, as I recall, Mr. Pringle, a San Francisco lawyer, representing either Smith or Bruce, or both, came to see me. I turned him over to Assistant Attorney General Harr, with instructions to give the matter particular and careful attention. After considering all the facts Mr. Harr finally concluded that the just solution of the situation was first to prosecute the three, who were both directors and officers of the company, and that the case against the other two should be deferred until he could examine the evidence presented and determine the propriety of further proceedings. He reported this conclusion to me. I thought it right, and in pursuance of our understanding he sent the district attorney the following telegram:

"Upon further consideration of matter, department feels grave doubt as to guilt of Sidney V. Smith and Robert Bruce, indicted in Western Fuel Co. case. In order to avoid possible injustice, you are instructed to continue case as to them until after the trial of the other three directors, who were officers of the company and active in its management. If latter are convicted, copy of proceedings at trial should be sent department, in order that it may determine what course should be pursued in regard to the two directors named. Wire receipt."

The receipt of this is one of the reasons alleged by Mr. McNab for giving out the dispatches described above and for imputing base motives to me.

I am still of opinion that the course recommended by Mr. Harr in respect of this case is the proper one to pursue. But in view of the insinuations spread broadcast by the district attorney, and for the same reasons as those stated for similar action in the Diggs-Caminetti case, special counsel should be selected to prosecute the cause under like instructions as those suggested there, and I think we should have an immediate conference for this purpose.

Respectfully,

J. C. McREYNOLDS,
Attorney General.

167096–13

DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, June 24, 1913.

MY DEAR MR. McREYNOLDS: In view of the published statements that influence has been brought to bear upon you through the Secretary of Labor to postpone the trial in the Diggs-Caminetti case, I desire to state to you that neither Commissioner General Caminetti nor anyone else either requested or suggested to me that I should ask you to postpone the trial.

The Department of Labor has been but recently created. It is in a formative state of organization. Congress has provided funds for the payment of the salaries of the Secretary, Assistant Secretary, Solicitor, private secretary and confidential clerk to the Secretary, and private secretary to the Assistant Secretary. Funds have not yet been provided for the other clerical help necessary for the proper organization and operation of the department. Consequently

every person connected with the department has been working to his full capacity in an effort to keep up with the business. That is particularly true with regard to the Immigration Service. Any leave of absence at this time would seriously impair the service.

Before Mr. Caminetti took the oath of office he informed me that it would be necessary to ask for leave of absence in order to be present at the trial of his son. About the middle of June he again called my attention to his desire for leave of absence. I pointed out to him the difficulties we had to contend with; that the department was in a formative stage; that we had large contracts for feeding the immigrants at Ellis Island and other ports of entry to consider and dispose of; that Hindu immigration to the Pacific coast via Hawaii and the Philippine Islands was becoming an acute problem which ought to be worked out at as early a date as possible; that allegations were continuously being made that Chinese were being smuggled into the United States in violation of the Chinese-exclusion laws; that the administration of the immigration laws generally would require his close application for some time to enable him to grasp the details of the methods used by the department in enforcing the law; and that, in view of these conditions, it was imperative that he should remain here for a considerable period in order that he might assist in the work in this emergency and acquaint himself with the problems we had to work out. That, then, when he went to the Pacific coast he would be in a position to inspect the various immigration stations in a manner which would give beneficial results. I then asked him if it would not be possible for him to secure a postponement of his son's trial until the next term of court, so that he could attend the trial of his son and on the same trip inspect the Immigration Service on the Pacific coast. He replied that he did not know whether a postponement could be obtained or not; and I stated to him that I would take the matter up with the Attorney General and ask for a postponement of the case, with a view to carrying out the suggestion I had made. It was pursuant to this suggestion that I called you up on June 18, stated the circumstances, and asked for the postponement, which was granted.

Respectfully, yours,

W. B. WILSON,
Secretary.

The ATTORNEY GENERAL,
Washington, D. C.

C–A

DEPARTMENT OF JUSTICE,
June 23, 1913.

JOSEPH E. DARLING, Esq.,
Lasalle Hotel, Chicago, Ill.

DEAR MR. DARLING: The Attorney General has received your telegram of even date offering your services in connection with the "San Francisco matter," and has directed me to acknowledge its receipt and to say that, while he appreciates your thoughtfulness, he does not consider it necessary to avail of your services at present.

Faithfully, yours,

FRANK COLE,
Private Secretary.

[Department of Justice. Telegram received.]

4 W Ji 69 Govt.

LH CHICAGO, ILL., *June 23, 1913.*

Attorney General MCREYNOLDS,
Department of Justice, Washington, D. C.:

If there is anything I can do to investigate and straighten out that San Francisco matter for the department, I am at your service. I could devote my time between June 27, date Harvester hearing here ends, and July 7, date moving-picture hearing commences at New York. This would give me three to six days on coast. Possible to leave Monday.

DARLING.

11.55 A. M.

Personal.

THE WHITE HOUSE,
Washington, June 21, 1913.

MY DEAR MR. ATTORNEY GENERAL: I send you a telegram just received from Hon. John I. McNab, United States attorney for the northern district of California. This message has not yet been shown to the President.

Sincerely, yours,

J. P. TUMULTY,
Secretary to the President.

Hon. J. C. MCREYNOLDS,
Attorney General.

Inclosure.

[Telegram.]

[The White House, Washington, 11.40 a. m., 21st.]

10 WU JM 460 NL

SAN FRANCISCO, CAL., *June 20, 1913.*

The PRESIDENT, *Washington, D. C.:*

I have the honor to tender my resignation as United States attorney for the northern district of California, to take effect immediately. I am ordered by the Attorney General, over my protests, to postpone until autumn the trials of Maury Diggs and Drew Caminetti, indicted for a hideous crime, which has ruined two respectable homes and shocked the moral sense of the people of California, and this after I have advised the Department of Justice that attempts have been made to corrupt the Government witnesses, and the friends of the defendants are publicly boasting that the wealth and political prominence of the defendants' relatives will procure my hand to be stayed through influence at Washington. In these cases two girls were taken from cultured homes, bullied and frightened, in the face of their protests, into going to a foreign State, were ruined and debauched by the defendants, who abandoned their wives and infants to commit the crime. On receipt of the Attorney General's telegram I prepared my resignation, to take effect at the conclusion of the trial of the Western Fuel Directors and the J. C. Wilson stockbroker cases, both of which I had instituted and which I wished to bring to a successful conclusion before I could send my resignation. I received another telegram from the department ordering me to postpone the cases against certain defendants of the Western Fuel Co., and not to try them unless ordered by the department. In bitter humiliation of spirit I am compelled to acknowledge what I have heretofore indignantly refused to believe, namely, that the Department of Justice is yielding to influences which cripple and destroy the usefulness of this office. I can not consent to occupy this position as a mere automaton and have the guilt or innocence of rich and powerful defendants, who have been indicted by unbiased grand juries on overwhelming evidence, determined in Washington on representations on behalf of the defendants without notice to me. I seem unable to convey to the department an understanding of the serious situation in which its action will leave this office. If the department in future is to review the findings of grand juries and nullify their indictments, then this office might as well be abolished, for its functions will have ceased to exist. Neither my private honor nor sense of public duty can permit me thus to destroy the prestige of this office. With profound respect and regret that such step is necessary, I have the honor, in view of my absolute inability to agree with the department, to ask that I be, by wire, immediately relieved from duty in order that the Department of Justice may be permitted to carry out its policy in these cases without further obstruction by me.

JOHN L. MCNAB.

[Telegram.]

1W. O. 262 N. L. 3 Ex. 167096-8.

SAN FRANCISCO, CAL., *June 20, 1913.*

ATTORNEY GENERAL, *Washington, D. C.:*

I am in receipt of your two telegrams in which you order me to continue until autumn the cases against Maury Diggs and Drew Caminetti, and, also postpone indefinitely trial of certain directors of Western Fuel Co., and in which you

say you will hereafter determine whether to try certain defendants as heretofore advised. I am profoundly convinced the action taken will destroy the prestige and ruin the usefulness of this office and result in the ultimate escape from punishment of certain of these defendants. I have notified you that it is publicly charged in this State that the prosecution of the Diggs-Caminetti cases would be stopped by appeals to Washington. In the meantime corruption and subornation of perjury will weaken and destroy the cases long before autumn is here. If the Western Fuel defendants are innocent they need not apply to the department for protection, but should welcome the opportunity to present their defense to a jury and assert their innocence. The present grand jury yesterday again voted to indict all the directorate of the Western Fuel Co. With full appreciation of the delicacy of your position in the Caminetti case and with every desire that you shall not be embarrassed I will withdraw from this office therefore by reason of my inability to agree with the department's policy. I am compelled to respectfully tender my resignation to the President this day, and have the honor to ask that you secure if possible its immediate acceptance by wire. I will then have the cases continued as directed.

McNAB,
U. S. Attorney.
(9.45 A. M. 21st.)

167096. M–R.

JUNE 18, 1918.

UNITED STATES ATTORNEY,
San Francisco, Cal.:

The Secretary of Labor advises it is a matter of public importance that Commissioner of Labor Caminetti remain at his post here. I do not now wish Government to be in position of insisting upon trial of young Caminetti and Diggs, charged with violating white-slave law, during enforced absence of the father, who is performing necessary public duties. In view of all facts, you are instructed to postpone trial of these cases until the autumn.

McREYNOLDS.

DEPARTMENT OF JUSTICE,
OFFICE OF THE UNITED STATES ATTORNEY FOR THE
NORTHERN DISTRICT OF CALIFORNIA,
San Francisco, June 3, 1913.

The ATTORNEY GENERAL, *Washington, D. C.*

SIR: On May 16, 1913, I received your wire directing me to submit a report of the evidence in the cases against Caminetti and Diggs and instructing me to take no further action until notified by you.

On May 21, 1913, I forwarded you full report, accompanied by recommendation, and asked for instructions.

On May 27, 1913, I received your telegram approving my report and directing me to proceed with the trial.

I am in receipt of telegrams from Senator Caminetti requesting that the cases go over until after July or August. I had a letter, written prior to his departure for Washington, asking this.

I have the utmost sympathy for Senator Caminetti and for his good wife in this matter, but I feel it my duty, in view of the repeated telegrams, to state that I believe your direction wired to me is the only proper course to pursue. I have set the cases for trial July 26, 1913. I have no hesitancy in saying that the Government's case will be impaired by a long delay. Witnesses whom it is material that the Government should use may not be available if long postponements are granted. Evidence which is at hand may be difficult to secure at a later period. Furthermore, I have written to Senator Caminetti with the utmost candor and frankness, informing him of the condition of the public mind and saying to him that both he and this office will be subjected to the bitterest criticism if the cases are again postponed. I think the good of the service demands that I proceed in accordance with your directions. I would be only too glad to do anything in the way of accommodating Senator Caminetti, particularly in view of the fact that his present duties may require his presence in Washington, but I am forced to the conclusion from my knowledge of the case that another postponement will make it increasingly more difficult for the Government to proceed.

This letter is written not in reference to any messages received from you, but because I believe it to be my duty to keep you informed as to the progress of a cause concerning which you have inquired and relating to which I have your instructions.

Respectfully,

J. L. McNAB,
United States Attorney.

DEPARTMENT OF JUSTICE,
OFFICE OF UNITED STATES ATTORNEY FOR THE
NORTHERN DISTRICT OF CALIFORNIA,
San Francisco, May 28, 1913.

The ATTORNEY GENERAL, *Washington, D. C.*

SIR: I am just in receipt of your telegram of May 27, 1913, in which you state that you think the proper course is for me to set for trial the cases against Diggs and Caminetti and in which you direct me to proceed.

I wish to thank you very sincerely for this prompt reply to my report. It is precisely what I expected to receive from the department. I did not feel at liberty, in the report on the evidence, to express too strongly my views in regard to the local situation. Owing, however, to the peculiarly aggravated character of the offense, public opinion throughout the State has been burning at white heat, and the press watches with a scrutinizing eye every action that is taken in court in regard to these cases. The comment has been freely indulged in—and I think this is due to certain indiscreet remarks of certain men in Sacramento—that unlimited influence would be brought to bear at Washington and here to indefinitely defer the cases, if not dismiss them. I know how absolutely futile such efforts are, but I am extremely jealous of the high regard in which your department is held throughout the country, and was particularly anxious to have the cases promptly disposed of, along with all other cases of similar character. Your telegram is encouraging to every one in the office, and on behalf of the entire force I thank you for your prompt and vigorous action. The case will be presented just as every other case is presented, without bias or feeling, but with a due regard to the serious facts involved.

Respectfully,

J. L. McNAB,
United States Attorney.

167096–4. MAY 27, 1913.

UNITED STATES ATTORNEY,
San Francisco, Cal.:

I have your letter of 21st giving me the facts in reference to Diggs and Caminetti cases. I think the proper course is for you to set the cases and proceed with them as you have planned, and you are so directed.

McREYNOLDS.

OFFICE OF UNITED STATES ATTORNEY FOR THE
NORTHERN DISTRICT OF CALIFORNIA,
San Francisco, May 21, 1913.

The ATTORNEY GENERAL, *Washington, D. C.*

SIR: I am in receipt of your telegram of the 16th instant, in which you direct me to forward to you a statement of the facts in the cases pending here against Maury Diggs and Drew Caminetti, and in which you say that you wish no further affirmative action taken until directed by you.

THE INDICTMENTS.

The defendants Diggs and Caminetti are jointly indicted in this district for conspiracy to violate the white-slave traffic act in inducing two young women, Marsha Warrington and Lola Norris, to go from Sacramento, in the State and northern district of California, to Reno, in the State of Nevada, and to secure transportation for them to said place for immoral purposes, viz, that the young women should live with them as their concubines and mistresses, etc.

In addition to the conspiracy indictment each defendant is charged in a separate indictment with a direct violation of the act; Diggs with having induced the Warrington girl to go, and with having furnished transportation for

her, and Caminetti with having been guilty of the same acts with regard to the Norris girl.

STATEMENT OF FACTS.

The testimony before the grand jury was not taken down. It was as follows: (Omission, referred to in committee report.) When this matter first came up, many of the leading citizens, including the district attorney of Sacramento, appealed to this office. Not only was it to my mind a clear violation of the white-slave traffic act, but no State law could afford adequate remedy. Furthermore, if it could, I was assured by scores of the best men of Sacramento that the money of the Diggs family would corrupt any local jury that could be secured, and numerous instances were brought to my attention in which this appears to have been true. This prediction was followed by the attempts of Diggs and Harris to corrupt one of the principal witnesses for the Government. I may add that I have the active assistance of the district attorney's office at Sacramento.

The friends of the defendants are reported to have stated repeatedly that they could "easily fix the case"; that they had too much money and too much influence at command to cause them to worry. This seems to have come principally from the Diggs end of the case. I have not heard that Caminetti has made any such assertion. Caminetti is the son of State Senator Caminetti of the State senate, a man for whom I have high respect and keen pity. I have had a conference with Mr. Howe, of the Sacramento bar, representing the defendants, who stated to me that Mr. Caminetti would in all probability plead guilty. At Senator Caminetti's request I continued the setting of the case two weeks, as he stated that he desired to confer with me, but he did not call, and I heard no more from him.

No case in this part of the State has brought forth such universal condemnation; no case has so roused the sense of public decency or called forth such bitter strictures from the press of California. The press, public, and bar of northern California are giving the Department of Justice more vigorous support in this case than any other this office has ever undertaken.

I, of course, have no means of knowing what appeals or representations of facts may be made to the department at Washington, but I sincerely trust that I may be permitted to immediately submit this case to a trial jury. It was on the calendar on May 19, ready to be set for the month of June. Acting on your instructions I continued the cases two weeks. But in view of the fact that Judge Farrington of Nevada is to be here with the expectation that the case will be tried in early June, I most earnestly and respectfully ask that you wire me permission to set the case as planned. Judge Van Fleet wishes the case disposed of and so stated in open court. For these reasons I respectfully ask for your directions by wire.

I trust that you will not misunderstand the unfortunate situation which will arise here if the case is permitted to go over from week to week. The well-known political prominence of the defendants' relatives will subject this office to the public criticism that this office is unduly favoring these defendants, and I know that nothing is closer to your wishes than that this office be kept free from such strictures.

I trust that you will pardon this suggestion, based upon an intimate knowledge of conditions in this State: That should the department direct that no further affirmative steps be taken in the case I should be compelled in utter discouragement of spirit to give up any attempt to enforce the law or maintain the prestige of this office, which we have so sedulously striven to enhance. Such result, I know only too well the department does not for a moment contemplate, and for this reason I have stated all facts at greater length than perhaps was necessary, so that you may see the entire situation.

Very respectfully,

J. L. McNAB,
United States Attorney.

OFFICE OF THE PRIVATE SECRETARY,
May 21, 1913.

The telegram to United States Attorney McNab was sent by the Attorney General, personally, from his hotel on the evening of Friday, May 16.

COLE.

[The Western Union Telegraph Co.]

P. M. 7, 46

Received at 120 A. S. D. 134 Govt. rate.

P. O., SAN FRANCISCO, CAL., *May 20, 1913.*

ATTORNEY GENERAL,
Washington, D. C.:

In your wire of May 16th you direct no further affirmative action against Diggs and Caminetti under white-slave indictment until directed by you and ask for report. Full report testimony mailed you to-day. I desire to know if your direction is intended also as instruction to refrain from setting for trial indictment against Diggs and his attorney, Harris, for conspiracy to suborn perjury in same cases. These cases all on calendar for setting before Judge Farrington, of Nevada, who comes by request to try these and other cases. Judge Vanfleet reluctantly granted request for two weeks' continuance and notified counsel for defendant in court that cases must be disposed of in June, owing to peculiarly flagrant circumstances of all cases. Respectfully ask earliest practical reply.

MCNAB,
United States Attorney.
7.44 p. m.

DEPARTMENT OF JUSTICE,
OFFICE OF SPECIAL COMMISSIONER FOR THE
SUPPRESSION OF THE WHITE-SLAVE TRAFFIC,
Baltimore, Md., May 20, 1913.

GEORGE F. MIKKELSON, Esq.,
Department of Justice, Washington, D. C.

DEAR MR. MIKKELSON: Referring to our conversation of yesterday, I would state that I find we wired Special Agent Herrington in reference to the white-slave case prosecuted in the northern district of California wherein the transportation was by means of an automobile. Mr. Herrington probably referred this telegram to the United States attorney, who, for that reason, sent you the wire concerning the Caminetti and Diggs case.

Yours, very truly,

S. W. FINCH,
Special Commissioner.

167096–2

[Department of Justice, telegram received.]

7W 0 27 G. R.

SAN FRANCISCO, CAL., *May 17, 1913.*

ATTORNEY GENERAL,
Washington, D. C.:

Answering your wire, full report testimony Diggs-Caminetti case will be forwarded to you at once. Regard case as aggravated one.

MCNAB,
United States Attorney.

2.10 p. m.
H
167096–1

[Report Form No. 1.]

5783. Report made by C. Herrington. Period for which made: March 24, 1913. Place where made: San Francisco. Date when made: March 25, 1913.

Title of case and offense charged or nature of matter under investigation: United States *v.* Farley Drew Caminetti and Maury I. Diggs, white-slave case.

Statement of operations, evidence collected, names and addresses of persons interviewed, places visited, etc.:

GENERAL PASSENGER AGENT SOUTHERN PACIFIC CO.,
Flood Building, San Francisco.

SIR: Will you please secure the signed portions of tickets sold at your depot ticket office, Sacramento, Cal., and used on train which left Sacramento for Reno at 12.40 a. m. Monday morning, March 10, 1913? These tickets were

bought by Maury I. Diggs for himself and Mr. Caminetti, Martha Warrington, and Lola Norris. The party traveled together, occupying the same compartment in the standard Pullman on that train. This may enable you to identify these particular tickets.

I would also like to have the name and address of the conductor who handled this train into Reno; also the name and address of the Pullman conductor and Pullman porter of that particular car.

The information is needed by the Government, and I would appreciate it if you would secure this at the earliest possible moment, using the wire if necessary.

Respectfully, CLAYTON HERRINGTON.

* * * * * * *

Copy of this report furnished to: Mr. John L. McNab, San Francisco, Cal.; Special Commissioner Sid. Finch, Baltimore, Md.

SJG–LER.

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., June 30, 1913.

Hon. HENRY D. CLAYTON,
Chairman Judiciary Committee, House of Representatives.

DEAR JUDGE CLAYTON: I beg leave to herewith inclose you a letter and a copy thereof in relation to the Western Fuel Co. case, which has just been received at this office. It should be placed in the file sent you in connection with H. Res. 181.

Very truly, yours,

(Signed) SAMUEL J. GRAHAM,
Assistant Attorney General.
(For the Attorney General.)

Inclosures.

OFFICE OF THE UNITED STATES ATTORNEY,
San Francisco, June 24, 1913.

The ATTORNEY GENERAL, *Washington, D. C.*

SIR: I have your letter of June 17, 1913, "WRH 165862–9," in which you state to me that you do not consider the letter addressed by Sidney V. Smith to the Secretary of the Interior admissible against the other defendants in the trial of the Western Fuel Co. case.

I thoroughly understand that the declaration of a conspirator is not admissible against his coconspirators unless the declaration is made during the continuance of the conspiracy. However, you have been advised that the Western Fuel Co. directors have all been indicted again since the writing of your letter, and the letter of Sidney V. Smith is admissible. Furthermore, it would have been admissible against Smith himself as an individual defendant. It matters very little whether I take issue with the department now upon these matters or not, but I can not refrain from saying in closing my connection with this case that the policy of the Attorney General's office in instructing a United States attorney as to what evidence he shall or shall not use tends to the discouragement of the service. No man who cares a rap for his position is going to conduct a case along lines suggested by somebody else. If evidence is admissible at all and tends to prove the guilt of a defendant, it ought to be admitted so long as its introduction sustains the Government and tends to convict the guilty. This, as I say, is written subsequent to my resignation and can in no wise affect any of my future conduct, but you may be glad to know that the United States attorneys in the various districts feel that they are crippled whenever suggestions as to how they should or should not conduct cases are sent to them by the department.

Respectfully, J. L. MCNAB,
United States Attorney.

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63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 33.

TO INVESTIGATE THE EXISTENCE OF A LOBBY IN THE HOUSE OF REPRESENTATIVES.

JULY 5, 1913.—Ordered to be printed.

Mr. HENRY, from the Committee on Rules, submitted the following

REPORT.

[To accompany H. Res. 198.]

The Committee on Rules, to whom were referred the resolutions (H. Res. 194, H. Res. 195, H. Res. 196, and H. Res. 197) for the purpose of investigating the existence of a lobby and other purposes, beg leave to report in lieu thereof a substitute, which herewith accompanies this report.

Whereas there have appeared in recent issues of various newspapers published in the United States divers statements and charges as to the existence and activity of a lobby organized by and on behalf of an organization known as the National Association of Manufacturers for the purpose of improperly influencing legislation by Congress, the official conduct of certain of its members and employees, the appointment and selection of committees of the House, and for other purposes, designed to affect the integrity of the proceedings of the House of Representatives and its Members; Therefore be it

Resolved, That the Speaker appoint a select committee of seven Members of the House and that such committee be instructed to inquire into and report upon all the matters so alleged concerning said Representatives, and more especially whether during this or any previous Congress the lobbyists of the said National Association of Manufacturers, or the said association through any officer, agent, or member thereof, did in fact reach or influence, whether for business, political, or sympathetic reasons or otherwise, the said Representatives or any one of them or any officer or employee of this or any former House of Representatives in or about the discharge of their official duties, and if so, when, by whom, and in what manner.

Said committee shall also inquire whether money has been used or improper influence exerted by said National Association of Manufacturers or any agent thereof to accomplish the defeat for nomination or election of any candidate for the House of Representatives of Congress, and said committee shall likewise inquire whether Members of Congress have been employed by said association for the accomplishment of any improper purpose whatever.

Said committee is also directed to inquire whether improper influence has been exerted by said association or by any other association, corporation, or person to secure the appointment or selection of the committees of the House, or any of them.

Said committee shall also inquire whether the said National Association of Manufacturers or any other organization or corporation or association or person does now

maintain or has heretofore maintained a lobby for the purpose of influencing legislation by Congress and ascertain and report to what extent and in what manner, if at all, legislation has been improperly effected or prevented by reason of the existence of such lobby, if it be found to exist at all now or heretofore.

Said committee, or any subcommittee thereof, may sit in the city of Washington or elsewhere to conduct its investigations during the sessions of the House or recess of Congress. It shall have power to employ such legal or clerical assistance as may be deemed necessary, to send for persons and papers, and administer oaths, and shall have the right to report at any time.

The Speaker shall have authority to sign and the Clerk attest subpœnas during the recess of Congress. The expenses of said inquiry shall be paid out of the contingent fund of the House upon vouchers approved by the chairman of said committee, to be immediately available.

O

63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 35.

AUTHORITY TO THE COMMITTEE ON THE DISTRICT OF COLUMBIA TO MAKE CERTAIN INVESTIGATIONS.

JULY 25, 1913.—Ordered to be printed.

Mr. HARDWICK, from the Committee on Rules, submitted the following

REPORT.

[To accompany H. Res. 203.]

The Committee on Rules report back the accompanying resolution (H. Res. 203) to the House with the recommendation that the same do pass:

Resolved, That the Committee on the District of Columbia, or any subcommittee thereof which the chairman of the committee may appoint, be, and the same hereby is, empowered to investigate and inquire into the condition of the financial relations between the District of Columbia and the United States, as well as to the correctness of the books and accounts relative thereto, whether those books or accounts be kept by the United States or by the District of Columbia.

Said committee hereby is empowered, further, to examine and investigate the books and accounts of any officer or employee (past or present) of the District of Columbia, or of any other person having business dealings or transactions with the District of Columbia.

And said committee hereby is empowered, further, to inquire into and investigate the official conduct, acts, omissions, and doings of any officer or employee (past or present) of the District of Columbia.

And said committee hereby is empowered, further, to inquire into and investigate the books, accounts, and affairs of any public utility or common carrier doing business or operating in the District of Columbia, including any ice manufacturer, any market-house company or corporation, any market company, any taxicab or motor vehicle company, the Washington Terminal Company, any cold-storage or warehouse company, and any person, company, or corporation dealing in meats or other provisions in the District of Columbia.

For the purposes above set out the said committee is hereby empowered, in its discretion, to send for and compel the attendance of persons and the production of books and papers before it; and the chairman, or acting chairman, may administer oaths or affirmations.

The sum of $20,000, or so much thereof as may be necessary, hereby is appropriated out of the contingent fund of the House in order that this resolution may be put into effect. Said committee or subcommittee, as the case may be, is empowered to sit during the sessions of Congress, or during the recesses between sessions of Congress, and may employ stenographers and accountants, who shall be paid out of said $20,000 upon vouchers authorized by said committee and signed by the chairman or acting chairman thereof and approved by the Committee on Accounts signed by the chairman thereof: *Provided*, That the total expense incurred under the authority of this resolution shall not exceed said sum of $20,000.

O

63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 36.

INVESTIGATION OF THE SHIPPING TRUST.

JULY 29, 1913.—Ordered to be printed.

Mr. LLOYD, from the Committee on Accounts, submitted the following

REPORT.

[To accompany H. Res. 205.[

The Committee on Accounts, to whom was referred House resolution 205, authorizing a continuance of the investigations begun by the Committee on the Merchant Marine and Fisheries during the Sixty-second Congress, have had the same under consideration, and believing it beneficial that the investigations be continued and the resolution appearing to be a proper one its adoption is recommended.

○

63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 39.

UNITED STATES v. FARLEY DREW CAMINETTI AND MAURY DIGGS.

AUGUST 1, 1913.—Ordered to be printed.

Mr. CLAYTON, from the Committee on the Judiciary, submitted the following

REPORT.

[To accompany H. Res. 212.]

The Committee on the Judiciary, having had under consideration House resolution 212, submit the following report:

The resolution as drawn by the author is in the following words:

Resolved, That the Attorney General be, and he is hereby, directed to transmit to the House of Representatives a copy of his telegram dated May sixteenth, nineteen hundred and thirteen (more than one month prior to the date when Mr. Wilson, Secretary of Labor, telephoned to the Attorney General in regard to a postponement of the Caminetti case), directing United States Attorney McNab to take no further affirmative action against Diggs and Caminetti under white-slave indictment until further directed by the Attorney General, and also copy of the memorandum placed in the files of the office of the Attorney General in connection with or relating to the sending of such telegram.

The attention of the Attorney General was called to this resolution, as has been done in other like cases. Afterwards, while the committee had the resolution under consideration, the following letter was transmitted to the committee by the Department of Justice:

DEPARTMENT OF JUSTICE,
Washington, D. C., July 28, 1913.

Hon. H. D. CLAYTON,
Chairman Judiciary Committee, House of Representatives.

SIR: The attention of the department has been called to the following resolution:

"*Resolved*, That the Attorney General be, and he is hereby, directed to transmit to the House of Representatives a copy of his telegram, dated May sixteenth, nineteen hundred and thirteen, 'more than a month prior to the date when Mr. Wilson, Secretary of Labor, telephoned to the Attorney General in regard to a postponement of the Caminetti case,' directing United States Attorney McNab to take no further affirmative action against Diggs and Caminetti until further directed by the Attorney General, and also copy of memorandum placed in the files of the office of the Attorney General in connection with or relating to the sending of said telegram."

In response to this resolution I beg leave to herewith inclose a copy of the telegram.

In transmitting the file containing the correspondence in this case, in response to the first resolution, the fact that it did not contain the text of this telegram of May 16

was overlooked. You will observe, however, that this file contained a memorandum by the secretary to the Attorney General which specifically called attention to the fact that such a telegram had been sent. You will observe that the entire substance of the telegram was set out in the opening paragraph of Mr. McNab's response thereto, dated May 21, 1913, which was a part of the file sent to the committee.

I also inclose you a copy of the memorandum mentioned in the resolution, as a formal response thereto. This memorandum is contained in the file sent to the committee in response to the first resolution and is also in the printed report of your committee.

The Attorney General is absent from the city.

SAMUEL J. GRAHAM,
Assistant Attorney General.
(For the Attorney General.)

The telegram and memorandum accompanying the foregoing letter are as follows:

[Telegram.]

MAY 16, 1913.

MCNAB,
United States District Attorney, San Francisco, Cal.:

Please write me fully concerning charges against Caminetti and Diggs and take no further affirmative action in respect of same until you receive advices from me. Answer.

MCREYNOLDS, *Attorney General.*

[Memorandum.]

OFFICE OF THE PRIVATE SECRETARY,
May 21, 1913.

The telegram to United States Attorney McNab was sent by the Attorney General, personally, from his hotel on the evening of Friday, May 16.

COLE.

In view of the fact that copies of the papers called for by the resolution have been furnished and are embodied in this report and made a part hereof, your committee is of opinion that the purpose of the resolution has been accomplished and therefore so report and recommend that the resolution do lie on the table.

○

63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 42.

THOMAS GREEN PEYTON.

AUGUST 5, 1913.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DENT, from the Committee on Military Affairs, submitted the following

REPORT.

[To accompany S. J. Res. 52.]

The Committee on Military Affairs, to whom was referred the joint resolution (S. J. Res. 52) to authorize the appointment of Thomas Green Peyton as a cadet in the United States Military Academy, having considered the same, report thereon with a recommendation that it do pass with the following amendment:

Strike out the period in line 5 after the word "Academy" and add the following: ": *Provided,* That this shall not operate to increase the Corps of Cadets at said academy as now authorized by law."

And in support of said report adopts the report of the Senate committee upon this resolution, a copy of which is hereto attached, and presents herewith attached an extract from the conduct record of said Thomas Green Peyton.

[Senate Report No. 71, Sixty-third Congress, first session.]

The Committee on Military Affairs, having carefully considered the joint resolution (S. J. Res. 52) to authorize the Secretary of War to appoint Thomas Green Peyton as a cadet to the United States Military Academy, reports same back to the Senate favorably, and recommends that it do pass without amendment.

This young man entered the academy as a cadet in 1910, and was there until December, 1912. During his service there he was operated on for appendicitis, which caused him to suffer somewhat in his studies, and he was turned back for one year in mathematics. He was dismissed from the academy on account of "demerits," but it appears from the record that they were given him for insignificant breaches of the academy discipline, and it is stated in a letter by the superintendent of the academy that "the boy committed no serious offense which need in any way be considered a disgrace in the eyes of the world or of anyone." His demerits were on account of violations of the regulations and for minor offenses.

The Secretary of War reports that he has no objection to the passage of the bill.

The boy has been offered another appointment from an Alabama district, but he is over the age at which he could enter, and it is considered best by your committee to authorize the Secretary of War to appoint him.

Extract from the conduct record of Cadet Thomas G. Peyton, third class.

Date.	Delinquencies.	Demerits	
1912.			
June 2	Late at formation of punishment squad, 4.47 p. m. 1st instant	1	
2	Handkerchief thrown loosely in clothespress at S. M. I	1	
3	Floor not properly swept at a. m. inspection	2	
4	....do....	2	
9	Late at chapel	1	
11	Room in disorder at police inspection	2	
18	Late at formation for posting relief, at 3 p. m	1	
19	Late at troop parade	1	
24	Shoes under clothespress not shined	1	
24	Garter on floor at parade inspection	1	
26	Not wearing white shirt about 5.15 p. m	1	
27	Gazing about while in ranks marching to dinner	2	
27	Articles on shelf of clothespress not properly arranged at retreat inspection	1	
29 E.	Frayed belt at Saturday inspection	2	
29 E.	Carrying gun other than his own at S. I	3	
29 E.	Making no attempt to clean gun after firing it at practice march	4	
			26
July 1	Shoes dusty under clothespress during supper	1	
1 E.		(1)	
2	Dirty bore at parade	4	
2	Rifle not in cover during supper	1	
4	Late at dinner	1	
6	No condiment can at inspection for practice march, 5th inst	2	
6	Late at Saturday inspection	1	
7	Late at drill, 5th inst	1	
8 E.	Field equipment not in proper place at retreat inspection	1	
13	Cigarette material in possession at Round Pond	5	
16	Dirty washbasin at retreat inspection	1	
16	Late at formation for punishment squad	1	
17 E.		(1)	
23 E.	Absent at 8 a. m. drill formation	2	
23	No black tie on about 3.30 p. m	2	
23	Late at reveille	1	
23	Crossing company street in underclothes about 6.15 p. m	2	
24	Handkerchief in dress hat in clothespress at retreat inspection	1	
25	Shoes under tent at retreat inspection	1	
28	Falling in at chapel formation with only one glove on	2	
29 E.		(1)	
30 E.		(1)	
30	Not returning explanation referred to him at the next orderly hour	2	
			37
Aug. 1	No clothes bag visible during parade	1	
1 E.		(1)	
1	Cap on shelf of clothespress during parade	1	
4 E.	Absent at police call	2	
4	Smoking cigarette in company street, 1.57 p. m	5	
5 E.	Not repeating general orders verbatim when inspected by the officer in charge	1	
5	Member of the guard not wearing gloves going from camp to guard tent	2	
10 E.	Waist belt too loose at S. I	1	
10 E.	Dirty bore at Saturday inspection	4	
10 E.		(1)	
10	Late at inspection	1	
12 E.		(1)	
12	Smiling in ranks at formation of punishment squad	2	
13	Field bayonet very rusty at retreat inspection	2	
15	Late at parade	1	
17	Late at inspection	1	
17 E.	Tarnished breastplate at inspection	1	
17 E.		(1)	
19 E.		(1)	
19	Trifling conduct while being relieved from punishment tour, 3.30 p. m	4	
21	Late at 3.40 p. m. formation for punishment	1	
21 E.	Smiling when on punishment squad 1.35 p. m	2	
24	Overstaying time in camp three minutes	3	
			42
Sept. 3	Late at breakfast	1	
6 E.	Not reporting at cadet store for inspection of clothing as directed	3	
10 E.	Knocking off dress hat at guard mounting	2	
15 E.	Rust on gun at inspection	4	
15 E.	Stopping and not walking properly on punishment tour, 14th instant	4	
22	In hall of barracks in underclothing about 9.35 a. m	2	
			16
Oct. 1 E.	Wearing white shirt with sleeves cut out at inspection of clothing	2	
3 E.	Explanation not properly written	2	
23 E.	Dirty wash basin at a. m. inspection	1	
27 E.	Dirt on groove of rifle at S. I	4	
			9

[1] Removed by Superintendent Oct. 16, 1912 (date entered in red ink).

Extract from the conduct record of Cadet Thomas G. Peyton, third class—Continued.

Date.	Delinquencies.	Demerits.	
1912.			
Nov. 6	Towel not in proper place, a. m. inspection	1	
7 E.	Dirty wash basin, a. m. inspection	1	
10 E.	Four minutes late returning from hop	3	
12 E.	Overshoes dusty, a. m. inspection	1	
17 E.	Late at breakfast formation 16th inst	1	
28 E.	Late at dinner formation	1	
			8
			138
	Limit of demerits June 1 to Nov. 30		115
	Demerits recorded June 1 to Nov. 30, 1912		138
	Removed by the Superintendent (date of removal entered in red ink) on privilege granted to cadet to submit explanations for offenses after he had exceeded the limit of demerits for a period		14
	Number of demerits remaining Nov. 30, 1912		124

63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 43.

ADOLPH UNGER.

AUGUST 8, 1913.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. GARD, from the Committee on Military Affairs, submitted the following

REPORT.

[To accompany H. J. Res. 111.]

The Committee on Military Affairs, to whom was referred the joint resolution (H. J. Res. 111) to authorize the reinstatement of Adolph Unger as a cadet in the United States Military Academy, having considered the same, report thereon with a recommendation that it do pass with the following amendment:

Provided, That nothing in this resolution shall operate to increase the number of cadets now allowed by law at the United States Military Academy.

The history of this case is that Adolph Unger was appointed a cadet at the United States Military Academy at West Point by Hon. William G. Sharp, of Ohio, entering the academy on June 14, 1911, and remaining there until January 14, 1913, when he was discharged.

Mr. Unger was born on February 21, 1890, and is therefore now a little over the age at which he might be admitted by congressional appointment.

His struggle for self-advancement has made strong appeal to all the members of this committee, for when a very young boy he lost his father and mother and was reared in an orphans' home until he was old enough to enter the high school at Tiffin, Ohio, through which he worked his way by waiting on table and doing any honest work he could get, finally completing a four years' course in this school with a general average of 91 per cent.

Letters received from leading citizens of Tiffin and Mansfield strongly recommend the young man for his persistence in seeking an education and for his willingness to work and for his ability and industry in the employment he took up after his graduation from the high school.

The evidence before us shows that at West Point he was obedient, subservient to discipline, a young man of the cleanest life, industrious,

and honest. There are no demerits charged against him which would in any way reflect upon his character for morality, honesty, and integrity. In the third-year class, in January, 1913, he became deficient in descriptive geometry, and as a result of this he was discharged.

We have learned that his average in the other studies was fair and that only his weakness in descriptive geometry, which the young man was frank enough to admit, caused his dismissal.

Copies of letters from some of the officers and instructors at West Point are as follows:

MARCH 18, 1913.

Mr. ADOLPH UNGER, *Tiffin, Ohio.*

DEAR SIR: I am sorry that I do not feel that I know you well enough to speak with authority as to your fitness. I will say, however, that during the time you were in my section in history, as well as through the course in riding, I was favorably impressed by your attention and apparently earnest efforts; and judging from what I have observed I would consider you as good material for the service. I should advise you to get a recommendation from your company tactical officer, if possible, as he would be in a position to know more about you. You are at liberty to use this letter in furthering your cause. Wishing you success, I am,

Sincerely, yours, JOHN H. HERR.

JUNE 7, 1913.

This is to certify that I know Adolph Unger as a cadet at the United States Military Academy from March 14, 1912 to December 14, 1912, during which time I was on duty at the Military Academy as a tactical officer in charge of a cadet company of which he was a member. I found him to be bright, obedient, and attentive to duty and discipline. In my opinion, he was a desirable cadet and would be a desirable officer.

E. W. NILES,
First Lieutenant, Coast Artillery Corps.

WEST POINT, N. Y., *May 4, 1913.*

The bearer, Adolph Unger, is in my estimation a person whom one would be glad to call a brother officer. I have found him to be trustworthy, obedient, willing, and, above all, self reliant. A very fit person to exercise command over others.

R. K. GREENE,
First Lieutenant, Coast Artillery Corps.

The young man desires to make military service his career. It is his ambition which he has long cherished and worked for to graduate from West Point and remain in the service of his country.

With this showing it is the unanimous opinion of this committee that a deficiency in this highly technical mathematical study ought not to prevent him from finishing his course, especially as he would be reverted to the beginning of a year and have the advantage of almost a half year's experience.

With his age the only bar to an appointment, which Representative Sharp would be glad to give him, we are all of opinion that this is a case where he should be given another chance to complete his course, for we believe that with his sterling character and most persistent determination he will undoubtedly succeed.

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63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 55.

CLERK AND A JANITOR, COMMITTEE ON ROADS.

AUGUST 22, 1913.—Ordered to be printed.

Mr. LLOYD, from the Committee on Accounts, submitted the following

REPORT.

[To accompany H. Res. 119.]

The Committee on Accounts, to whom was referred House resolution 119, authorizing the appointment of a clerk and a janitor to the Committee on Roads, have had the same under consideration, and, believing that the importance of that committee justifies such authorization and that this is a proper resolution, its adoption is recommended.

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63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 56.

J. FRED ESSARY ET AL.

AUGUST 22, 1913.—Ordered to be printed.

Mr. LLOYD, from the Committee on Accounts, submitted the following

REPORT.

[To accompany H. Res. 169.]

The Committee on Accounts, to whom was referred House resolution 169, providing for the payment of $2.25 each to J. Fred Essary, Carl D. Groat, and Daniel O'Connell, have had the same under consideration and recommend its adoption.

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63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 57.

ANNUAL CLERK TO COMMITTEE ON ELECTION OF PRESIDENT, ETC.

AUGUST 22, 1913.—Ordered to be printed.

Mr. LLOYD, from the Committee on Accounts, submitted the following

REPORT.

[To accompany H. Res. 188.]

The Committee on Accounts, to whom was referred House resolution 188, authorizing the appointment of an annual clerk to the Committee on Election of President, Vice President, and Representatives in Congress, have had the same under consideration, and, believing that the important work heretofore performed by this committee and the important questions and bills now under consideration justify such action, the adoption of the resolution is recommended.

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63D CONGRESS, 1st Session. HOUSE OF REPRESENTATIVES. REPORT No. 58.

V. L. ALMOND.

AUGUST 22, 1913.—Ordered to be printed.

Mr. LLOYD, from the Committee on Accounts, submitted the following

REPORT.

[To accompany H. Res. 141.]

The Committee on Accounts, to whom was referred House resolution 141, have had the same under consideration and recommend that it be amended as follows:

In line 2, after the word "House," strike out all the remainder of the resolution and insert in lieu thereof the following:

The sum of $150 to V. L. Almond for services rendered as stenographer to the Committee on War Claims from June fifth, nineteen hundred and thirteen, to August fifth, nineteen hundred and thirteen.

The committee recommend that the resolution, as amended, be adopted.

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63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 59.

PURCHASE OF TYPEWRITERS.

AUGUST 22, 1913.—Ordered to be printed.

Mr. LLOYD, from the Committee on Accounts, submitted the following

REPORT.

[To accompany H. Res. 164.]

The Committee on Accounts, to whom was referred House resolution 164, authorizing the Chief Clerk, with approval of Committee on Accounts, to contract for the purchase and exchange of typewriters for the use of the House, have had the same under consideration, and, believing its provisions to be in the interest of economy and beneficial to the service, the adoption of the resolution is recommended.

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63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 60.

WILLIAM J. MACDONALD v. H. OLIN YOUNG.

AUGUST 22, 1913.—Referred to the House Calendar and ordered to be printed.

Mr. POST, from the Committee on Elections No. 1, submitted the following

REPORT.

[To accompany H. Res. 231.]

In the contested-election case of William J. MacDonald *v.* H. Olin Young the following report is respectfully submitted from the Committee on Elections No. 1, to which the case was referred:

The committee has carefully examined the evidence contained in the record, heard the arguments of the respective parties, and have given the case most careful and painstaking consideration. The case arises out of the election held on the 5th day of November, 1912, for the election of presidential electors and public officers, including a Representative to Congress from the twelfth district of the State of Michigan.

This district is composed of 15 counties and occupies what is generally known as the Upper Peninsula of the State.

At the election there were four candidates, the contestant, William J. MacDonald, being the candidate upon the National Progressive ticket, and the contestee, Hon. H. Olin Young, was the candidate of the Republican Party for the office of Representative in Congress. In 14 of the counties Mr. MacDonald received 17,975 votes. In one of the counties, Ontonagon, his name appeared upon the ballot as Sheldon William J. McDonald, and under such designation he received 458 votes, making a total in the 15 counties of 18,433. Mr. Young received 18,190. The State board of canvassers, composed of the secretary of state, treasurer of state, and commissioner of the land office, canvassed the returns of the district, allowing the contestant 17,975 in the 14 counties and canvassed the vote for Ontonagon County under the name of Sheldon William J. McDonald, thus giving to the contestee upon the face of the returns a plurality of 215 votes, and on the 10th day of December, 1912, issued to him his certificate of election. When the Congress convened in extraordinary session at the beginning of the Sixty-third Congress Mr. Young appeared at the

bar of the House, took the oath of office, and served as a Member until the 10th day of May, 1913, when he resigned his seat.

It was generally understood in the district that the contestant had been elected until the 10th day of December, when the State board of canvassers issued the certificate of election to Mr. Young. Immediately thereafter, and on the 31st day of December, 1912, the contestee served his notice to contest the seat, alleging that under the primary laws of the State of Michigan one Joseph M. Rodgers had been nominated for the office of Representative in Congress as the candidate of the National Progressive Party; that said Rodgers had resigned as such candidate, and that he had been duly selected by the congressional committee of the party to fill the vacancy caused by the resignation of Rodgers; that his name as such candidate had been duly certified by the chairman and secretary of the State committee of the National Progressive Party to the various boards of election commissioners of the several counties in the district, whose official duties required them to prepare and print the ballots for the use of the voters at the general November election; that the chairman and secretary of the State committee had made a mistake in the spelling of his name, spelling it "McDonald" instead of "MacDonald"; that in Ontonagon County the clerk of the board of election commissioners caused his name to be printed upon the official ballot as Sheldon William J. McDonald; that there was no other person or candidate in the entire district of the name of Sheldon William J. McDonald; that the clerk of the board of county commissioners in Ontonagon County caused the name Sheldon William J. McDonald to be printed upon the ballot contrary to the law of Michigan in diminutive type, causing it to occupy a more obscure position than the law would have given it; that notoriety through the press and various telegrams were given to his candidacy; that the National Progressive candidate for President, for Vice President, and candidates for electors whose names appeared in the column of the ballot along with contestant's name as a candidate for Congress received practically the same number of votes in Ontonagon County as were cast for contestant; that it was the clear and manifest purpose of the 458 votes cast in that county for the candidate for Congress under the designation of Sheldon William J. McDonald were intended to be cast for him; that the State board of canvassers should have counted the same for him, which would have given him a plurality of 243 votes, and that he was justly entitled to the seat instead of the contestee.

The contestee filed his answer practically admitting the facts set out in the notice and, as countercharges, alleged that under the primary election laws of the State of Michigan a general primary election for all political parties shall be held in every election precinct in the State on the last Tuesday in August preceding every general November election, and in every congressional district there should be nominated at such primaries by direct vote of enrolled voters a candidate for Representative in Congress; that to entitle a person to vote at such primary he must register, before officers provided for that purpose, his party affiliation; that any votes cast for any candidate who is not so enrolled should not be counted and that the board of election commissioners should not print the name of any candidate upon the official November ballot who is not nominated in accord-

ance with the provisions of the primary act; that at the time of the primary election held on the last Tuesday of August the said Joseph M. Rodgers was enrolled as a Republican, and the contestant was also enrolled as a Republican and was so enrolled at the November election, 1912; that a congressional commitee should be selected by the county convention in each county selecting delegates to a congressional convention, which convention nominates the congressional committee, or the candidate for Congress may select his own committee; that blank space should be left upon the primary ballot for the use of voters to elect delegates to a county convention, which convention was authorized by the act to create a county committee; that the said Joseph M. Rodgers was not on account of being enrolled as a Republican eligible as a candidate for Congress as a Progressive; that he was not selected in accordance with the provisions of the primary act, which provides that in the formation of a new party 25 electors of the district must petition to have the name of a candidate for Congress printed upon the ballot to be used at such primary; that there was not in existence any duly constituted congressional committee of the Progressive Party at the time of the primary election in August, nor at the time of the general election in 1912; that only in two counties in the district were delegates elected to a county convention which would be authorized to formulate a congressional committee; that Joseph M. Rodgers, on October 11, 1912, filed in all of the 15 counties a paper writing declining to be a candidate; that on the same date Nathaniel N. Field as chairman and George P. Shiras as secretary of the congressional committee of the Progressive Party filed with the election commissioners of Marquette County, and shortly thereafter with the commissioners of the other counties of the district, a certificate to the effect that William J. MacDonald had been selected to fill the vacancy caused by the resignation of Joseph M. Rodgers; and on the 14th of October, 1912, Charles P. O'Neil as chairman and Charles F. Hoffman as secretary of the State central committee of the National Progressive Party filed with the boards of election in each of the counties of the district certificates of nomination of that party for presidential electors, State officers, Congressman at large, and the name of William J. McDonald as the candidate for Congress for the twelfth congressional district; that on the 15th day of October, 1912, the State secretary sent to the commissioners of the several counties a telegram in the following words: "Congressman twelfth district should be spelled William J. MacDonald, correct"; that the chairman of the Republican State committee, by reason of an opinion rendered by the Supreme Court, having sent a telegram to the board of election commissioners of each county notifying them that it was their duty to call the boards together and have the ballots printed without the contestant's name and having on the 2d day of November sent a second telegr m to such boards asking them to direct the inspectors of election to place stickers over MacDonald's name, thus taking his name from the ballot, contestee, on November 3, 1912, telegraphed the election commissioners of the several counties and caused circulars to be distributed to the voters of the district declining to avail himself of the informal-

ity and infirmity of the presence of the name of the contestant on the official ballot. The circular is in the following language:

To the voters of the twelfth congressional district:

Hon. Thomas A. Lawler, deputy attorney general for the State of Michigan, having wired the several election boards of this congressional district that under a decision of the Supreme Court of the State of Michigan just handed down Mr. William J. MacDonald, as a candidate for Congress in this district, could not legally have his name printed on the official ballot, I take this means of expressing my personal wish, which I think might well prevail over the strict letter of the law and have wired the chairmen of the different boards of elections commissioners throughout the district as follows:

"It is my personal desire that the name of W. J. MacDonald remain upon the election ballot of your county."

Mr. MacDonald and I were both candidates at the recent primaries as Republicans. I was a candidate for the nomination for Congressman and received 21,905 votes and was nominated. Mr. MacDonald was a candidate for prosecuting attorney in Houghton County and was defeated.

As a candidate for Congress Mr. MacDonald was "hand picked" by the Progressive committee, which was appointed by one man, Mr. Joseph M. Rodgers, who himself received 11 votes only as a candidate of the Progressive Party for Congress. The whole number of persons concerned in the selection of Mr. MacDonald did not exceed 25.

Which, then, is the people's candidate?

I have known from the day Mr. MacDonald was selected that his name could not legally be placed upon the ballot, but I have been at all times willing to submit the question between him and myself to the test of a popular election.

Let the people rule.

H. O. YOUNG.

He further alleged that at the time of the general election in November, 1912, and for 70 years prior thereto, it was the settled law of the State of Michigan that the intention of the voter must be clearly shown by his ballot; that no evidence aliunde is admissible to determine the intention of the voter; that by the law of the State of Michigan it can not be shown that the 458 votes cast for Sheldon William J. MacDonald can be canvassed or counted as cast for the contestant.

Upon these issues the case was submitted to the committee. It is pertinent to state that in Ontonagon County the recipient of the telegram sent by the secretary of the State committee of the National Progressive Party was misinterpreted and the word "spelled" taken for the word "Sheldon." By this mistake the name of the contestant appeared upon the ballot as the name of Sheldon William J. MacDonald.

Your committee finds:

(1) That under the primary act of the State of Michigan all officers must be nominated as provided for in that act; that at the primary held upon the last Tuesday of August, 1912, Joseph M. Rogers and one Cook were voted for as candidates for Member of Congress by voters writing in their names upon the ballots; and that Joseph M. Rogers received a majority of the votes, his name being certified to the secretary of state as the nominee of the National Progressive Party, and who issued to him a certificate of election as such nominee; that under the primary act provision is made for the writing in of a name for candidate for Congress, section 35, primary act; that in at least two of the counties delegates were elected to a county convention; that these delegates named congressional delegates to a convention to be held the latter part of September at Escanaba, in Delta County; that such delegates, with others, selected a congressional committee and elected Nathaniel L. Fields as chairman and George

W. Shiras as secretary of such committee; that at this convention the contestant was elected as the candidate to fill a supposed vacancy caused by the resignation of Joseph M. Rogers; that there being doubts as to the legality of this convention, a later convention was held at Marquette, after the resignation of Joseph M. Rogers, and the action of the Escanaba convention, selecting the contestant as the candidate to fill the vacancy, was ratified; Joseph M. Rogers recognized the action of these conventions by filing his resignation with the chairman and secretary of the committee selected by the convention.

Whether the nomination of Rogers was regular and in conformity with the primary act, or whether the congressional committee was regularly formed, we do not deem fatal to contestant's claim to a seat. It is sufficient to say that the contestant's name was duly certified as required by the general laws of the State of Michigan to the election boards of the several counties, and by them printed upon the official ballot for the use of the voters at the November election. This certification took place as early as the 11th day of October, and the certificate was made a matter of public record in each county in the district. No objections were made in any county in the district by Mr. Young, any elector of the district, any officer of any political party, or by any of the election officials to the manner in which Mr. Rogers, or Mr. MacDonald had been nominated, until four days prior to the 5th day of November, the date of the general election. The contestee, who was more vitally interested than any other person, by telegram to all of the boards of election commissioners in the district requested that Mr. MacDonald's name remain upon the ballots as they were printed and in his circular invoked the rule of the people. His desires in this regard were respected by the election officials in every voting precinct in the district, with the exception as shown by evidence, in one voting precinct the election officers pasted blank paper over the name of the contestant, thus depriving him of the Progressive votes in that precinct.

The primary act provides that any candidate, feeling aggrieved on account of fraud or error by the board of primary election inspectors, or in the count of the votes cast, or returns made by the board, may file a petition to correct any error or fraud complained of, and that the board of election inspectors may correct any fraud practiced, or irregularity in the election. This is a remedial statute and if the manner of the nomination of Joseph M. Rogers was irregular or fraudulent, its provisions should have been invoked at the proper time. In addition to this your committee finds that the courts of the State of Michigan had the inherent right and power if the name of William J. MacDonald was not entitled to be printed upon the ballots for the use of the voters at the general election, to have corrected such irregularity, and that recourse should have been had to the courts if complaint was to be made prior to the existence of the right of suffrage by the electors of the district.

(2) It is not claimed that the nomination of Rogers, his resignation, and the filling of the vacancy with the name of the contestant, or with the formation of the congressional committee who selected the contestant to fill the vacancy caused by Rogers, were fraudulent. It is only contended that it was irregular and not in strict conformity to the primary act of the State of Michigan. By a long line of unquestioned precedents established by the House it is not bound to take

cognizance of the manner in which a candidate for Congress is nominated, unless the methods employed are unfair or fraudulent and have resulted in thwarting the will of the electorate. Objections made by the contestee to the manner and form of the nomination of the contestant are highly technical, and if enforced by the House would result in the disfranchisement of not only the 458 votes cast in Ontonagon County, but of the 17,975 votes cast in the remainder of the district.

We believe that if the contestee or any elector in the district were dissatisfied with the manner in which contestant's name appeared upon the official ballot such dissatisfaction should have been exemplified prior to the general November election; that it would be exceedingly unfair and inequitable to wait until after the voters had made their choice between the candidates, and if not then satisfactory, to urge objections. But we believe the nomination of Rogers and the formation of the congressional committee were regular and legal under the provisions of the primary act.

(3) The contention that votes cast for the contestant because at the time of the primary election and at the time of the general election he was enrolled as a Republican can not be counted for him is wholly untenable. No evidence whatever was introduced even tending to show that the persons who voted for him were not qualified electors of the district. So far as the evidence discloses the election was fair and honest, and the votes cast were by honest electors, and the election was regularly and legally conducted. The claim that he was disqualified from receiving votes upon the National Progressive ticket when he was enrolled as a Republican imposes a qualification upon a Member of Congress not sanctioned by the Constitution of the United States or by the constitution of the State of Michigan.

Section 5, Article I, of the Federal Constitution provides that the House shall be the judge of the election returns and qualifications of its own Members.

Section 2, Article I, provides that the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature; and that a Member of Congress shall be 25 years of age, 7 years a citizen of the United States, and an inhabitant of the State in which he shall be chosen. The constitution of Michigan, article 3, section 1, provides that in all elections every male inhabitant of the State a citizen of the United States, 21 years of age, a resident of the State for 6 months, the township or ward for 20 days, shall be an elector and entitled to vote.

Section 5, article 5, of the constitution of the State of Michigan provides that the qualifications of a representative to the State legislature are that he shall be a citizen of the United States and a qualified elector of the district he represents.

As the contestant at the time of the general November election, 1912, possessed all the qualifications required by the Constitution of the United States and the constitution of the State of Michigan, to superadd a new qualification would be to deny to the House the right to be the judge of the qualifications, election and returns of its Members.

The provisions in the primary act to the effect that votes cast for a person not enrolled as a member of the party casting such votes are applicable only to the primary election held in accordance with the terms of its provisions, and if its provisions relate to the general November election it superadds a qualification to those embraced

in the Constitution of the United States. Mr. Justice Story, in his Commentaries, volume 2, page 101, lays down the doctrine—

> that the States can exercise no powers whatsoever which exclusively spring out of the existence of the National Government which the Constitution does not delegate to them.
>
> They have just as much right, and no more, to prescribe new qualifications for a Representative as they have for a President. Each is an officer of the Union, deriving his powers and qualifications from the Constitution, and neither created by, dependent upon, nor controllable by States.

If the ballots cast for him at the election were void, it could only be so upon the theory that by the statutory and adjudged law of the State he was ineligible to receive votes cast by Progressive electors and ineligible to be a candidate for the office, because enrolled as a Republican. In other words, it was contended such enrollment disqualified him from receiving votes on Progressive ballots, and for that reason 18,443 votes of the district should be disfranchised. Such a contention is unsound. If the laws of the State of Michigan lead to such results, then it is absolutely certain that they superadd a qualification to a Member of Congress not contemplated by the Federal or State Constitutions.

That this may not be done by the States has been decided by this House in a long line of precedents, notably in the cases of Turney *v.* Marshall and Foulke *v.* Trumbull, coming from the State of Illinois, and decided in the Thirty-fourth Congress in 1856. The constitution of the State of Illinois contained a provision to the effect that a judge of the circuit or supreme court while serving his term, or for one year thereafter, could not be a candidate for a State or Federal office, and votes cast for them should be void.

Marshall and Trumbull, both judges of the class enumerated in the Illinois constitution, were, while serving in office, candidates for the office of Representative in Congress. Each received the majority of votes cast in their respective districts and were given their certificates of election by the governor of the State. Their seats were contested upon the ground that the votes cast for them were null and void under the provisions of the State constitution.

The House decided that the provisions of the Illinois constitution providing that votes cast for a candidate for Representative while he was serving a term as a supreme or circuit judge should be null and void, was imposing a new qualification, and was therefore wholly repugnant to the Federal Constitution and null and void.

It being conceded that the votes cast for the contestant were cast by honest voters and qualified electors of the district, and such votes were intended to be cast for the contestant, then the case should not be decided upon any technicalities arising in the manner or form in which he was nominated. The House should not confine itself to such narrow limits. It possesses the power of a court, having full jurisdiction to try the question, Who was elected? and is not limited to the powers of a court of law, but clearly possesses all the functions of a court of equity. In this connection it is pertinent to say that the contestee, in his speech upon the floor of this House on the 10th day of May, 1913, said: "I am also convinced that it was the intention of those 458 electors to vote for the candidate of the National Progressive Party"; and as to the fairness and regularity of the election said: "I am convinced that if the 458 votes of Ontonagon County should be counted for the contestant no other facts can be satisfactorily proven

which, in a forum governed by broad equitable rules, would justify a verdict in my favor." The committee unanimously concur with contestee in these views.

(4) The 458 votes cast for the contestant in Ontonagon County should be counted for him. The evidence is uncontradicted that the word "Sheldon" was placed before his name in that county through a mistake pure and simple. The recipient of the telegram from the secretary of the National Progressive committee to the clerk of the board of election commissioners misinterpreted the telegraphic characters for the word "spelled" to mean the word "Sheldon," and in transcribing the name made it Sheldon William J. McDonald. This fact is conceded by all. Is the House powerless to correct this mistake? Notwithstanding the fact that it is the settled law of the State of Michigan that the intention of the voter can be determined only from the face of the ballot, the House can go behind the ballot to ascertain the intention of the voter; it may consider the circumstances surrounding the election; it can determine who were the candidates; whether there were other persons of the same name residing in the district who were candidates; whether the ballot was printed perfectly or imperfectly; and if imperfectly, how it came to be so printed.

Knowing how the word "Sheldon" became prefixed upon the printed ballot before the name of the contestant, and it being conceded that 458 of such ballots were intended for him, it would be eminently unjust or unfair not to grant him the benefit of such votes.

(5) Evidence was taken showing that the contestant failed to file with the Clerk of the House, as provided by law, prior to the general election held on November 5, 1912, an affidavit setting forth the source or sources of moneys contributed to his campaign fund, and also failed to file, as provided by law, an affidavit touching election contributions and expenses within 30 days following the general election.

No issue was made in the pleadings upon this subject, and the precedents are numerous to the effect that no issue having been raised upon it the committee is not bound to give the subject consideration. However, your committee feel that in the investigation of a contested-election case where facts are disclosed that might have a bearing upon the right of a Member to his seat, whether these facts be advanced by any of the parties to the controversy or not, it is proper for the committee to investigate the same and to come to some conclusion thereon. Moreover, it is important that the House take full notice of the compliance with the law looking to the purification of elections. In view of this, your committee has given full consideration to the question raised.

The correctness of these statements touching the facts has not been questioned. Your committee finds, however, that on the 21st day of April, 1913, contestant filed an affidavit with the Clerk of the House showing that he had incurred no election expenses required by law to be reported subsequent to the filing of his statement before the election on October 26, 1912. Contestant also filed an affidavit with the Clerk of the House on April 24, 1913, setting forth that during the month of October, 1912, he received a contribution to his campaign fund in the amount of $300 through George P. Shiras on behalf of the National Progressive Party.

The House has repeatedly affirmed its right to consider the eligibility of a person presenting himself as a Member elect to the House

of Representatives from the standpoint of the manner in which his campaign for election had been conducted under the corrupt-practices acts, and the House has the undoubted right to refuse to seat a person presenting himself for membership for violation of the law.

In this case, however, it does not appear that the failure of contestant to comply with the law was willful or on account of ulterior purposes. The money contributed was not an unreasonable amount and was from a source that was legitimate, and the failure of contestant to file an affidavit within 30 days following the election, as is provided by law, when, as a matter of fact, no expenses had been incurred subsequent to the affidavit filed on October 26, 1912, can not have been to avoid the disclosure that such an affidavit might reveal. The delinquency of contestant lies solely in his failure to comply with the law within the time required.

In view of this the committee feels that while the Congress must retain the principle of reserving to itself the right to seat, or refuse to seat, a person presenting himself as a Member elect, on account of his conduct in attaining his election, in this instance the failure to comply with the law, as has been disclosed, carries with it nothing of opprobium, and your committee can not recommend that contestant be denied his seat on account of his failure to comply with the technical provisions of the law.

(6) The committee after careful and patient study and investigation of this case determine that the 458 votes cast in Ontonagon County not returned by the State board of canvassers of the State of Michigan for the contestant should be counted for him, and that he was fairly and justly elected, having received a plurality of 243 votes in the district, and more than any other candidate, and is entitled to the seat.

We can not fail to recognize the frank and honorable manner in which Hon. H. Olin Young has conducted himself with relation to the pending contest, nor fail to approve his candor in reaching a conclusion touching the question of his own election which prompted him to tender his resignation to the House of Representatives on May 10, 1913. In view of this waiver of any rights that contestee may have had in the contest, the committee does not regard it necessary to present for the consideration of the House a separate resolution bearing upon the question of the election of Mr. Young.

The committee, therefore, offers for adoption the following resolution:

Resolved, That William J. MacDonald was duly elected a Representative from the twelfth congressional district of Michigan to the Sixty-third Congress and is entitled to a seat therein.

J. D. POST, *Chairman;*
HUBERT D. STEPHENS,
CHAS. R. CRISP,
CHAS. M. BORCHERS,
WALTER ELDER,
BURTON L. FRENCH,
JAS. A. FREAR,
WALTER M. CHANDLER,
Committee on Elections No. 1.

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63D CONGRESS, 1st Session. | HOUSE OF REPRESENTATIVES. | REPORT No. 61.

FOURTEENTH INTERNATIONAL CONGRESS ON ALCOHOLISM.

AUGUST 26, 1913.—Ordered to be printed.

Mr. HENRY, from the Committee on Rules, submitted the following

REPORT.

[To accompany H. Res. 235.]

The Committee on Rules, to whom was referred House resolution 235 for the consideration of the bills H. R. 6382 and S. 1620, "To provide for representation of the United States in the Fourteenth International Congress on Alcoholism and for other purposes," report the same with the recommendation that it be adopted.

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63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 66.

TO PRINT HOUSE DOCUMENT NO. 1458, SIXTY-SECOND CONGRESS, THIRD SESSION.

SEPTEMBER 5, 1913.—Ordered to be printed.

Mr. BARNHART, from the Committee on Printing, submitted the following

REPORT.

[To accompany H. Con. Res. 8.]

The Committee on Printing, to which was referred House concurrent resolution 8, providing for the printing of 50,000 copies of House Document No. 1458, Sixty-second Congress, same being known as "Prayers offered at the opening of the sessions of the Sixty-second Congress of the United States," recommend that the same do pass. The estimated cost of the printing authorized by the resolution is $1,935.

63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 67.

URGENT DEFICIENCY APPROPRIATION BILL.

SEPTEMBER 5, 1913.—Ordered to be printed.

Mr. HARDWICK, from the Committee on Rules, submitted the following

REPORT.

[To accompany H. Res. 242 and H. Res. 243.]

The Committee on Rules, having had under consideration sundry resolutions relating to the urgent deficiency appropriation bill (H. R. 7898), report the following substitute therefor:

House resolution 244.

Resolved, That it shall be in order for the House in the Committee of the Whole to consider so much of H. R. 7898 as is embraced between the word "the," at the beginning of line 4, page 21, and the word "repealed," at the end of line 17, page 25.

It shall also be in order for the House in the Committee of the Whole to consider, without amendment, even though the paragraph to which the said amendment is germane may have been passed, the following amendment to H. R. 7898:

"For compensation (not exceeding in the aggregate $15,000 and a monthly compensation not exceeding $300 each, to be fixed by the Secretary of the Treasury) and traveling expenses of agents to select and recommend sites which have been authorized by law for public buildings, for the fiscal year 1914, $30,000."

63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 68.

PUBLICATION OF REPORT OF PROCEEDINGS OF UNVEILING OF STATUE OF ZACHARIAH CHANDLER.

SEPTEMBER 5, 1913.—Ordered to be printed.

Mr. BARNHART, from the Committee on Printing, submitted the following

REPORT.

[To accompany S. Con. Res. 5.]

The Committee on Printing, to which was referred Senate concurrent resolution 5, providing for the publication of report of proceedings of unveiling of statue to Zachariah Chandler in Statuary Hall, reports the same back and recommends that the same do pass.

The number of copies and their distribution—5,000 for use of the Senate, 10,000 for use of the House of Representatives, and 1,500 for use of Senators and Representatives in Congress from the State of Michigan—is in compliance with resolutions heretofore provided in similar proceedings, and the estimated cost is $6,375.

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63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 70.

CONFERENCE COMMITTEE ON TARIFF BILL.

SEPTEMBER 11, 1913.—Ordered to be printed.

Mr. HENRY, from the Committee on Rules, submitted the following

REPORT.

[To accompany H. Res. 248.]

The Committee on Rules, to whom was referred H. Res. 248, have considered the same and beg leave to report said resolution with the recommendation that it shall be adopted.

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63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 76.

INVESTIGATION OF BOLL WEEVIL AND HOG CHOLERA.

SEPTEMBER 16, 1913.—Referred to the House Calendar and ordered to be printed.

Mr. LEVER, from the Committee on Agriculture, submitted the following

REPORT.

[To accompany H. Res. 254, reported in lieu of H. Res. 240 and H. Res. 245.]

The Committee on Agriculture, to whom was referred House resolution 240 and House resolution 245, to wit:

H. Res. 240—

That the Secretary of Agriculture is hereby directed to communicate to the House of Representatives at the earliest practicable day, not later than the first Monday in December, nineteen hundred and thirteen, the result thus far secured in the study and investigation of the boll weevil and the amount of money thus far expended in such study and investigation.

And H. Res. 245—

That the Secretary of Agriculture is hereby directed to communicate to the House of Representatives at the earliest practicable day, not later than the first Monday in December, nineteen hundred and thirteen, the result thus far secured in the study and investigation of hog cholera and the amount of money thus far expended in such study and investigation.

respectfully report the following as a substitute for the same and recommend its adoption:

Resolved, That the Secretary of Agriculture is hereby directed to communicate to the House of Representatives at the earliest practicable day, not later than the first Monday in December, nineteen hundred and thirteen, a full report of the methods used and the results thus far secured in the study and investigation of the boll weevil and hog cholera and also the amount of money thus far expended in the study and investigation of each.

The passage of the resolution is recommended for the reason that in recent months great interest has manifested itself in the country both with respect to the boll weevil and the hog cholera. It is thought advisable that the methods used by the Department of Agriculture in its study of the boll weevil and hog cholera and the results so far accomplished by these methods and the amount of money thus far expended in the prosecution of these studies and investigations should be made available to the Congress before consideration of the regular appropriation bill for the Department of Agriculture begins.

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63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 82.

SALE AND ISSUANCE OF PATENT TO H. W. O'MELVENY.

SEPTEMBER 22, 1913.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CHURCH, from the Committee on the Public Lands, submitted the following

REPORT.

[To accompany H. R. 27.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 27) to authorize the sale and issuance of patent for certain land to H. W. O'Melveny, having had the same under consideration, respectfully submit the following:

The bill was submitted by the committee for the consideration of the Department of Agriculture and the Department of the Interior. The reports from these two departments appear to state the matter fully, and are herewith set forth:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D. C., June 13, 1913.

Hon. SCOTT FERRIS,
Chairman Committee on the Public Lands, House of Representatives.

DEAR MR. FERRIS: I wish to acknowledge receipt of your letter of June 5, inclosing a copy of the bill H. R. 27, introduced by Mr. Stephens of California, to authorize the sale and issuance of patent for certain land to H. W. O'Melveny, with the request that I also read the report made on August 17, 1912, by the Secretary of the Interior.

The facts set forth in the letter of August 17 show the status of this case as it appears to this department. The tract upon which Mr. O'Melveny is living, and to which he has sought title for some time, is chiefly valuable for agriculture. From the records in this department he appears to be entitled to the land. For these reasons this department has no objection to the passage of the bill.

Very sincerely yours,

_____,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
Washington, July 31, 1913.

Hon. SCOTT FERRIS,
Chairman Committee on the Public Lands, House of Representatives.

MY DEAR MR. FERRIS: In response to your request therefor I have the honor to report on H. R. 27, that the facts in relation thereto are as follows:

The bill provides for the sale to H. W. O'Melveny of certain lands in sections 6 and 7, township 1 north, range 9 west, San Bernardino meridian, Angeles National Forest, Cal., at a price of $2.50 per acre.

It appears from the statements of Mr. O'Melveny and from certain other records available in the department that this property was occupied by one George B. Islip, who entered into possession about 1884, and that upon the death of Islip Mr. O'Melveny purchased from his estate whatever equities may have accrued through his occupancy. Mr. O'Melveny makes the statement that prior to 1891 an application had been made at the local land office by or in behalf of Islip to enter certain of these lands under the homestead or preemption laws, but that this application was denied because the lands were then within the limits of a primary grant of a Southern Pacific Railroad Co. branch line, as defined by the act of March 3, 1871 (16 Stat., 573). On October 3, 1891, and July 16, 1892, Mr. O'Melveny made application to the Southern Pacific Railroad Co. to purchase the lands in question, these applications being attested to by a certificate of Jerome Madden, land agent of the Southern Pacific Railroad Co., dated May 10, 1900. By a decision dated October 18, 1897 (168 U. S., 1), the United States Supreme Court held that the Southern Pacific Railroad Co. acquired no rights under its branch-line grant of 1871 to lands within the overlapping limits of the forfeited portion of the Atlantic and Pacific grant and the lands were accordingly, with certain exceptions, ordered on April 13, 1898, to be restored to entry (26 L. D., 697). Meanwhile, by proclamation of December 20, 1892, the San Gabriel Forest Reserve, including the lands in question, was established, and the lands within this reserve were among those excepted from entry under the order of April 13, 1898.

Mr. O'Melveny's application to purchase from the Southern Pacific having been nullified by the decision of the Superme Court (168 U. S., 1), he made application to enter parts of section 7 under the act of January 13, 1881 (21 Stat., 315), and on January 30, 1899, was allowed to make cash entry No. 5526, depositing with the register and receiver the sum of $200 at the time the application was made. By decision of November 24, 1900, the land office held the cash entry for cancellation. Appeal was taken, but the department affirmed the decision of the commissioner, and the entry was canceled May 14, 1901, but the $200 deposited when the application to purchase was made is still retained by the Department of the Interior. Mr. O'Melveny is now in possession of the property under a permit issued by the Department of Agriculture, for which he pays an annual rental of $15.

It appears from this record that Mr. O'Melveny has been endeavoring for 15 years to secure title to the property under the various laws which from time to time have appeared to him to be applicable. Mr. O'Melveny is not qualified under the homestead laws to enter lands otherwise, so the forester states in a letter dated March 30, 1912, and addressed to the Hon. W. D. Stephens, M. C., it would be possible to list under the act of June 11, 1906, so much of the land occupied by him as is chiefly valuable for agriculture. It appears, therefore, that there is no way for him to acquire this land under existing law.

Mr. O'Melveny has always been an earnest and practical supporter of the forestry policy of the United States. He has at all times cooperated to the fullest extent with the forest officers, and is reported to have constructed at his own expense a firebreak and trails which, though used mainly for the protection of the property which he is occupying under the permit from the Forest Service, would be of great value to that service in case of forest fires. Ownership of this tract by him would, therefore, not result in injury to the reserve.

The forest supervisor states in a report to the district forester that the tract contains no timber of value, being chiefly covered with brush and a few live oaks; that the improvements consist of a substantial house, with suitable outbuildings, a reservoir, pipe lines, and orchard, these improvements representing an investment estimated at from $5,000 to $6,000.

It appears from the records of the General Land Office that parts of the lands involved were withdrawn on March 2, 1909, from all disposal under any of the public-land laws, except the various right-of-way acts, the withdrawal being for the purpose of protecting a reservoir site.

I am informed by the Director of the Geological Survey that under the stimulus of the great demand which exists for water in southern California, where supplies for agricultural purposes are estimated to be worth at the rate of $50,000 for a perpetual right to 1 second-foot continuous flow, or, for municipal purposes, $100,000 for that quantity, not only have all available waters in the San Gabriel Canyon been filed upon long since, but, through costly litigation and by agreements of various types, rights to the waters of the stream have been definitely adjusted. Under this same stimulus the canyon has been repeatedly examined by competent engineers for available dam and reservoir sites, and the conclusion has invariably been reached that no such sites exist that are practicable of development under the conditions that prevail of high gradient, low-storage capacity, and small residue of flood waters available for storage. The

power possibilities of the part of the canyon involved likewise appear to be fully utilized by the developments already made.

It may be said, therefore, in summary, that Mr. O'Melveny has sought through a long period of years to acquire title to these lands under such laws as from time to time have seemed to apply; that he has occupied them in good faith and is now occupying them under a permit from the Department of Agriculture and has placed upon them improvements costing from $5,000 to $6,000; that the transfer of these lands to him in fee will in the opinion of the Department of the Interior adversely affect no valuable reservoir or power possibilities; and it appears to be the opinion of the Department of Agriculture that forest interests will in nowise be jeopardized by vesting the title to the lands in Mr. O'Melveny.

Very truly, yours,

A. A. JONES,
Acting Secretary.

The committee was unanimous in the opinion that this bill do pass.

Respectfully submitted.

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63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 83.

AGRICULTURAL EXHIBIT, SIXTH NATIONAL CORN EXPOSITION, DALLAS, TEX.

SEPTEMBER 22, 1913.—Referred to the House Calendar and ordered to be printed.

Mr. UNDERHILL, from the Committee on Industrial Arts and Expositions, submitted the following

REPORT.

[To accompany H. Con. Res. 17.]

The Committee on Industrial Arts and Expositions, to whom was referred House concurrent resolution No. 17, having carefully considered the same, unanimously report the said resolution favorably, with amendment, and recommend that it do pass:

Resolved by the House of Representatives (the Senate concurring), That the Secretary of Agriculture be, and he is hereby, authorized to make such exhibit as may be convenient and practicable at the Sixth National Corn Exposition, to be held in Dallas, Texas, during the month of February, nineteen hundred and fourteen.

At the end of line 6, after the word "fourteen," insert the following:

SEC. 2. That the said exhibit shall be of such nature as the Secretary of Agriculture deems appropriate: *Provided*, That the Secretary of Agriculture shall make such arrangements with the proper officers of the said exposition that the Department of Agriculture shall be at no expense for transportation of said exhibit to and from the exposition: *Provided further*, That the Secretary of Agriculture shall also make such arrangements with the proper authorities of said exposition that there shall be no expense to the department for any breakage or damage that may occur to the exhibit, nor for the living expenses of such appointees as he may see fit to send to said exposition to demonstrate the exhibit sent.

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63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 87.

COMPENSATION OF STAR-ROUTE AND SCREEN-WAGON CONTRACTORS.

SEPTEMBER 25, 1913.—Ordered to be printed.

Mr. MOON, from the Committee on the Post Office and Post Roads, submitted the following

REPORT.

[To accompany H. Res. 229.]

The Committee on the Post Office and Post Roads, to which was referred House resolution 229, submitted the same to the consideration of the Postmaster General. On September 13, 1913, he made the following reply:

OFFICE OF THE POSTMASTER GENERAL,
Washington, D. C., September 13, 1913.

Hon. JOHN A. MOON,
Chairman Committee on the Post Office and Post Roads,
House of Representatives.

MY DEAR MR. CHAIRMAN: The receipt is acknowledged of your letter of the 5th instant, with which you transmitted a copy of House resolution No. 229, directing me to inform the House as to what steps have been taken toward the readjustment of the compensation of star-route and screen-wagon contractors on account of the establishment of the parcel post, as provided in the parcel-post law; the character of the action which has been taken; the extent to which a determination has been reached as to the amount of extra compensation to which such contractors are entitled; and what steps, if any, have been taken to provide for the payment of the sums adjudged to be due by reason of the readjustment.

In reply I have the honor to inform you that, in accordance with the provisions of the act of Congress approved on August 24, 1912, making appropriations for the service of the Post Office Department for the fiscal year ended June 30, 1913, instructions were issued to the postmasters at offices on star routes in Alaska and at offices having screen-wagon service, which resulted in the weight being taken of all mail and equipment transported over such routes during the months of October and November, 1912, and March and April, 1913, in order to determine whether the weight of the mails handled by the contractors had been materially increased by the adoption of the parcel-post system.

As it was impossible owing to the nature of the service performed on screen-wagon routes to weigh the parcel-post matter separately from the other classes of mail matter handled without great expense to the department and delay to the mails, the postmasters were required to keep a record of the aggregate weight of mails handled over the various routes during the periods mentioned without regard to the class thereof and to forward to the department, under proper certificate, a statement showing the

aggregate weight of the mail and equipment carried during the months of October and November, the aggregate weight of the mail and equipment carried the months of March and April, the increase in the weight of mail and equipment carried during March and April over that carried in October and November, and what per cent of such increased weight of mail and equipment was due to the adoption of the parcel-post system, as ascertained from personal observation and information on file and from reports made to the postmasters by their subordinate officers personally familiar with the conditions on the routes.

With a view to ascertaining whether as a result of the adoption of the parcel-post system the weight of mail and equipment handled on screen-wagon routes had been so increased as to involve the contractors in material additional expense in the performance of the service they were requested, under date of July 19, 1913, to prepare and forward to the department a statement showing the additional employees, horses, wagons, and other equipment necessary, the additional mileage traveled, and other expenses incurred in the performance of the service as a direct result of the adoption of the parcel-post system. The contractors were required to submit such statement under oath, accompanied by the certificate of the postmaster cognizant of the facts as to the correctness of the statement.

Upon the receipt in the office of the Second Assistant Postmaster General of the data referred to it is examined by a committee especially appointed for the purpose of reviewing it to determine whether as the result of the parcel-post system the weight of the mails handled by any particular contractor has been materially increased, and making appropriate recommendation to the Second Assistant Postmaster General with respect to the action that should be taken in connection with the readjustment of such contractor's pay. If the approval of the recommendation of the committee on any particular case involves a readjustment of the contractor's compensation, the necessary order will be issued authorizing such readjustment, when the additional amount allowed and due will be paid to the contractor.

The number of screen-wagon routes in operation on the date of the adoption of the parcel-post system on which the contractors' compensation is subject to readjustment is 265. Of this number of routes there are 207 on which the required data have been received. Of the latter number the data on 40 routes have been examined by the committee and recommendation prepared for submission to the Second Assistant Postmaster General for approval, and it is expected that all of the cases will be disposed of at an early date.

As practically all of the star routes in Alaska are covered by contracts under which the contractors can not be required to carry an amount of mail exceeding a specified weight limit on each trip, and as the reports of the weight of mails carried on the routes on which the contracts are not on a weight-limit basis do not indicate any material increase owing to the adoption of the parcel-post system, no readjustment of the pay of the contractors on these routes appears to be necessary.

Respectfully,

A. S. BURLESON,
Postmaster General.

This letter of the Postmaster General gives all the information now obtainable on the subject of the resolution. The committee therefore recommends that the resolution do lie upon the table.

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63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 89.

ASSISTANT FOREMAN IN FOLDING ROOM OF THE HOUSE OF REPRESENTATIVES.

SEPTEMBER 30, 1913.—Ordered to be printed.

Mr. SMITH of Texas, from the Committee on Accounts, submitted the following

REPORT.

[To accompany H. Res. 263.]

The Committee on Accounts, to whom was referred House resolution 263, providing for the appointment of an assistant foreman in the folding room have had the same under consideration and recommend that it be amended as follows:

In line 1, after the word "That" strike out "S. D. Taylor be chosen to act as" and insert "the Doorkeeper of the House be, and he is hereby, authorized to appoint an."

The resolution of February 6, 1900, referred to in this resolution, names P. L. Coulson as assistant foreman in the folding room and the appropriation acts since that time included that for the present fiscal year, provides for the continuance of his employment. His employment was continued until his death, during the present session of Congress. This resolution provides for the appointment of his successor and this committee, believing the employment necessary, and this a proper resolution, recommend its adoption.

63D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 90.

SPECIAL ORDER FOR THE CONSIDERATION OF H. R. 7898.

OCTOBER 10, 1913.—Ordered to be printed.

Mr. HARDWICK, from the Committee on Rules, submitted the following

REPORT.

[To accompany H. Res. 275.]

The Committee on Rules, to whom was referred the resolution (H. Res. 275) to provide a special order for the consideration of H. R. 7898, having considered the same, beg leave to report it back to the House with the recommendation that it be adopted.

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